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Degradation or Redemption? A Parole Board Polices a Moral Boundary

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Parole boards possess the notable power to grant release from prison, oftentimes well short of an incarcerated person's legally allowable length of sentence. Although the exercise of that power is, at least in part, governed by law, extralegal considerations likely play an influential part in decisions to grant release. Indeed, the analysis offered here of parole board hearings in Washington State reveals, in particular, the work that board members perform to reinforce the moral significance of past criminality. In parole hearings, board members find ample opportunities to morally condemn the index offenses that petitioners have perpetrated and to express skepticism about narratives of petitioner change. Instead of helping petitioners ease the burden of being profaned for their past acts, board members often act to reinforce the mark of a criminal record. These realities underscore the significant work necessary to shift attitudes toward those convicted of crimes, and expose the cultural challenges that attempts to reduce incarceration more generally are likely to face, especially in the United States.

INTRODUCTION: THE BRASHEAR CASE

Gail Brashear appeared before Washington State's Indeterminate Sentencing Review Board (ISRB) for consideration for parole in April 2017. She was before the parole board because of a 2014 change in Washington law. That law addressed individuals who had been convicted in adult court for crimes they committed as juveniles and who had received long sentences. Any such individuals could be considered for parole after they served at least twenty years. The law was inspired, in part, by a key US Supreme Court case, *Miller v. Alabama*, which made unconstitutional the imposition of mandatory life without parole sentences for juveniles.[1] Washington's law was significantly more expansive than *Miller* because it primarily addressed those not serving life without parole. But it relied upon the logic of *Miller*, which emphasized how juveniles differ from adults.[2] Juveniles, this decision held, are insufficiently risk

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1. *Miller v. Alabama*, 567 US 460 (2012).

2. To say that the Washington law was inspired by *Miller* is by no means to say that it was strictly loyal to it. Indeed, the Washington law went beyond *Miller*, which focused solely on those sentenced to mandatory life without parole. Washington allows consideration for release of any individual convicted of any felony after they have served twenty years of their sentence. For this reason, the vast majority of those who go before the Indeterminate Sentencing Review Board (ISRB) were not sentenced to life without parole. Further, *Miller* by no means dictated the standards that the Washington legislature created to

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adverse, overly susceptible to peer pressure, and more likely to be rehabilitated. Harsh criminal sentences for teenagers thus deserve to be questioned.[3]

The Washington law that brought Brashear before the parole board was constructed on favorable terms for the petitioner: the board could only deny release when the petitioner was judged more likely than not to commit a criminal offense upon reentry. This "preponderance of evidence" standard should ensure a petitioner's release if there is at least a 51 percent chance that they will not re-offend. Brashear seemed to have met that standard. A psychological evaluation assessed her as a "very low to low" risk to re-offend. Her prison counselor provided highly favorable testimony at the hearing, describing Brashear's extensive involvement in educational and vocational activities. And Brashear conveyed deep remorse for the murder that she had committed at the age of fifteen and for which she received a fifty-three-year sentence.

Yet the ISRB denied release. The board cited three reasons: Brashear had committed an egregious crime; had served not even half of her sentence; and had garnered opposition from the prosecutor from the county of her conviction. In response, Brashear sought relief in an appeals court, where she argued that the board had abused its discretion. In a short and strongly worded opinion, the court agreed with her and mandated her release. The court noted that the law meant to govern the ISRB's juvenile process had only one criterion for the release decision: the likelihood of re-offending. Because that likelihood was low in Brashear's case, the court decreed that the parole board had to release her. In response, the ISRB conducted a second hearing for Brashear and reached a different conclusion—that she should be released. At the time of writing, Brashear is completing a bachelor's degree and working as a legal assistant for a criminal defense attorney.

THE PUZZLE

Brashear's case suggests the need for attention to parole board practices. If a parole board can so easily stray from a clear legislative mandate, it is clear that extralegal dynamics can too readily influence their decisions. Because of the notable power of a parole board, it is worth considering what those extralegal factors might be and how they might work to structure how parole boards both make and justify release decisions. In other words, how might we understand the fact that the Washington ISRB veered far enough from the law that their actions required remediation from an appeals court?

I offer here what I hope is an instructive way to approach this puzzle—namely, that it is fruitful to consider parole board proceedings in moral terms. As Harold Garfinkel (1956) long ago recognized, to convict someone of a crime is not simply to find them in

structure the board's decisions. The "preponderance of evidence" standard in Washington, for instance, is not mandated by *Miller*.

3. In a 2020 decision, *Jones v. Mississippi*, 593 US __ (2021), the US Supreme Court arguably weakened the standards established by *Miller*, by making it easier for judges to sentence a juvenile to a sentence of life without the possibility of parole for aggravated murder convictions. This will not impact Washington's practices because its parole law applies to all juveniles convicted of adult crimes and because the Washington Supreme Court has ruled that life-without-parole sentences for juveniles are contrary to the Washington Constitution.

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violation of the law, but it also requires them to undergo practices that serve to degrade. As Garfinkel explains, "[w]e publicly deliver the curse: 'I call upon all men to bear witness that he is not as he appears but is otherwise and in essence a lower species'" (421). One's loss of status is symbolized in the shackling of one's limbs, the moral condemnation of one's behavior by a judge, the loss of one's clothing and hairstyle, and even the probing of one's orifices. In these ways, the legal proclamation of a criminal conviction involves a series of ceremonial acts to symbolically mark an individual's passage into the land of the stigmatized (Erikson 1962; Hagen, Hewitt, and Alwin 1979; Emerson 2017); the profane nature of criminality is decreed and condemned (Durkheim 1984; Smith 2008).

A hearing for parole, by contrast, represents an opportunity for a person with a criminal conviction to potentially traverse back across that symbolic boundary. It provides a chance to convince a group of designated officials that one is morally worthy of a return to outside society. Parole board members, in other words, stand as guardians of the deeply symbolic line between those worthy of collective trust and those who deserve continued suspicion. Many of the board's actions, I suggest, represent their attempt to guard that moral boundary.

It is never easy for someone to lose one's status as a deviant; once a ceremonial redefinition of a self has occurred, it is hard to overcome (Goffman 1963, 1990). As Kai Erikson (1962, 311) has noted, "[a]n important feature of these ceremonies in our culture is that they are almost irreversible." Even under the best of circumstances, parole boards may not be the likeliest bodies to allow such a reversal. Because they are typically appointed by a governor, board members are often in politically tenuous situations (Connor 2016; Rhine, Petersilia, and Reitz 2017). Further, they are not always well regulated by law, which can result in a high level of discretionary authority (Reitz and Rhine 2020). This level of discretion can sometimes lead to release decisions that are shaped by extralegal factors, such as race (Garber and Maslach 1977; Huebner and Bynum 2008; Weisberg, Mukamal and Segall 2011; Friedman and Robinson 2014; Bell 2019).

Certainly, parole members are amongst those powerful social agencies with the power to impose and reinforce the moral stain of a criminal conviction (Link and Phelan 2001) and to do so in a highly moralized fashion (Yang et al. 2007). The level of discretion possessed by board members allows them to evoke and reinforce their own moral understandings (Greene and Dalke 2020). And this power is considerable. As Kevin Reitz and Edward Rhine (2020) point out, even if parole is used less frequently than it once was in many jurisdictions in the United States, it remains a very significant means by which prison release can occur. In their words, "[p]arole-release and supervision practices are major focal points for the development of American prison policy—near the top of the list, perhaps, in most states" (282). Because of this, attention to parole practices is well deserved.

Whatever else parole board members might be doing, they work to ensure that parole petitioners understand both the moral magnitude of their past offenses and the moral significance of a potential release. In these ways, parole board members reenact the ceremonial flourishes of the criminal conviction process by making clear why they will only begrudgingly allow passage out of the dishonored status of prisoner. Although these moralized practices are common, they work to limit parole board

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members' understandings of the petitioners who appear before them. Significant personal change is actually very common for individuals who receive lengthy sentences as juveniles and for long-term prisoners more generally (Johnson and Dobrzanska 2005; Irwin 2009; Nellis 2012; Leigey and Hodge 2013; Leban et al. 2016; Herbert 2019; Crewe, Hulley, and Wright 2020; Johnson and Leigey 2020). Yet such narratives of prisoner growth, maturation, and altruism are usually downplayed in these hearings. This can work to inhibit the ability of a petitioner to adopt a new identity as a morally worthy member of society.

DATA, METHODS, AND ARTICLE STRUCTURE

To try to assess how extralegal moral considerations can influence parole board decision making, I drew upon an analysis of forty-two juvenile parole hearings conducted by the ISRB in Washington State. Audio-recordings of these hearings were gathered via a public disclosure request and were transcribed. These hearings all took place between 2016 and 2019 and involved individuals who, like Gail Brashear, were given new hope for release following the 2014 change in law. Recordings prior to 2016 were not available. Hearings that occurred after the 2019 appeals court ruling in Brashear's case were excluded. After that ruling, the ISRB notably increased the rate at which it granted release to juvenile petitioners, from just less than 50 percent to just less than 85 percent.[4] Because my focus here is on how a parole board might operate without strict adherence to the law, and thus how extralegal moral considerations can shape decision making, I have excluded cases in more recent years.

Typical hearings are overseen by two of the parole board's four members. Because these hearings predated the pandemic, they all took place at the facility where the individual was incarcerated. The hearings typically lasted about one hour. Besides the board members and the petitioner, the only other certain attendee was the petitioner's prison counselor, whose role is to provide the board with information about prison conduct. On a small number of occasions, the petitioner had a legal advocate in attendance. Juvenile parole hearings constitute only a small fraction of the ISRB's caseload. The board typically conducts about fifteen juvenile parole hearings a year. The vast majority of the board's cases focus instead on those convicted of sex offenses.[5] The juvenile parole petitioners usually appeared before the board in their late thirties. That is because Washington law requires that they can petition for a hearing only after serving twenty years of their sentence. After the petition is accepted, the Washington Department of Corrections must complete a mandated psychological evaluation within six months. That evaluation includes the psychologist's prediction of the likelihood of re-offense.

4. Because I did not subject the board's decision-making practices to any form of rigorous statistical analysis, I cannot definitively state that the Brashear decision caused an increase in release decisions. However, in their written justifications for their decisions, the board stopped referencing factors that they previously cited commonly, including the heinousness of the crime, the recommendation of the prosecutor, or the desires of the victim. At least in terms of its public justification of its decisions, the board appeared to have learned a lesson from the appeals court.

5. By Washington law, those individuals convicted of sex offenses can remain in custody beyond their court-mandated sentence if the ISRB finds that that they are more likely than not to commit a future sex offense.

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The hearing usually takes place within a few months of the completion of the psychological evaluation.

Of the sixty-two petitioners who appeared before the board between 2014 and 2019, fifty-five were men and seven were women. In terms of race, nineteen were white, twenty-five were Black, ten were Latino, four were Asian, and four were American Indian. The hearing transcripts were analyzed with an iterative coding process through which broad indexes used to initially organize the data were progressively refined into a series of analytic codes (see Deterding and Waters 2021). Repeated passes through the transcripts yielded an increasingly specific set of analytic codes and revealed the means by which parole board members framed the cases before them.

In the analysis that follows, I move through four sections. In the first section, I explore one of the key paradoxes of the board's approach—namely, how it seemingly wishes to situate the petitioner's behavior in a cognitive plane yet misses few opportunities to morally condemn that behavior. Even as the board seeks to read criminal behavior as being caused by faulty thinking, it does not ultimately see the petitioner as a cognitive agent as much as a moral one. In the second section, I explore one key place where the board finds the authority for its moral scolding—it frequently situates itself as speaking for victims. The victim occupies a sanctified position; their name is frequently wielded by the board to try to ensure that petitioners understand the depth of their past immorality. In the third section, I explore how the board's moral understanding of the petitioner is incomplete. The board's efforts to ensure that the petitioner is aware of the depth of their past depravity provide it with somewhat less space to consider the full degree of change that many prisoners accomplish. The work of reinforcing a symbolic boundary, in other words, limits an appropriate recognition of the moral work of individuals who achieve significant personal development under prison conditions that hardly make maturation easy. The fourth section concludes the analysis by summarizing its key points and offering some additional reflections on its significance.

"WHAT YOU DID IS A HORRIBLE THING": THE COGNITIVE, IF IMMORAL, PETIONER

One of the most striking aspects of each parole hearing is the extensive amount of time devoted to asking the petitioner to recount the index offense. This component typically occupies at least half of the hearing. Particularly notable are the very specific details that board members often ask about: the caliber of the gun if one was used; the number of bullets in the chamber; whether and when any reloading of the gun occurred; what the victim said after they were injured, and so on. Board members justify these questions in terms of accountability. Petitioners are told that their stories about the crime will be compared to the version of events that emerged from their criminal proceedings. This "official" rendition is the one that board members are provided before the hearing, and it comes from documents generated by police, prosecutors, and judges while the petitioner's case was being adjudicated. Petitioners are assessed by how well their version of events matches this file material. Any notable discrepancy can be construed by board members as evidence that the petitioner refuses to accept full responsibility for their actions; if they cannot tell the truth about their past acts, the board

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presumes, then petitioners have not embraced complete accountability for their criminality (see also Caplan 2007; Aviram 2020; Ruhland 2020).

Board members often interrupt petitioners with questions about what they were thinking at different moments as the action unfolded. Here is a common justification for such questions, as stated by a board member during a hearing: "But one of the things we're trying to get at is what your thinking was then, so that we can compare it to what you're thinking now. That's really the only reason we go through all this is so that we can get to what is the change, or if there's been a change that means you would never do this again. We can't get to that unless we can understand what you were thinking at the time." This emphasis on what the petitioner was thinking is very consistent across the hearings and is commonly found elsewhere in the world of corrections (see Fox 1999; Waldram 2012). In this way, the board steadily reinforces the idea that the petitioner's criminality can best be understood as the result of improper cognition. Board members frequently wonder aloud why the petitioner did not interrupt their actions so that their ultimate acts of violence could have been prevented. The rather long exchange below with a petitioner illustrates this thinking. This petitioner was convicted of first-degree murder when he and a co-defendant sought to burglarize the home of an elderly couple in a rural Washington community. The young men had done several such burglaries before. Although they were always armed, they had never before encountered someone inside any home they entered:

> Board Member 1: You said that what you understood to be your intention when y'all went to the house that day was to burglarize it and steal things. So you go in, is that still your intention?
>
> Petitioner: Yeah, that's still my intention.
>
> Board Member 1: Okay, but now you've come to the bedroom where you see two lumps in the bed that are the victims. So tell me what happens then. How does—
>
> Board Member 2: Because you're in the lead right?
>
> Petitioner: Yeah.
>
> Board Member 2: And you have a gun?
>
> Board Member 1: Why do you not turn around and walk out—oh shit they're home?
>
> Board Member 2: Do you see how that kind of doesn't really square for us?
>
> Board Member 3: Because if what you're saying is that your intent was to burglarize the house, then our thought would be, you see people there, you leave as soon as possible, but you didn't.
>
> Petitioner: I didn't back then as a child. The only thing I could think of when I seen them, I got startled, I got scared and I panicked and I started firing.
>
> Board Member 2: You never had the thought before you went in that house if there's somebody here, this might have to go down bad, we might have to shoot somebody?
>
> Petitioner: No, I didn't.
>
> Board Member 2: It never occurred to you that someone might be home.

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Petitioner: No it's—

Board Member 2: You ever encountered people in those homes before?

Petitioner: No we had not.

Board Member 2: Were you armed every time you went in?

Petitioner: Yes. So when we seen the light on, my thought process was, they're way out in the country. They're leaving the light on just in case, so someone would think they're home. And after kicking on the door for as many times as I did and as many times as [co-defendant] did—

Board Member 2: So now you're in the bedroom and you know, you see people in the bed, right?

Petitioner: Yeah, so when I seen people in the bed looking at me, I panicked. I got scared. I panicked.

Board Member 2: You never thought, just briefly, I'm about to kill a human being?

Petitioner: No, I did not.

Board Member 2: Two human beings.

Petitioner: I didn't even, I didn't think of nothing, besides I don't wanna get caught.

Board Member 1: So you shot them.

Petitioner: So I shot them. I shot. As I finished firing, [co-defendant] came behind me and fired and we ran outside. He grabbed the gun from me and said, "You know they seen us, we're gonna get caught if we don't kill them, we're gonna get caught."

Board Member 2: Did you think they were still alive?

Petitioner: I didn't even think, to be honest with you. I didn't think of nothing but—

Board Member 2: Do you remember how many times you fired or how many times [co-defendant] fired?

Petitioner: I don't recall how many times he fired. I do recall how many times I fired.

Board Member 2: So what were you thinking at that point?

Petitioner: At that point, I'm still only thinking of the cops are coming, I don't wanna get caught.

Board Member 2: Are you thinking that both victims are dead?

Petitioner: Honestly, at that time, I wasn't even thinking that. I was just so scared. I was just thinking so selfishly.

The petitioner here is describing a sequence of actions that the logic of adolescent brain science helps us apprehend: a few scared young people acting impulsively and under the influence of peer pressure, unable to recognize the larger consequences of their actions. In other words, much of adolescent behavior is irrational in nature, including criminal behavior (see Steinberg and Scott 2003; Heide and Solomon 2006; Monahan et al. 2013; Piquero 2013). Rather than accepting this truth about juvenile crime, the board

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wishes to see it as the result of faulty thinking. This is not factually incorrect—every juvenile case before the board provides significant evidence of poor and deeply harmful choices—but it underplays the typically impulsive nature of the criminal acts for which the petitioners were convicted and the usually messy contextual realities surrounding those acts.

The parole board thus appears to struggle to enable a simple release from a dishonored status and instead finds a need to re-label the crime as the moral atrocity that they believe it represents. The Washington law is meant to ensure a parole hearing that is primarily forward-looking—the sole criterion is the likelihood of re-offending. This can be explored with precisely no discussion of the index offense. Indeed, the law provides no instruction that the board consider the crime's severity. So, to ask petitioners about that crime is to reinforce the idea that they are forever morally tainted by it. If the board was truly interested in how a petitioner's thinking had changed since the commission of the crime, they could simply ask that question in a straightforward manner. This is something they rarely do. Petitioners are almost never asked to engage in a comparative analysis of who they were as a teenager and who they are today, to describe how and in what manner they have matured, and to explain how they see themselves as a moral adult acting responsibly in a wider community. Such an exploration of cognitive, behavioral, and emotional change could more easily occur through something other than a recounting of the index offense.

Perhaps, then, there is another way to understand the board's detailed exploration of each petitioner's crimes. As the above account exemplifies, these are all serious crimes, most typically murder but also rape and assault. To ask the petitioner to recount these stories may serve a deeper purpose besides understanding their teenaged cognitive patterns: it may principally work to reinforce the morally problematic nature of the petitioner's past acts. In fact, board members frequently find cause to comment on the grisly nature of the crimes that they prod petitioners to so thoroughly explore. The next extract is from a board member toward the end of a hearing involving a petitioner convicted of murder, a crime that occurred just two weeks after that petitioner committed a serious assault:

> First, let me, let me say this. What you did was a horrible thing. It's a horrible crime and um, extremely violent. And the crime two weeks before that was very disturbing too. Um. And, I just want you to let me know anything that you think we need to know to help us with our decision making. Because it looks like you've done a lot of great work while you've been in prison. And we still have this, this thing that you did. You know, we gotta weigh that in our decision making, when trying to determine what we want to do.

Or consider this board member, who was reacting to a petitioner who was involved in a prolonged assault that eventually resulted in murder: "Yeah and it's pretty horrific, the crime itself is really horrific, um, and uh, you know, it's a tough one for people to wrap their minds around. It's a tough one for me to wrap my mind around."

Because the only relevant legal issue in these hearings is whether there is a greater than 50 percent chance that the petitioner will commit a crime if released, there is no imperative for the board to try to understand the petitioner's criminal history or to make

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any commentary about it. That the board seems compelled to traverse this terrain, and to decry the wrongful nature of the crime, demonstrates how hard it is for them to remove the moral stain the petitioner has carried since they were convicted. This coding of the crime extends to comments that some petitioners made after their murders occurred. On multiple occasions in these hearings, board members drew attention to statements attributed to some petitioners after their crimes. Consider the following example of this dynamic:

> Board Member: In the paperwork, you probably saw that a prosecutor said that you called the plan to kill your parents as Operation Potato Head. Is that true?
>
> Petitioner: Yes.
>
> Board Member: What was that about?
>
> Petitioner: It was like the potato head had came up because it was some kind of, about how like parents have eyes and ears, but don't see and hear. Like, they don't get it.

In another instance, a newspaper account suggested that a juvenile murderer had compared shooting his victim as being akin to shooting a deer. During his hearing, a board member asked him: "What was the purpose of an ugly comment like that?"

Again, the Washington law in question says nothing about the severity of the index offense or how it transpired. It also says nothing about any comments that a petitioner may or may not have made after the fact. So there is no need to review any degree of brutality in the crime or any bravado expressed afterwards. The fact that the board insists on ensuring attention to the nature of the offense and any after-action commentary suggests an underlying impulse to reinforce the symbolic significance of a potential release. The difficulty that board members have in removing the moral stains of criminality and incarceration is even more evident when one considers the role that victims play in these hearings. Victims are very rarely in actual attendance, but their presence is often made evident. Their moral standing, unsurprisingly, is rather different from that of petitioners. The board's more valorized construction of the victim serves as another means of reinforcing symbolic boundaries.

"THAT'S BEEN VERY TRAUMATIC FOR THEM": THE MORAL STATUS OF VICTIMS

Consider this exchange between a board member and a petitioner. The petitioner was convicted of first-degree murder. She was influenced at the time by her boyfriend, who was being sought by the police for an alleged crime. They were on the run when the petitioner flagged down a passing motorist so that they could commandeer his car. Instead of simply taking the car, the petitioner murdered the driver:

> Board Member: So here's the part, I'm kind of confused. If you wanted the car, you just wanted the car, right?

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Petitioner: I know. Why—

Board Member: Why'd you have to shoot him? I mean, because you decided before that you were gonna shoot him. But do you remember what you were, what was your thinking about that?

Petitioner: I didn't ev– (starts crying) even think about it, like.

Board Member: Do you remember what's going through your mind, what kinds of thoughts, emotions you were having?

Petitioner: I remember being scared. And I remember like, not knowing, like, what was gonna happen. And, I remember feeling very disconnected.

Board Member: Like you weren't really killing another human being, or?

Petitioner: Kinda. I, I know that like, when I think back on it, even after it first happened, when I look on it—it's like a foggy dream. And it's like all these things happen, even, like things that lead up to it, it's like I wasn't thinking. I was like disconnected or something. And I, I don't want to say that it's because of [boyfriend], because I made decisions. And I don't know if it's because, like, I wanted to impress him or if I wanted—I just found myself always making like, these choices that I didn't even like think through, or think about.

Board Member: You just did whatever he said.

Petitioner: Kinda.

Board Member: Were you afraid that he would tell that you took the car or, what was it? There must have been some reason you decided you had to shoot him.

Petitioner: I think that, because it was just, I don't know. I don't know if it was because, like, it was expected. Or I don't know, if it was because I was scared that if I left him there, then he would tell. Like there was a lot of things.

Board Member: Were you angry when you shot the gun?

Petitioner: No, I was, I was kind of just scared. Like, um, I didn't really—

Board Member: Okay. So, did you know this man had a family?

Petitioner: (crying) I didn't know anything about him.

Here again, a petitioner is describing her actions as something less than rational—as if she was acting in a "foggy dream"—even as a board member searches in vain for some seemingly clearer explanation for her acts. Rather than accept that the petitioner's behavior was fundamentally irrational, the board member pushes for an understanding that seems, at least to him, more sensible.

But note how quickly the board member shifts from this conversation about the crime to a question about the victim and his family. After asking the petitioner to recount in considerable detail how the crime was committed, and to try to explain her thoughts and feelings at the time, the board member inserts the victim into the story. This sudden transition seems jarring, at first glance. However, perhaps the board member's mention of the victim helps make clear the fundamentally moral nature of the hearing. The recounting of the crime, in all of its gory detail, can be understood as an

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attempt to ensure that the petitioner does not lose sight of the moral wrong the crime represents, that they never forget the harm they created. Both the detailed discussion of the crime and the mention of the victim work to reinforce the heinousness of the index offense and the ramifications that this offense generated in the community. To mention the victim quickly after listening to an anguished account of a senseless murder helps underscore that murder's fundamental immorality.[6]

To be sure, board members do likely feel outside pressure to reference victims (see Morgan and Smith 2005; Roberts 2009; Caplan 2012; Young 2016; van Zyl Smit and Corda 2018). The law that enabled these juvenile review hearings also mandated that the board provide opportunities for victims to express concerns. In many cases, victims do precisely that. Certainly, victims are referenced regularly, both in specific and general terms. At some moments, board members will make reference to concerns expressed by the actual victims involved in a particular case. At other moments, board members will reinforce victim and community concerns in a more abstract fashion. In this way, to borrow a term from Hadar Aviram (2020), the victims help to reinforce the "moral memory" of the criminal offense. As board members invoke the concerns of victims, they implicitly memorialize the crime as the moral atrocity they believe it represents.[7]

Certainly, each time a victim is invoked, their moral standing is made clear. Consider the following excerpt of a hearing of a petitioner who, at the age of fifteen, killed a young woman. The victim was a single mother of a two year old at the time:

> Board Member 1: When we have victims and survivors come talk to us all the time and um—
>
> Board Member 2: They sit across the table from us, right like this.
>
> Board Member 1: And it's not unusual to have a murder that occurred thirty-five, forty years ago and it's the survivors, maybe it's their kids or their granddaughters or whoever, are sitting in front of us and talk about the effects of what this did to their family, generations of effects. Um. And the things that, how it changed their life. Not talking specifically about your, the survivors of your crime, but you know, she was a young mom.
>
> Board Member 2: A single mom.
>
> Petitioner: Yeah.
>
> Board Member 2: And what's, what I think our hardest cases are cases exactly like yours, where people got life without parole. And these people really have believed for *all* of these years that this person would *never* see the streets. And they're pretty traumatized by the fact that now somebody is eligible to get out of prison when they were sure that this guy will never get out. That's been

6. This is not to suggest that all victims necessarily embrace punitiveness (see Page 2011). That said, the only time victims were mentioned in the hearings analyzed here was when board members sought to emphasize the tragic consequences of petitioners' criminal acts.

7. In the California cases that Hadar Aviram (2020) analyzes, victims are allowed to testify at parole hearings, as are prosecutors. In this way, the "moral memory" of the offense is even more clearly articulated at California parole hearings. In Washington, victims cannot testify at hearings, although in rare instances they do attend. Prosecutors also cannot testify, but they are invited to provide a recommendation prior to a hearing. For these reasons, the ISRB in Washington has to articulate victim concerns at hearings in order for this form of "moral memory" work to occur.

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> very disturbing for them, and hard for them to accept. And you know, we try to explain, well, this is a change in the law and all of this, but they feel *very* betrayed by the system. So, it's just tough. Sounds like maybe you understand that?

This discussion of victim concerns is of no significance to the petitioner's likelihood of re-offense. That the board members seek to cover this terrain seems rather more motivated by a desire to ensure that the petitioner understands that it is no small matter to allow him to return to the same society inhabited by his victim's family. Note how this board member seeks to ensure that the petitioner understands the ongoing pain that the family feels.

The effort to ensure that petitioners understand the pain of victims is common. Petitioners are often asked about what they know about their victims and how they expect their victims to currently feel. Board members frequently try to ensure that petitioners understand the world from the victim's perspective:

> Board Member: How would you feel if somebody did this to your niece or nephew?
>
> Petitioner: I mean, I would be hurt. You can't really describe feelings like that, it's just so painful.
>
> Board Member: Can you imagine that pain? [Long silence] That's what empathy is.
>
> Petitioner: Yeah.
>
> Board Member: Is when you can try to figure out, you can empathize with somebody else's pain. So, if you only imagine what that victim's family felt when they got the phone call that their son was dead.
>
> Petitioner: [crying] Yeah, they're probably still grieving today, you know, it's got to hurt them. So, whatever it is that I'm feeling, it's a hundred times more for them.
>
> Board Member: You know, I don't know how this particular victim's family feels, but we have people come talk to us all the time when their loved one was murdered twenty years ago or thirty years ago and they—it has, like, extended family members who never met him come and talk to us, just because of the ripple effects of what it does to a family. It's generational, I guess is what I'm trying to say. It goes from one family member to another, it just gets passed down in a variety of different ways.

To be sure, board members' sense of the moral responsibility they carry is likely increased when they encounter victim testimonies. It can be no easy feat to try to explain to victims that the board's actions are driven by a law that those victims find troublesome. But the board appears to feel its own moral obligation to make sure that the petitioner continually carries the weight of their past offense. To the extent that board members do empathize with victims, they appear compelled to ensure that the petitioners are aware of the moral stakes of each hearing. And, perhaps by extension, it leaves the board invariably skeptical of petitioners' stories of personal change.

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"TURN OFF OUR RECORDER": SKEPTICISM ABOUT PETITIONER CHANGE AND REMORSE

For ISRB members, victims occupy a more sanctified moral standing than petitioners. The emotions and trauma of victims are always treated respectfully. Board members accept these at face value and frequently reference them during hearings. The effect is to remind the petitioner of their fallen moral status as convicted criminals and to ensure their awareness of the perpetual moral stain on their record. It also provides the board with justification for treating petitioner's stories about themselves and their futures with considerable skepticism. The extent to which board members seem morally skeptical of parole petitioners is evident in those discussions that do occur about personal change and maturation. Even if such discussions are rather less central in hearings than those focused on the index offense, they do take place. Yet board members rarely ask many follow-up questions in such instances and thus do not seek to understand the realities of petitioner maturation in any depth. This absence of follow-up appears to be especially the case when petitioners demonstrate evidence of their own morality, either in terms of their desire to be of service to others or their deep remorse for their crimes. Consider this excerpt of a hearing of a petitioner who was convicted of sexual assault and who had undergone sex offender treatment:

> Petitioner: I think when I came to [prison facility] in 2004, I was able to get involved with a lot of programming. I was able to volunteer as a tutor in the GED [general educational development] classes and meantime get involved with the worship team at church. I started to get the satisfaction from helping other people instead of being a selfish person and only caring about myself.
>
> Board Member: When you were in treatment, what did you come up with as your five high risks?

Or consider this excerpt of a hearing involving a prisoner who helped plan the murder of her guardians with her then boyfriend, who went on to carry out the killings. In her long answer below, the petitioner was crying throughout:

> Board Member: Okay so, what would you say to maybe the victim's son who is still alive I assume, about why you should get out now? Or anybody else who might think that you shouldn't be out now.
>
> Petitioner: I'm sorry. There aren't enough words to say how sorry and ashamed and remorseful I am. And I knew I was wrong, I knew, and I didn't try to stop it. And I look back and I think of all the things I could've done differently. And I knew, I knew it was wrong. There's not anything ever I can do to take it back or make up for it. There's nothing that I can do, and I, I don't feel like I deserve this. I feel like deserve is kind of an entitled word and I don't feel like that. I feel like I can say that I am a good person today and I know how to live my life well and I know how to think for myself and how, like I said, how to function as an individual. And I don't think that I'm going to get out and change the world. But I think that I can help make one little piece of it better. And I feel like I have grown up and I have taken advantage

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> of everything that I could and I have an education. But I don't feel like I can ever do anything to compensate for what happened, because at the end of the day, that was my fault. And there aren't enough words to say how sorry I am, and there aren't enough words to say how ashamed I am, and how wrong I was. And there's nothing I can do to fix that, there's nothing I can do to change that. And there isn't a day that goes by that I don't wish there was something I can do.
>
> Board Member: So, what would you do if you were released?

And the following exchange occurred during a parole hearing with a petitioner who was convicted of first-degree murder and second-degree rape. During his long answer below, this petitioner was also crying throughout:

> Board Member 1: Have you thought about the impact your offense has had?
>
> Petitioner: I have.
>
> Board Member 1: What do you think that is?
>
> Petitioner: I destroyed a community. I ruined families' lives, took people's homes away from them. I'll never fully understand, not even close, to the impact it's had. I can only imagine. It's something that can never be fixed, never be repaired. Saying sorry would be an insult. There's nothing you can do to make right the wrong that was done. The only thing I can do is to try and make sure that I try at least to do my part to make sure that somebody else doesn't go out and do the same thing. That's by helping people in here. That's what I've been doing through these programs, facilitating, making sure that when I get out, I never do anything like this ever again. If ever given that chance—make sure that I'm right.
>
> Board Member 1: Okay.
>
> Board Member 2: All right, we are done. Turn off our recorder.

In each of these instances, board members quickly shift the attention away from instances where petitioners are displaying their own degree of moral awareness. A testimony of genuine altruism shifts back to the cognitive behavioral vocabulary of a prison treatment program; anguished confessions of remorse are breezed over by a swift change of topic or even ignored altogether. Even as victims are treated as morally valorous, petitioners seem unable to climb into the same status.

Board members use another means to reinforce this boundary: by strongly questioning any romantic relationships that petitioners have developed inside prison. Petitioners can be expected to be asked about any such relationships and to be told that such relationships are not likely to continue after release. A common expression of such concern can be found in this excerpt:

> Board Member: You know, we always have concerns about relationships that begin in prison. Because although you've married her and you consider her to be a good support person—when these relationships begin with somebody in prison, I frankly, as just one board member, I question that person's judgment.

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> Petitioner: Yes ma'am.
>
> Board Member: Of why they would cross that kind of a boundary. You're a young man who came to prison younger than thirty. So, it was ten years, ago right? So, you were twenty-eight—there you go. A young man with no real-life experience. And so I just can't wrap my head around why a woman would decide, "I'm just interested in this guy."

This type of concern also extends to the reception that board members believe that petitioners will receive when they leave prison. Board members will typically ask about the petitioner's reentry plan, which includes their plan for housing. When petitioners express an interest in living with a particular person in the community, board members often express concern about the reception the petitioner can expect on the outside:

> Board Member: Are they going to have any issue with you living with your mom if they know you are living there?
>
> Petitioner: That's a good question. I'm not sure about that.
>
> Board Member: Okay, so you probably want to talk to her about that. It's going to be on the news, there's no way around that, if you were to be released.
>
> Petitioner: Sure.
>
> Board Member: People are going to basically know where you are and so if there's a landlord of that trailer park, she probably needs to talk to them to see if it would be an issue.

Community disapprobation of recently released prisoners is something that board members accept as a matter of course. They expect petitioners to anticipate that reality, as this exchange makes clear. This hearing was with a petitioner who planned to live with his mother if he were released:

> Board Member: Does your mom have support?
>
> Petitioner: Absolutely. Yeah, she has a church community that she's very involved in. Her medical community seems to be very tight-knit.
>
> Board Member: It can be hard to be supporting your son who's in prison for murder.
>
> Petitioner: Right.
>
> Board Member: That's not a warm and fuzzy, you know.
>
> Petitioner: No.
>
> Board Member: When you're talking to your friends and stuff about your kids: "How's your kid doing?" "Oh, still in prison" [laughter].

This board member's recognition that a parolee can expect reminders of their stigmatized status on the outside is certainly justified; the newly released may well meet with resistance from, among others, potential employers. Yet the board member here compounds the pain of that potential ostracism by making a tasteless joke about the

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extension of disapprobation to the petitioner's mother and fails to provide anything by way of empathetic support to the challenges that the petitioner will face upon release, through no fault of his own.

Although it is not common, the board does sometimes recognize personal change. But even here, there appears to be a preferred, and moralistic, narrative about how that transpires. Board members do seem to expect that young prisoners will engage in disruptive prison behavior. One board member, explaining to a petitioner the initial behavior pattern that he has come to recognize, made the following statement: "We didn't just fall off the turnip truck, and we know that you came to prison at the age of sixteen and you know for a few years, yeah, you had to fight for your life. In every one of these juvenile boards, there's a long list of infractions for that first five years. It's across the board. I haven't seen one yet that wasn't like that."

What board members suggest they like to see after this pattern of infractions is a sudden shift in orientation. They cite what they see as a common pattern—an individual's persistent misbehavior leads to their spending time in solitary confinement. At this difficult moment, the individual decides to change:

> Board Member 1: Having that "ah-ha" moment in the hole has been fairly common for our juvenile boards, where they finally do realize they are in it for the long haul and decide to make the best of it.
>
> Petitioner: Yes.
>
> Board Member 2: It seems to be around that ten-year mark, too, you know, ten to twelve right around there, some low, low point.

This pattern may well be common, but the board seems to seek evidence of it:

> Board Member 1: So why did you quit committing serious infractions?
>
> Petitioner: I could see that the cycle of it, the results. It wasn't benefiting me or anybody else that was also affected by my own actions. And I stopped reacting to a lot of things instantly, and I started taking in and observing the situation and pretty much finding ways and there's no reason to act in a negative way.
>
> Board Member 2: But what had you change and start seeing things in that manner?
>
> Petitioner: Putting my priorities in order.
>
> Board Member 2: But why, I mean you're sitting here thinking that, you know, I'm gonna be in prison for quite a while, I mean, did something happen that had you shift in your thinking or was it just, just one day you woke up and were like I'm tired of this or … do you remember?
>
> Petitioner: Pretty much I got tired of the same results.
>
> Board Member 2: I mean were you in solitary confinement when that happened, when you sort of made the shift?

Board members' preference for this narrative is in keeping with their moralized understandings of criminal wrongdoings. Although it is common that many juveniles earn

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multiple infractions when they enter, and that they eventually tire of that pattern such that they wish to change, the board seems to hope that petitioners are pushed to the moral brink. Rather than lamenting the harrowing psychological impact of solitary confinement, board members seem to see the hole as the moral abyss out of which the fallen can climb. It is as if the board expects any worthy petitioner to have reached this space of utter depravity and desperation, to have undergone some form of penitent ritual in the cauldron of solitary confinement. Consider this board member's excerpt from a hearing with a petitioner who had not displayed a notable pattern of personal change:

> Board member: I don't know that you're there yet, but I'm just letting you know, for guys that are in similar situations to you that are making it and doing well and being found releasable, that's a common thing that I see in almost every single one of them. Something happened, some incident, usually when they were very low, often when they were in the hole, in segregation for something, and the light you know, the light switch flipped for them.

There is, of course, a more simple explanation for much personal change on the part of juvenile parole board petitioners—they matured. The science of brain development has now made clear that the ability to exercise strong foresight is not physiologically entrenched until the age of twenty-five (Gerber et al. 2009; Monahan et al. 2013). When the board member above references "the ten-year mark," he is likely noting the age of brain maturation. Time in the hole may thus simply coincide with the arrival of a more comprehensive self-understanding rather than cause it. Board members, at times, do reference emerging brain science so they are aware of the physiological processes that occur for these petitioners. That many members seek evidence of a "low moment" is thus telling. They seem to wish that petitioners fully recognized the moral dead end that their life represented. Only with such recognition can their change toward better behavior be acknowledged as genuine and legitimate.

CONCLUSION

There are other narratives of prisoner change that parole board members could acknowledge. Such change does not require trips to solitary confinement and the moral debasement it exacts. Rather, it requires, as a wide raft of scholarship now shows, the development of a new narrative about oneself, one that uses the tragic realities of one's past as the foundation upon which to construct a new and redeemed self (Maruna 2001; Giordano, Cernkovich, and Rudolph 2002; Vaughn 2007; Bullock, Bunce, and McCarthy 2019), a self that can engage in practices that provide significant structure and purpose (Maruna and Ramsden 2004; Ward and Gannon 2006). In this fashion, the stain of a criminal conviction is resisted by those who must bear its mark (see also Kusow 2004; Shih 2004; Opsal 2011; Stone 2016).

Although the analysis here focuses on a single sample of parole decisions from a single state, the moral discourse that undergirds the hearings appears to be commonplace elsewhere, most notably in California (see Paratore 2016; Shammas 2019; Aviram 2020). Indeed, Aviram (2020, 222) concludes her analysis of how

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California parole authorities have treated those convicted of crimes connected to Charles Manson in terms that resonate with my analysis: "The protection of public safety, as well as the wise and prudent expenditure of public funds, should lead the hearings to focus on whether inmates might commit future crimes, not on moral judgments about their virtues and flaws." As Aviram implies, the parole proceedings analyzed here could serve as a key moment when the mark of a criminal conviction is diminished, if not erased. *Miller v. Alabama* and the Washington law it inspired were built upon a recognition that young people are malleable and, that their adult selves will likely differ notably from their teenaged selves. Even if they committed horrible crimes twenty or more years ago, that fact predicts little about who they are today. Their past acts can be dispassionately seen as the unfortunate consequences of teenaged impulsivity.

Yet the symbolic significance of those acts is hard for parole board members to ignore. Their compulsion to review past crimes in fine-grained detail works to recreate the same degradation that occurred at the moment of conviction, and which is reinforced daily in prison. Given an opportunity to convey a counter-narrative—to celebrate change, to welcome reentry—parole board members instead take great pains to reinforce their moral disapprobation for past criminality and to convey skepticism about petitioners' moral standing upon release. Indeed, as Shadd Maruna (2011) notes, prisoner reentry arguably deserves the same observance of ritual that accompanies others of life's key passages. That these rituals do not occur—and seem to be deliberately avoided by Washington's ISRB—sadly reinforces the persistent moral smudge of a criminal conviction. As Maruna puts it, "[w]hen it comes to reintegration—turning prisoners back into citizens—we typically forgo all such ritual and try to make the process as stealthy and private as possible, if we make any effort at all. This contradiction may account for why the imprisonment of human beings is taken for granted as 'normal' or even 'natural', and yet the return of the same human beings to communities is the cause of often inordinate concern" (4).

The challenge of reversing the moral blotch of a criminal conviction lies as a notable cultural impediment to potential efforts to reduce mass incarceration. For this reason, it is important to recognize the moralistic practices of parole boards, particularly if these work either to justify retaining people in prison or to diminish efforts to reduce the mark of a criminal record. As Reitz and Rhine (2020, 283) remind us, "[p]arole release has been an underacknowledged force in American incarceration policy . . . . Any effort to understand the causes of mass incarceration, or to manage prison rates going forward, must take prison-release frameworks into account." Many of the individuals who appear before Washington's ISRB could be understood in terms that can help them be morally reintegrated: they were rash teenagers who made a colossal mistake, and they grew and matured into responsible adults. In the process, many of them—like Gail Brashear—express ongoing remorse for their past actions and use that remorse as a foundational element of their adult selves (Maruna 2001; Herbert 2019). Such transformations can themselves be understood in moral terms (Radzik 2009)—namely, as the outgrowth of a heroic quest to seek redemption, particularly in prison conditions that can be arduous (Sykes 1958; Johnson 2001; Irwin 2004). These stories of redemption are ones that a parole board can not only acknowledge but also help to celebrate.

That the parole board leans toward the moral story of degradation rather than the moral story of redemption is an illustration of the cultural obstacles that confront

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attempts to reduce rates of incarceration. Until institutions like parole boards find it easier to recognize and celebrate transformations like those of Gail Brashear, the societal impulse to denigrate and exclude will continue to exert force. The moral investment in vilification is perhaps an unavoidable component of our criminal process. If resistance to such degradation is insufficiently practiced, the contrasting moral value of redemption will remain weak, and the drive to exclude will resist abatement.

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