

Rationally Speaking #163: Gregg Caruso on, “Free Will and Moral Responsibility”

Julia: Welcome to Rationally Speaking, the podcast where we explore the borderlands between reason and nonsense. I'm your host, Julia Galef, and with me is today's guest - professor Gregg Caruso.

Gregg is associate professor of philosophy at SUNY Corning, and he's also the co-director of The Justice Without Retribution Network, and the founder and editor in chief of Science, Religion, and Culture. He's written multiple books, and writes for publications like Psychology Today.

One of Gregg's main areas of focus is the topic of free will and moral responsibility. That's what we're going to be talking about on today's episode. I intend for us to tackle a whole cluster of related questions, including: If people don't have free will then can they be said to be morally responsible for their actions? For example, are criminals morally responsible for their crimes? Relatedly, of course, what do we mean by the question, "Do people have free will?" Then also the related question, "If we as a society collectively decided that free will doesn't exist would the consequences of that decision be good or bad for society?"

Gregg, welcome to Rationally Speaking.

Gregg: Hi Julia.

Julia: Hi.

Gregg: Thank you for having me.

Julia: It's a pleasure, looking forward to the conversation.

Gregg: Yeah, me too.

Julia: Gregg, on this topic you've described yourself as an optimistic skeptic.

Gregg: Right.

Julia: Can you explain what you mean by that?

Gregg: This first begins with the notion that I'm a skeptic, so by a skeptic I mean a free will skeptic. And free will skeptics either doubt or deny the existence of free will.

It's a large cluster of views. I'm more of the view that we lack free will, so as a free will skeptic, as I'm using the term, it basically maintains that who we are, what we do is ultimately the result of factors beyond our control. And because of this we lack the kind of moral responsibility that would make us truly deserving of praise and blame.

This is in a backwards looking, nonconsequentialist sense. I define free will in terms of a certain type of responsibility called “basic desert” and as a free will skeptic I maintain that we lack this free will, and by extension the basic desert moral

responsibility that would make us ultimately or truly deserving of praise and blame in a nonconsequentialist, backwards looking sense.

Julia: Just to clarify for our listeners, that's desert spelled with just one "S", similar to deserving, as opposed to dessert with two "S's" similar to... chocolate pie.

Gregg: Exactly. As an optimistic skeptic, then, that essentially maintains that the implications, the consequences of adopting free will skepticism -- that is the consequences of denying the existence of free will -- in this particular kind of moral responsibility, from my perspective would be not a negative thing.

There's lots of critics out there that maintain that giving up the belief in free will would be harmful for a whole number of reasons I'm sure we'll talk about. My view is that a life without free will would not be as destructive as many people think and in fact in many ways would be better. I'm pretty optimistic about the consequences and the implications of giving up the belief in free will.

Julia: Excellent. I think for a topic like this it's especially important that we early on clarify our terms. I want to go through a taxonomy of different kinds of moral responsibility, and see which of those you are pointing at when you talk about moral responsibility or free will.

Gregg: Sure.

Julia: I'm thinking here of a famous essay by the philosopher Thomas Nagel, in which he talks about something called "moral luck," which is very similar to moral responsibility, and he breaks it down into 4 types.

The first type he calls *resultant moral responsibility* and this is basically the question of, how do your choices turn out? Which can be a function of things totally beyond your control. If both Bob and Alice drink, become drunk, and then drive, and then a child runs across the road where Bob was driving and Bob ends up killing the child, their choices turned out very differently. That's resultant moral luck at work there.

Then the second category Nagel points at is *circumstantial moral responsibility* which is getting at the question of, how does your moral responsibility depend on the circumstances in which you find yourself? If Bob and Alice grew up in two different societies or cultures, and Bob's culture has a norm of people drinking a lot in the evenings, then he has much greater opportunity to do something like drive drunk and end up killing a child than Alice does.

Then the third category is *constitutive moral responsibility* which is getting at the question of how does your character, your personality, your identity determine how morally responsible you are for your choices? Much of that constitution is not under your control. It's determined by things like genetics or the environment you grew up in. Maybe Bob was born with a predisposition towards less self control or he grew up in an environment in which no one really helped him develop that self control, et cetera, and so he's more likely to drive drunk.

Then the final category of moral responsibility is *causal* and that's basically: if Bob makes a conscious choice to get drunk and then drive can he still be said to be morally responsible for that, given that the universe is determinist? Given that his choice was determined by all the previous states of the universe before that. This is the classic question of free will.

That's the rough taxonomy. Those are many different ways in which one's moral responsibility could be said to be determined by things outside of one's control. Which of those categories are you trying to point out?

Gregg: The kind of basic desert moral responsibility I have in mind is a kind of moral responsibility that has to do with, "Are you ultimately accountable for the kind of constitutive characteristics of our being?" It's a good thing that you mentioned this stuff about luck, although my arguments against free will typically are not based in notions of luck. I am sort of persuaded by Neil Levy's excellent book, I don't know if you've had a chance to read this called "Hard Luck".

Julia: No.

Gregg: It's a great title, it's a great book. "Hard Luck: Why Luck Undermines Free will and Moral Responsibilities" is the subtitle. It's basically an issue of constitutive luck that ... It's a number of different things, actually. The luck objection when it's raised in the free will debate is typically brought in in terms of circumstantial luck. At a particular moment, is there a kind of an indeterminacy, and can one be morally responsible for such luck in these individual cases?

I think the bigger problem is constitutive luck, in the circumstances in which we're born, the circumstances in which we're placed, the experiences we have throughout life. The lottery of life that we're given in terms of innate dispositions and propensities, we're not ultimately accountable for any of those features. If those features ultimately determine and constitute the moral characters that we have, then ultimately I don't think we're responsible for those moral characters.

There's a kind of argument that I think first is given by people like ... It comes up obviously as you mentioned in Nagel, and then Galen Strawson, and then followed through to Neil Levy, that luck swallows all. Luck swallows everything in terms of what we care about, in terms of this kind of responsibility.

My categories of responsibility are slightly different than the ones you mentioned. In the free will debate the three kinds of responsibility that come up quite often are attributability, answerability, and accountability.

Attributability is, can we attribute a particular action to an agent, can we assign, say creativity to an agent. I don't deny attributability at all, I think it's totally consistent with free will skepticism.

Answerability is a little different, it's can we hold agents to account for their actions? For example, if you do something morally wrong could I ask you your reasons for doing so? Derk Pereboom has recently spelled out a forward looking

version of answerability that I think is totally consistent with free will skepticism and I'm absolutely okay with accepting that.

Accountability, or accountability moral responsibility is the kind that most aligns with what I'm calling basic desert. And it's that kind of moral responsibility that free will skeptics deny. I would also argue it's that kind of moral responsibility that most of us are debating when we're debating the free will issue. Yeah, go ahead.

Julia: Just to make sure I understand your taxonomy, if Bob consciously chose to get drunk, knowing that he was going to have to drive and also knowing that that was unsafe and he was putting other people at risk, we could say that he was answerable for that choice because he made it consciously, but you still wouldn't hold him accountable -- because his character that makes him the kind of person who would willingly take such a risk is not something that was determined by him?

Gregg: That's right, and his ability to focus on his moral reasons, or exert more willpower, all of those things of themselves are caused by features that are outside his control. Right, exactly, that's the kind of ... You could also say he's causally responsible, so I'm okay with that notion of responsibility-

Julia: Although we would also say that a shark is causally responsible for killing something, but we-

Gregg: Exactly, right.

Julia: -- still wouldn't hold the shark accountable.

Gregg: Exactly. If it's part of the causal story, part of the causal explanation and the choice is an important part of that causal story I'm okay with that kind of responsibility. It's the particular kind of moral responsibility that comes up in notions of punishment, reward, imprisonment and what PF Strawson calls the reactive attitudes.

Julia: Reactive attitudes, like-

Gregg: Like indignation, moral blame, anger, resentment, those.

Julia: Got it.

Gregg: Are the famous attitudes that most people point to. That's the kind of claim that I'm interested in, in whether that kind of ... Do agents have the kind of control in action that would ground that kind of moral responsibility?

For me it's mainly about backwards looking moral responsibility because I'm willing to acknowledge that there are forward looking reasons to again engage in moral reasoning, hold agents to account, etc ... You know, if my daughter does something that I disapprove of, there are reasons for me to hold her accountable, to show disapproval because I'm looking forward towards moral formation, reconciliation, protection. Those are totally consistent in my view with denying the existence of free will.

What's not consistent, on my view, with denying the existence of free will, is holding individuals responsible in a purely backwards looking sense.

Julia: That's interesting.

Gregg: This is what comes up quite often with accounts and justifications punishment. Retributivism is inconsistent with my view because in general terms retributivism is backwards looking in its justification for punishment. Why throw Harry in jail? Harry deserved, justly deserves to be punished for what he did. That's backwards looking.

Julia: Got it. The example with your daughter is interesting because it seems like you're saying, "I, by virtue of punishing my daughter, I can affect her future actions."

Gregg: Sure.

Julia: ... but in saying that she doesn't have backwards looking moral responsibility it sounds like you're saying that her past self was not able to affect her present actions. Even though your current self can affect her future actions.

Gregg: That's right. There are choices, you know, free will skeptics don't deny choices. At least the kind of free will skepticism I defend can acknowledge all the important work that compatibilists have done in terms of acknowledging different types of levels of control, reasons-responsiveness versus agents that are not reasons-responsive.

Those are all I think very important distinctions, I just don't think they're important for the reasons compatibilists think they're important. I think they're important for judging how successful certain types of rehabilitation will be, they're important for determining what forms of punishment are most suitable, or what types of sanctions we should implement for various types of moral transgressions, but they're not important for me to ground the backwards-looking blame.

My daughter, she's reasons responsive so I can deal with her. I could ask her for her reasons for why she did what she did, hopefully with the purpose of her realizing the moral wrong, acknowledging maybe a flaw in her own character, a commitment to work on that moving forward. That's a different type of moral engagement I would have with her than I would have with someone who say is a sociopath, or isn't reasons responsive in the same kind of way.

Julia: Where the sociopath is closer to the shark on this spectrum?

Gregg: That's right, yeah. Somewhere in between my daughter and the shark, exactly.

Julia: To expand on my previous point a little bit, I have this simplified model of what's happening when our character and our choices get shaped over time... Let's say I make a choice every second, and you know maybe that choice is something as little as whether to put down my book or keep reading, to scratch my head or not, et cetera. I have this set of choices I can choose from each second, that I can

consciously choose from.

And the set of things that are in my choice set is partially determined by things that are not under my control, like did someone even give me a book to read, or what society am I currently existing in? It's also determined by the results of my previous choices.

I will concede that at time T I don't have a lot of control over what choices are available to me, although I still I think have a little bit of control over what choice I choose from within that set. People have wildly different sets of choices, some of which are mostly all bad and some of which are pretty good. I agree that at time T I don't have control over the things in that set.

But the things in that set are partially, although not fully by any stretch of the imagination, determined by the choices I made at time T-1 and T-2 and so on and so forth.

I agree that if you condition on the results of all of my past choices then I have only a small amount of free will in choosing right now. I just don't see why we should be conditioning on the results of my past choices. I'm willing to condition on all the things that are *not* under my control at all those previous T-2, T-3 choice sets, like the options that my parents gave me or the ideas I was exposed to, that sort of thing. I just don't think that conditioning away those things fully gets rid of the degree to which I'm consciously making choices that shape my character and therefore shape the consequences of my actions.

Gregg: Let me just try to get a little clearer on the concern. For you the concern is the forward looking justification at the moment, is that what you're asking about because you're using the word conditioning?

Julia: I think my concern is the conflict between not believing in backwards looking moral responsibility but still believing in the forward looking ability to influence someone's choices.

Gregg: All right, no one, at least I'm not denying degrees of control. I agree with you that at time T-1 time T-2, again depending on ... A lot of this goes back to the luck factors that you mentioned, the circumstances in which I exist. In this society, in this culture, in this economic bracket that I exist in, my level of choices, my degree of control might be greater than somebody in a different place, in a different set of circumstances with fewer options. The question is whether the notion of control at time T-1 is enough in my view to ground free will or basic desert blame.

For me the question comes down to an issue of, ultimately, responsibility. I'm almost okay with dropping the debate about free will because sometimes I think people ultimately are attempting to get at different things with that. I would rather just talk about moral responsibility and then just distinguish between what kind of responsibility are we concerned about at that moment in T-1.

For me to deny basic desert moral responsibility is not to say that there are not

other conceptions to responsibility that can be reconciled with determinism, chance, or luck. Nor is it to deny there are good, pragmatic reasons for maintaining certain systems of punishment and reward. It's instead to say that to hold people truly or ultimately morally responsible for their actions, again in this nonconsequentialist desert based sense, would be to hold them responsible for the results of things that are morally arbitrary, for what's ultimately beyond their control which in my view is fundamentally unfair.

Julia: Partially, partially.

Gregg: ... so where's the nonpartial part?

Julia: The partial part is, let's say Bob was only exposed once to the idea of fairness and Alice was exposed 50 times to the idea of fairness, because her parents just cared more about it than Bob parents did. And he heard about it from a friend or something like that.

Bob and Alice still have the choice of whether to consider that concept of fairness and whether to attempt to apply it to some degree in their life. They also, let's assume they both make some small attempt at trying to be fair, they both have the choice of whether to try to repeat that action until it becomes more of a habit and more of a part of their character.

I would agree that because of things not under their control Alice was given a better shot, but that doesn't fully remove the degree to which they have some control over the extent to which they end up with a justice sense in their character.

Gregg: Alice is the one who is more susceptible to the concerns of fairness, what was the other name, I forget?

Julia: Bob.

Gregg: Bob, okay. Bob is less susceptible to concerns or considerations of fairness. I guess here's my question, let's say Alice is a cognitive cognizer, she's very self reflective, she more receptive to certain types of lessons. This lesson or exposure to principles of fairness have had more of an influence on Alice than they have on Bob.

Bob's more of a cognitive miser. He doesn't self reflect, doesn't bring up those concerns about fairness and maybe is less susceptible to the moral lessons and experiences that Alice had.

The question for me I guess would be back to whether that is something that is within their control. Is the cognitive abilities that make Alice more of a cognitive cognizer more receptacle to principles or concerns about fairness that have shaped her to have that psychology, are those factors that she controlled and if not I think it's just a regress argument.

I think we can go back to the psychological character of those individuals that make them more susceptible to those types of reasons, or less receptive to those types of

reasons.

Julia: Again I would say they're both partially responsible. So there's some influence of genetics to be sure, there's some influence of what do their parents encourage or discourage, what role models do they have in the social groups around them, et cetera. Even so, each of them are still, their character is partially shaped by the conscious choices that they make under the influence of all those other factors over time. You could say, "Well, Julia has less self control and that's not her fault therefore that she didn't pass up the third drink", but the fact that I have less self control is partially the result of genetics, but partially the result of conscious choices that I made many, many times in the past that developed this habit.

Gregg: Sure.

Julia: I don't see why those choices that I made aren't part of the calculus of my moral responsibility. As opposed to that calculus just including my choice right now, after you've already conditioned away the things that determined my degree of self control.

Gregg: This is really good, so thank you, this has helped clarify-

Julia: Sorry, that was a long way for me to get at this point.

Gregg: No, no, this is great. There's a couple of questions maybe then for me first. I don't know if you're familiar with Robert Kane's view, he's a libertarian, but not a spooky libertarian. He's not a... causal libertarian, his version of libertarianism could be consistent with naturalism, it could fit into a naturalistic worldview.

He holds a kind of a event-causal indeterministic account, and he has this notion of self forming actions, he calls them SFAs. His view is that, and maybe this is something that you're getting at, that I don't necessarily have to be responsible at say time T-1. I shouldn't have to have a kind of ultimate freedom or free will at time T-1 to be held responsible. All that's required is at some earlier point in creating my own character, and for again Kane, these are the SFEs, the self forming actions. Those were actions that were not causally determined and at that moment are relevant in determining the character that you are.

For example, I might do something now that's totally consistent with my moral character, my predispositions. In fact we often anticipate people to act consistent with their nature, but at that moment it could all be completely deterministic. For Kane you can't have ultimate responsibility unless some point in the past then you were responsible for creating yourself and one of these moments of self forming actions. I don't know if you're sneaking in at a moment in Alice's past or Bob's past one of these self forming actions or not.

Julia: Oh, I wasn't intending to sneak them in, I was intending to point at them and shine a light on them directly! And say that there are many, many, many such self forming actions. Although I was also conceding that there are many other things in addition to self forming actions that determine my character or disposition at time T and that

many of those other things are not under my control.

Gregg: Then the question for me would be, "What's needed for these self forming actions?" Kane is a libertarian, so Kane's view is that these self forming actions themselves are inconsistent with determinism and maybe even issues of luck. I don't know if you're that type of a-

Julia: I don't think I am.

Gregg: Or you want to hold onto to kind of compatibilist notion, I think.

Julia: Yes.

Gregg: Then my concern is, how do maintain the notion, or how do you make sense of the notion of a self forming action totally consistent with determinism, let's say?

I don't know if this helps, or maybe this just clouds the water, let me try this. This is actually based on a true story. My daughter's 7 and so she just finished first grade. Before she started this year, a friend of a friend told my wife that there's going to be this boy that's in her class and you might want to watch out for this boy, because this boy was in her son's daycare before first grade and he tried to engage in a "game" -- I'll put game in quotes here -- with her son and it was an inappropriate game that involved showing private parts and touching, so some sort of inappropriate sexual game.

As a father my primary concern for my daughter is safety. I want to isolate this young boy from my daughter, or at least when they're on the playground make sure that there's proper supervision.

Later we found out that this boy himself was shown this "game" by a 15 year old neighbor. This 15 year old boy who lived next door essentially sexually molested this young boy and told him it was a game and now he is trying to show and play this game with other people, mainly other boys.

My initial reaction to that case upon hearing this was not anger, was not moral indignation, it was sorrow. Because in a certain sense I see very clearly the causal connection in this kid's case. It's pretty easy in this circumstance to point to the experience he had with his 15 year old neighbor for why he now has these set of beliefs and desires and preferences, and engages in these certain sets of actions.

Of course when you age that 7 year old boy and turn him into a 40 year old people want to castrate him and look to other features that cloud the waters, but there's always a causal story to be pointed to, right? Even in horrific crimes there is a causal story and if you look deeply enough you'll generally find it.

I guess the question is if you were not to smuggle in this indeterminist libertarian notion of self forming actions, what's the miraculous moment in which this 7 year old becomes morally responsible or accountable in the backwards looking sense that he deserves retribution, a retributive punishment? If he ultimately is the

character he is because of the family he's been born into, the genetic, the environment... Now these new sets of experiences, namely the experiences with his neighbor, have created and caused in him a certain new set of psychological propensities and character traits.

I don't see, for me, on a completely consistent compatibilist account, room for the kind of moral responsibility that I'm interested in.

Julia: Well, I think one reason that people react with sorrow -- still not everyone, but more people -- react with sorrow in the case of the 7 year old than in the case of a 37 year old, is because the 7 year old has less ability to consciously reflect on his actions and the consequences of those actions, and whether his reasons for those actions are justified, et cetera, et cetera, than does the 37 year old.

Gregg: Excellent, yeah.

Julia: If the kid makes this choice as a 7 year old, which we mostly want to say is not his fault, I agree that that is one of the first steps in setting up a pattern of behavior in a character, a disposition that will be ingrained by the time he is 37. And that therefore you might want to say, "Well, you should therefore carry forward the sorrow you felt at his 7 year old self, and feel that same sorrow and not anger at his 37 year old self."

I think that's only partially true. I think that even though those actions that he was mostly not responsible for as a 7 year old have helped shape his 37 year old disposition... I think at each stage from 7 to 37 he had some ability to get onto a different path. He had some increasing amount of conscious reflection that he could have chosen to engage, or maybe considered engaging but didn't, and that therefore he is partially ... His conscious choices have partially shaped his 37 year old disposition in addition to the things back at age 7 that he wasn't responsible for.

Gregg: Okay, good. Yeah, you put me in an uncomfortable position to defend a 37 year old child molester.

Julia: I'm also defending the 37 year old more than most people would, so we're both-

Gregg: I should say maybe hopefully later get to my account of how I would deal with a person who's a danger to society-

Julia: Oh yes, no, I definitely want to get to that.

Gregg: I don't want to let a 37 year old child molester run free, so that's my view-

Julia: Understood, I promise I won't end the episode before you get a chance to explain!

Gregg: Good... I think we're generally in agreement, but the points of disagreement are: so, at each moment from the 7 year old to the 37 year old self, where they engage in this conscious deliberation, are totally consistent with my view that people engage in these conscious deliberations and reflective processes. The question though, or

the phrase you used was that he “could've chosen to” engage in a reflective process or not, or he could've chosen to act differently at a particular moment given the conscious set of reasons that stood before him. That's where I think it gets dicey for compatibilists.

Kane has his magic sauce because you could just bring in these moments of indeterminacy that screened out prior causal chains. Lets assume for the moment we're talking about a deterministic universe and you're a compatibilist and were trying to reconcile that with the 37 year old.

I would say that at each of those moments he could not have really deliberated otherwise. Or the outcome of that conscious set of factors at time T-1, T-2, T-3, et cetera would be determined by the prior set of causal and conscious status of deliberation, combined with innate sets of character traits, and previous experiences, and life circumstances, and all the rest.

Say at any particular moment ... I agree with you on this that there is definitely a disanalogy between the 7 year old and the 37 year old, and you hit on that. Which is at the moment the 7 year old doesn't know the moral nature of the act whereas the 37 year old presumably clearly does. We have more of a desire to want to blame that 37 year old, because they satisfy at least one condition for moral responsibility, a kind of epistemic condition that they know the action is wrong, where the 7 year old's lacking that kind of condition.

But then I don't think that that condition is enough -- let's say he recognizes in himself this desire -- such a horrible thing to have to defend, but -- he recognizes in himself a desire to engage in this act with a young child. You could even bring in a kind of Frankfurtian view here, that he disapproves of that lower order of desire in himself. So his second order desire's not in line with his first order desire.

I think the question of whether his second order disapproval is capable of checking his lower order desire is a matter of a whole bunch of psychological factors that themselves are again outside the control of the agent. They've been shaped ultimately by factors that Bob can't control.

Julia: They're outside of the control of the agent at time T, but I'd still disagree that they're outside of the control of the agent at all the previous times. I think they're partially in his control.

I feel like I'm repeating myself now, I'm sorry. Why don't you go on?

Gregg: Maybe could I ask you to spell out what you mean by control.

Julia: I think I mean, if someone has the conscious awareness of a choice that he could make, of an option, and he chooses consciously to either take that action or not take that action then I said that he had at least partial control over his choice of that action. And I say at least partial because his choice -- it may be conscious, but it's also significantly influenced by his environment and by his disposition which is itself the result of previous choices similar to this one.

Gregg: I think-

Julia: A conscious choice is really at the core of what I'm calling having partial control over one's actions.

Gregg: Yeah, there might be a couple things we could touch on here. For me I'm almost fine with all of that, and again I said earlier I don't deny degrees of control or even if you want to use the word degrees of autonomy. I just disagree that control equals free will or control equals-

Julia: Right, that was the difference between answerable and accountable, I remember.

Gregg: I'm not sure ... I agree that there's differences in degrees of control -- and Dennett touches on this quite often -- between me and some creature lower on the phylogenetic scale. Clearly to deny that would be absurd.

But what I don't think is enough in these compatibilist accounts of control is that the control itself, or the degrees of control themselves, are ultimately determined by factors that are outside the initial or ultimate control of the agent. The agent has a certain set of capacities in that moment, there's a certain set of options, he has certain rational and conscious abilities to deliberate through the choices. That does equal control, I'm okay with that, but that level of control for me is not sufficient. And I guess that's where the main disagreement comes down to.

Julia: I feel like we have made some substantial amount of progress on this part of the question, and I suspect we're not going to fully converge... As people almost never do on this topic. So I'm tempted to move onto the question, that third question in the cluster I was pointing at, which is, "What would the consequences be if society basically agreed with you?"

You know, I'm closer to your view than the typical member of society is, so your answer is still quite relevant even if everyone just agreed with me.

Gregg: There are numbers of areas we can go into here, but the one I've been working on a lot lately has to do with punishment and what to do with, say, dangerous criminals.

When you look at different justifications for punishment they generally fall into these camps that I mentioned earlier, backwards looking justifications and forwards looking. If you asked why should we punish Bob, one reason would be he deserves it. That's backwards looking, and that's what retributive punishment is, it's a payback for one's moral wrongs. It's ultimately saying that the agent justly deserves to be punished for the moral wrongs that they've done.

There's a different answer that some people give, and it's generally a forward looking one, to why punish Bob? -- It deters others, it makes them safer. Those are generally forwards looking justifications.

I have one particular account that's a forwards looking account, but it's not a typical consequentialist or deterrence account. So I call it the public health quarantine

model, and it's built off of Derk Pereboom's initial analogy... with quarantine.

The basic idea is that, for free will skeptics, criminals are not morally responsible for their actions in the basic desert sense, because essentially nobody is. Then you think many carriers of dangerous diseases are not morally responsible in this or any other sense for contracting a disease.

Say I get on a plane to go to a conference and I contract Ebola or some other communicable disease. I haven't done anything wrong, I don't deserve to be punished, I don't say deserve to have my liberty removed. Nonetheless most people would agree that we are justified in, or permitted to, quarantine that individual for the safety of society. And we're permitted to quarantine that individual without having to appeal to basic desert, just rewards, just punishment.

The analogous view for dangerous criminals would be an incapacitation account, based on self defense essentially. That we could incapacitate dangerous criminals on the same grounds that we can quarantine people who have communicable or contagious diseases. Namely on the grounds of self defense and defense of others without having to appeal to backwards looking blame, concepts like just deserts, or retributivism.

My view starts there and then it broadens out to a much more holistic view based in certain conceptions of healthcare ethics or public health ethics. The advantage of bringing in public health ethics here is that the focus gets reoriented towards prevention and social justice issues. When you think of public health institutions like the CDC, Centers For Disease Control, or the Food and Drug Administration, or the EPA, their primary function is preventative. It's to prevent foodborne illnesses or prevent pandemics. When they have to use quarantine, say with the CDC, they've already failed in their primary function. Quarantine is a fallback, it's not the preferred-

Julia: It's the pound of cure.

Gregg: Right, it's not the preferred approach toward dealing with communicable diseases. You want to prevent outbreaks.

The orientation in the criminal justice system towards punishment and the obsession with justifying punishment, and I think largely the retributive impulses that drive, at least in America, the desire for punishment has led to mass incarceration problems. And extreme disproportionate percentages of the population being incarcerated.

Very punitive forms of punishment, very harsh forms of punishment, and very counterproductive forms of punishment that don't achieve our desired ends like reducing recidivism, making us safe, et cetera.

In terms of money, resources, focus, the free will skeptic and someone who adopts this public health quarantine model would put a lot of focus on sort of the primary moral feature of the criminal justice system, just like public health institutions,

should be preventative. Should be to address systemic causes of crime, the causal determinance of crime. Poverty, educational inequity, lack of opportunity. We know that these have an effect on individuals, drive statistics on crime just like they do on health. We know that obesity rates and type 2 diabetes are much higher in terms of percentages among certain populations. We know that that's often tied to systemic racism and inequalities within the system.

The desire for both public health and public safety would be to address those social justice issues, the issues of inequality that are based largely, again, on contingencies of birth. I just happened to be born into a race, into a gender, into a socioeconomic background that gives me advantages in terms of health outcomes in our society, but none of that's deserved.

One of the big differences I think between retributive approaches to punishment is that it's individualistic. It focuses on taking the individual and placing full responsibility there, and then seeking out justifications for punishment at that level. Whereas my approach would be to look more holistically at the causes of crime, try to address them before they lead to certain types of outcomes, because on my view in the end the lottery of life is not always fair, and addressing them there would be both more humane, more effective, and in my view, more justified.

I would throw that 37 year old, or at least would incapacitate, separate that 37 year old until we could work towards rehabilitation and to the point which we view that that individual was no longer a threat to say young children. My view is not going to let criminals just run free, I have an account on how to deal with criminal behavior. I'll let you jump in.

Julia: One common point that people make about this is that having harsh punishments, and to some extent treating criminals like they deserve punishment, is actually forward looking because it deters future crime. Do you disagree that harsh punishments deter future crime or do you agree that they do, but still think we should say that the criminal doesn't deserve it?

Gregg: Good, good. Let me try to see if I can sidestep the issue and then tell me if I'm allowed to or not.

My answer would be that this is part of the reason why I rejected the deterrence model. My view's not a deterrence model because my concern with deterrence models is that they can justify, or at least they seem that they have a problem with blocking very punitive forms of punishment. They also run the risk of using individuals, the "use" objection. Say, throwing an innocent person in jail because it successfully deters larger quantities of crime.

My view would be able to block those type of cases because they can't be justified on my model. You can't throw an innocent person in jail because on the account that I defend, that person presents no potential harm to society, the innocent person. Just like I couldn't throw someone who doesn't carry a communicable disease in quarantine, I can't throw someone in jail to deter others from punishment.

Julia: Got it, so you're-

Gregg: I think it has an advantage over traditional deterrence models.

Julia: Your objective function then is something like, minimize future crime under the constraint of not doing anything that people don't deserve.

Gregg: I don't know about deserve. I have a principle, sort of a conflict principle, I call it the conflict principle. It says that punishment is only justified when A, it's in line with something like John Stewart Mill's harm principle, and B, follows in accordance with what I call the principle of least infringement. Which is that it takes the least intrusive form of sanctions that are-

Julia: Are needed.

Gregg: Are needed to achieve public health and safety. Just like I wouldn't throw someone in quarantine for a common cold. Although it does present somewhat of a risk to society.

Many of the things we currently imprison people for should be reconsidered I think. We imprison people for very low level crimes, we imprison people for outcomes of addiction, mental health issues, things that would all be dealt with much, I think more effectively within different systems of help, and rehabilitation, and social support systems.

The least restrictive portion is important, so that blocks for me certain excessively punitive forms. I might be able to cane you in public, and that might be a very effective deterrent. People don't spit on the street in certain societies where we cane people publicly. But I couldn't justify that on my view.

Whereas a deterrence person might say, "Yeah, let's go for public caning if it is effective." They may argue that there are reasons to think it's not effective, but if it turned out it would be, then that should be their preferred proposition.

Whereas I still have a way of saying that we shouldn't treat individuals in that way. Just like we hold people in quarantine, we have a moral duty while we hold them in quarantine to treat them for their disease, and not to make their lives unbearable, to treat them humanely.

I would say the same thing for people we incapacitate, that we have a moral obligation to try to rehabilitate those people unlike we currently do in our criminal justice system, and we have a duty to treat them humanely, with respect, and in certain ways that are inconsistent with our current system. The way we use solitary confinement and the excessive means in which we put people 23 to 24 hours a day in lockup, for sometimes decades.

Julia: Did you hear about the prison system in, I think it was Atlanta or outside of Atlanta, that were refusing to put air conditioning in their prison cells even in the heat of summer? Even though I think the state or local government had voted to give them

funding. They were explicit, there could be no other motivation than just wanting their prisoners to suffer more. They couldn't even justify it on, "We don't want to spend the money on that."

Gregg: That's right. I know many good well meaning retributivists who would say, "Oh, I'm all for reform too, that's just inhumane" but my problem is that the retributivist in theory, who holds proportionality principles that say the punishment should be proportionate to the wrong done, isn't the kind of person who implements these systems. The retributive impulse I think as you point out, I don't know if it's Atlanta-

Julia: Maybe it was Alabama. Anyway.

Gregg: -- Is that the retributive impulse is to make conditions as harsh as possible for these people. There was another example in the UK where they banned books for prisoners. It was a "ban the book" movement that essentially wanted to deprive prisoners of certain types of luxuries. Essentially they make conditions as harsh as possible so people don't want to go to prison, it's a very retributive impulse.

Julia: And it's directly trading off against rehabilitation.

Gregg: It's exactly at odds with both rehabilitation and self interest. Just out of pure self interest we know that that's not going to reduce rates of recidivism. People coming out with no new skills, no rehabilitation, no work training, no educational opportunities, and be deprived books in the process is not going to make us safer.

The US system not only has 25% of the world's prisoners, the highest rate of incarceration -- we only have 5% of the world's population, but we house 25% of the world's prisoners.

Julia: Wow.

Gregg: We also have the highest rate of recidivism, I think it's 76% or higher than 76% of prisoners are rearrested within the first 5 years of release.

Julia: God, that's depressing. All of that is so depressing.

Gregg: Norway has a recidivism rate of 20%, they imprison 10 times fewer people than we do. For every 100,000 people in the US we imprison about 700 people. In Norway for every 100,000 they imprison 70. Far fewer people are brought into the system, they focus on a model that's essentially geared toward rehabilitation.

It's not completely my system, but it's much more along the lines of a system that is geared towards rehabilitation, reintegration. Although they probably haven't completely relinquished blame, they often view criminal blame as a failure of the whole society and not just the individual.

Julia: It is closer to the view in which the individual's actions aren't totally the result of their own, individual free will.

Gregg: That's right. And there's a lot of Asian cultures that have this tendency too, where it's a shame on the family for example if a child does something wrong, because parents see themselves as important causal features in shaping the young child. When the young child does something wrong they believe it reflects on their parenting.

Norway has super max prisons with no barbed wire, with the access to knives, with shrubbery, all of the things that don't exist in our prisons. They have much lower rates of recidivism, much better outcomes, and for example the highest, I think it was 27 years, the highest prison sentence you can get for any crime, and this really pushed the credulity of the people when that ... Remember that shooting of that guy at the children's camp a number years ago-

Julia: Yeah, yeah.

Gregg: That really stressed their, or put to the test their retributive impulses, because that's a hard case. The max sentence you can give is 25 years.

Julia: Yeah, wow.

Gregg: Then what they do is after that period of time, they reassess the danger that individual poses to society, have they been rehabilitated or not, do they represent a continued risk? If they do represent a continued risk they can add 5 year increments, but there's a mandatory reevaluation process that has to occur.

Unlike prisoners in our systems that often are just deprived of hearings and any chance of parole for life. Cases are not reviewed, they're not reconsidered, we don't look at individual details. All the same thing with mandatory sentencing, it removes the ability of judges to look at the circumstances between individuals and what might work for one may not work for another.

Julia: We are a little bit over time, but I think before we close I want to invite you to tell our listeners what the Justice Without Retribution Network is up to, and if there's any way they can get involved.

Gregg: Oh thank you, yes. This is a network that we recently founded, actually, Elizabeth Shaw at the University Aberdeen School of Law held a conference two years back with that title, "Justice Without Retribution." And after that conference a bunch of us decided to found this network. The co-directors are myself, Derk Pereboom, Elizabeth Shaw, and Farah Focquaert at the University of Ghent.

What we want to do is bring together experts from different fields -- neuroscience, law, philosophy, psychology -- all to investigate whether nonretributive approaches toward criminal punishment are ethically defensible and whether they're justified.

We held this one conference in Aberdeen and then we just had a conference at Cornell University with both retributivists and nonretributivists. We want to include as many perspectives in the tent as possible, and open up a line of engagement. Our hope is to continue to foster workshops, produce maybe a number of edited

collections, hopefully get continued engagement.

We're looking for funding and we had a few grants, but we're hoping the grant may be a much larger grant that would sustain a multi-year project where we could fund some research in this area, bring together experts from different areas. Policy people, philosophers, academics, neuroscientists to address it from multiple perspectives. Hopefully with the outcome being that we effect some policy change.

Julia: Excellent. I encourage our listeners to check out Gregg's website, GreggCaruso.com which we will link to on the podcast site. It has links from there to find out more about the Justice Without Retribution Network. You can also check out Gregg's papers and books on the topic of free will and moral responsibility.

With that let's wrap up this conversation and move onto the Rationally Speaking Pick.

[interlude]

Julia: Welcome back. Every episode we invite our guest on Rationally Speaking to introduce the pick of the episode. That's a book, or a website, or a movie, or something that has influenced his or her thinking in some way. Gregg, what's your pick for today's episode?

Gregg: I'm going to cheat and name two here.

Julia: That happens.

Gregg: The first is Derk Pereboom's "Living Without Free will". I think that book probably was the most influential book on my thinking that I've read, and it was really the one that drew me into the free will debate. It's also the one that largely shapes my thinking to this day about optimistic skepticism. I really highly recommend that book, it goes through how one can adopt this perspective and what it means for interpersonal relationships, morality, punishment, and a whole number of other issues.

The other book would be by Bruce Waller, and he has a number of books, but the one that really sticks in my mind and has influenced me the most is this book "Against Moral Responsibility". Although we disagree on certain small features of his account, his views on moral responsibility have probably been, second to Pereboom, the most important in shaping my thinking.

Those two philosophers, Derk Pereboom and Bruce Waller, and those two books are books I would highly recommend for anyone that wants to know about the kind of position I defend, and what someone in my camp would say about things I may not have answered for you today.

Julia: Excellent.

Gregg: That really go deep into the systematic system of moral responsibilities... and what

an alternative perspective would look like.

Julia: Great. Gregg, thank you so much, it's been a pleasure having you on the show. As I said people should check out GreggCaruso.com -- and Gregg did you say you have another book or a volume that you're working on now that will be coming out soon?

Gregg: Yes, the next project that's coming out is a co-edited collection with Owen Flanagan called "Neuroexistentialism" and the subtitle is "Meaning, Morals, and Purpose in the Age of Neuroscience."

Julia: Excellent. Sean Carroll and I were just talking on the previous episodes how we really need more "isms," so that sounds like a worthy addition.

Gregg: He's going to be one of the contributors-

Julia: Oh, wonderful.

Gregg: Along with Patricia Churchland and just a whole host of amazing people.

Julia: Great. Gregg thanks again and hope to get to chat with you more soon.

Gregg: Thank you very much, Julia.

Julia: This concludes another episode of Rationally Speaking, join us next time for more explorations between the borderlands between reason and nonsense.