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The Guilty Plea and Self-respect

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I. Introduction

The guilty plea can both affirm and erode a defendant's self-respect. For this reason alone, it has a strong claim to our attention. On one view, the entering of a guilty plea can be a gesture of contrition, a form of atonement, and a public acceptance of legal responsibility. On another view, the guilty plea is an incentivisation tool employed by the State, designed to appeal not only to the factually guilty, but also to the factually innocent, who routinely waive their right to trial and plead 'guilty' in exchange for a sentence reduction.[1] The guilty plea, then, has the capacity to generate quite conflicting sentiments, where we might at once morally approve and morally object to its existence.

The chapter proceeds as follows. It begins by introducing the statutory framework and the role of the guilty plea in the sentencing process of England and Wales. It then proposes the concept of self-respect as a new conceptual tool for sentencing scholarship and a means by which to deepen our understanding of the guilty plea from an ethical perspective. In principle, the guilty plea allows a defendant to take responsibility for his wrongdoing and emerge from the criminal process with his self-respect intact. Yet, there is good reason to be sceptical that the guilty plea regularly fulfils such a lofty aim in practice. Too often, the factually innocent defendant 'self-convicts' for instrumental reasons, where the hidden cost is a loss of self-respect. It remains to be seen whether the sentencing community will succeed in forging a robust defence of the guilty plea as a defining feature of the sentencing process for the 2020s, despite mixed motivations for its use and the material risk it poses to a defendant's intrinsic worth.

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[1] 'Sentence reduction' is the term in use in England and Wales but the same differential (between the sentence if pleading not guilty compared to pleading guilty) is known in other jurisdictions as a 'sentence discount', 'allowance in respect of a guilty plea', 'adjustment', 'trial tax,' 'trial premium' and 'trial penalty' (Gormley, McPherson and Tata 2020).

II. Thinking Ethically about the Guilty Plea

The literature on the guilty plea has escaped harsh criticism in England and Wales when contrasted with the US plea bargaining system (Helm 2018). It has focused on three key themes: first, its statutory basis and the role of the Sentencing Guidelines; second, its role in securing a plea-based sentence discount; and, third, its prevalence (70 per cent of defendants in the Crown Court entered a guilty plea in 2021).[2] No doubt this scholarship is rich and extensive, but it is also inescapably pragmatic. The guilty plea calls out for analysis in ethical terms.

What might this task involve? The traditional but arguably deficient approach in the field of applied ethics is simply to 'apply' an ethical theory, such as utilitarianism or deontology, in a particular context – in our case, the entering of a guilty plea – to 'solve' the ethical problems it generates. This top-down approach to ethical reasoning adheres to the idea that ethics is akin to geometry, presupposing a solid foundation from which principles and general rules can be inferred and then applied to concrete cases independent of context. But there are limits to this narrow focus on *ethics as problem solving* that the sentencing community would do well to avoid. An ethical analysis of the guilty plea need not be reduced to an exercise in identifying the failures in sentencing law and practice. Rather, it ought to be a means by which to identify its successes too, especially if we subscribe to the idea of the ethical as 'good', 'right' or 'desirable' in a sense which evokes modernist moral and political theory (see, eg, Singer 2011: ch 1).

Furthermore, an ethical analysis need not be viewed as an exclusively abstract intellectual exercise, or an attempt at achieving a level of conceptual precision of interest only to the academic community. When we reconcile sentencing law and scholarship with concepts from ethics, it can be a concrete exercise too, with material implications for defendants and the sentencing process alike. Ethics, like law, is by its very nature a regulatory instrument for the proper direction of individuals towards the common good. As a system of moral concepts, it has the capacity to provide structured and systematic moral guidance, recommending what ought to be done or avoided. It too can be grounded and pragmatic.[3]

If there is a demand for ethical theory in the sentencing context, then ideas need to be presented carefully if they are to find their way into practice. Unsystematic criticism fuelled by moral intuition can call long-established practices into question, but explicit, stable and justifiable ethical principles provide a robust starting point and are essential to move forward.

[2] This represents a fall back from a peak of 79% in 2020. The high guilty plea rate reflects the restricted ability of courts to progress to jury trials as part of the COVID-19 response (Ministry of Justice 2021).

[3] On the practical demand for ethical theory, see Nussbaum (2000); Cueni and Queloz (2021).

III. The Guilty Plea in England and Wales

A plea of guilty is a formal reply to a criminal charge. While counsel may advise as to the appropriate plea, the decision is for the defendant alone, to be entered by him personally. It is essential that the plea be unequivocal, representing a clear acknowledgement of guilt (Ormerod and Perry 2021: Part D). If the court is satisfied with the plea, the prosecution is released from their obligation to bring evidence and prove the defendant's legal guilt beyond reasonable doubt. There is no need to assemble a jury and the defendant stands convicted simply by virtue of the word 'guilty' that he has uttered.

First established in English common law, sections 77(1) and (2) of the Sentencing Act 2020 now provide that, when determining what sentence to pass on an offender who has pleaded guilty, the court 'must take into account … (a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty; and (b) the circumstances in which the indication was given'. However, the statute is otherwise silent on what approach a court ought to take when an offender pleads guilty. This gap is filled by the Sentencing Guidelines. By virtue of section 125 of the Coroners and Justice Act 2009, the court is required to follow the Guidelines unless 'satisfied that it would be contrary to the interests of justice to do so'. In 2017, the Sentencing Council issued a revised Guideline, *Reduction in Sentence for a Guilty Plea* (Sentencing Council of England and Wales 2017; see also Gormley, Roberts and Harris 2020).

A defendant who pleads guilty typically receives a reduction in sentence. Part D of the Guideline states that full credit amounts to a reduction of one-third where the guilty plea was entered at the first hearing at which a plea or indication of plea is sought and recorded by the court; one-quarter for a plea indicated after the first stage of proceedings; with a sliding scale of reduction thereafter, down to a maximum of one-tenth on the first day of trial. The reduction would normally be decreased further, even to zero, if the guilty plea is entered during the trial itself. The Guideline states that the benefits of a guilty plea apply regardless of the strength of the evidence against an offender, and so this matter should not be considered when determining the level of reduction. This is an important change from the earlier Guideline, where a reduced discount was often given in such cases (Sentencing Guidelines Council 2007).

A reduced sentence is not an automatic right for those who plead guilty. In *R v Darling and others* (2009), the Court of Appeal held that where the sentencing judge identifies circumstances which would make it unjust to impose the minimum sentence, the limited reduction permissible for a guilty plea no longer applies. Relatedly, *R v Ladbrook* (2022) confirmed that the effect of section 73 of the Sentencing Act 2020 and the Guideline is that it cannot be assumed that the defendant will inevitably be entitled to full credit for the guilty plea whenever a lesser or different offence is charged during proceedings, and he immediately pleads guilty to it. *R v Plaku and others* (2021) served as another reminder that

a one-third discount for an early guilty plea will only be given if there is an '*unequivocal* indication' (paragraph 17) that the defendant wishes to plead guilty at the first stage of proceedings. An indication of a likely or probable plea is not enough since it keeps open the possibility of a not guilty plea and thus negates the advantages set out in the 'key principles' section of the Guideline.

There is an 'enhanced' discount available for defendants who assist the prosecuting authorities, for example, where an accomplice pleads guilty and gives evidence for the prosecution against his erstwhile co-defendants. In such cases, substantial credit should be given, particularly where that person's evidence leads to the conviction of a co-defendant or induces a co-defendant to plead guilty (*R v A (Informer: Reduction of Sentence)* 1999: 56).

The effect is that we have a negotiated form of justice in England and Wales, whereby the defendant essentially 'self-criminalises' or 'self-convicts'. Once a plea of guilty has been accepted, the court may then commence the procedure leading up to the passing of sentence. The fact that a plea of guilty has been considered must be made explicit in the sentencing remarks. The high rate of guilty pleas means that the contested trial, in theory the adversarial system's chosen mechanism for determining the question of legal guilt, plays no part in most criminal cases in this jurisdiction.

IV. Self-respect: An Interpretive Framework

Self-respect offers a means by which to interpret and assess the ethical issues associated with pleading guilty in England and Wales. What is self-respect? Despite the increasingly sophisticated accounts of self-respect to be found in the contemporary philosophical literature, disagreement persists as to precisely *how* the concept should be construed (see, eg, Bird 2010). It is possible, however, to detect some recurring themes in the literature and arrive at a working account of self-respect for the purposes of this chapter.

A. Two Kinds of Self-respect

Philosophers tend to agree that self-respect is something of great ethical importance. It is tied closely to an individual's sense of self-worth and is coupled with a desire to protect and preserve it. Suggesting that an individual has no self-respect or acts in a way that no self-respecting person would act amount to very strong moral criticisms. The notion that individuals must regard and treat themselves as deserving of respect is grounded in the Kantian claim that all human beings have a special moral value called dignity that is rooted in our capacity for autonomous rational agency (see, eg, Dillon 2021: Part 4).

There is a basic division in the way philosophers refer to self-respect. On the one hand, they invoke self-respect in the context of entitlements to due treatment from others, especially those required by justice. On the other hand, they describe self-respect as a character trait involving fidelity to certain standards or ideals of conduct (Dillon 2021: Part 4). Questions arise as to how distinct, if at all, these two notions are; about which is the primary concept of self-respect, and about how best to capture the contrast between them. We might, for example, distinguish between 'recognitional' and 'evaluative' conceptions of self-respect (Darwall 2009; Dillon 1995), or detect an opposition between Kantian and Aristotelian interpretations of the value (Dillon 2021: Part 4). It is striking, however, that none of the recent research has displaced the basic intuition that there is some distinction to be drawn between the two forms of self-respect: it runs through the otherwise unsettled literature on self-respect like a thread (Bird 2010).

Philosophers routinely point to the damage done to the self-respect of individuals who are marginalised, stigmatised or exploited by others. Its absence is painful and debilitating. Those with an injured self-respect cannot confidently view themselves as entitled to the very same respect they naturally extend to others. They are likely to see themselves as inferior or even deserving of mistreatment. Self-respect, then, is a central component of human well-being. This is illustrated by its connection to many other moral and social values such as rights, autonomy, dignity, freedom and equality (Bird 2010).

B. Self-respect as a Virtue of Individuals and Institutions

Philosophical scholarship on self-respect is not restricted to individuals. It is routinely proposed that legal institutions and practices are to be judged just or unjust – at least in part – by their impact on an individual's self-respect. Sometimes known as the 'dependency thesis', the idea is that self-respect is not self-sufficient (Bird 2010). Rather, it depends on the respectful attitudes of others or of institutions. A person or institution that permits or encourages disrespect for others will therefore be one that objectionably undermines or damages an individual's self-respect.

Margalit's conception of the dependency thesis is noteworthy here. According to Margalit, the conduct and attitudes of others pose a threat to our self-respect when they involve humiliation and, by extension, disrespect. He defines a 'decent' society as one in which major social institutions do not humiliate their members and a 'civilised' society as one whose members do not humiliate each other. Margalit understands humiliation as a form of disrespect for individuals that supplies 'victims with a sound reason for viewing their self-respect as having been injured' (Margalit 1996: 120). Given this construal of humiliation, Margalit naturally concludes that decent and civilised societies are the only ones that can fully preserve their members' self-respect. Societies that are indecent or uncivilised

necessarily threaten their members' self-respect by tolerating and, in extreme cases, encouraging acts of humiliation.

Rawls' *A Theory of Justice* is similarly instructive. For Rawls, self-respect is an entitlement that institutions are required by justice to support and maintain. He argues that individuals' access to self-respect is largely dependent on how the basic institutions of society operate. This includes messages about the relative worth of citizens that are conveyed in the structure and functioning of these institutions, including legal ones. For Rawls, justice requires that social institutions and policies be designed to support and not undermine an individual's self-respect. The value of self-respect, he claims, lies in the fact that no institution can fully achieve its aims adequately without it (Rawls 1971; see also Stark 2012). Like Margalit, Rawls also subscribes to the dependency thesis, claiming that even under ideal conditions, the continuing reassurance of respect from others is still required for individuals to maintain their self-respect. On this view, our self-respect always remains vulnerable to others' disrespect.

C. Why Self-respect at Sentencing?

This chapter proposes self-respect as a concept of critical enquiry for sentencing law and practice. What are the attractions of self-respect for the sentencing scholar? The key motivation behind making respect central to an account of the guilty plea is as follows.

For too long, the guilty plea has been viewed narrowly as a means by which to expedite the criminal process, secure convictions and save public money. The sentencing community has been held hostage to the empirical question of whether it is successful in achieving these outcomes. In requiring that the State treats defendants well and prioritises their self-respect, we overcome the framing of the guilty plea process as a value-free instrumental exercise. The intrinsic case for self-respect is that it is to be valued irrespective of whether it is implicated in the pursuit of certain instrumental outcomes because it builds into sentencing law and practice an ethical sensitivity that we ought to value in a liberal democracy. Self-respect speaks to the idea that it matters *how* we support individuals in the entering of a guilty plea and not simply that the process itself is effective. The court must relate meaningfully to defendants – by recognising their moral standing or affording them a baseline moral status – in a manner that reaffirms that there are non-instrumental reasons to protect and support them (Watson 2020).

There is a further reason for recourse to self-respect in the sentencing context. When we appeal to mid-level principles that are central to sentencing scholarship (such as justice or proportionality), we may require guidance in weighing, balancing and adjudicating between them. A commitment to affirming a defendant's self-respect could provide such guidance, by setting a normative standard for the sentencing community which places defendants at the centre.

V. Pleading Guilty: Conflicting Interpretations

Self-respect is a value whose importance in contemporary criminal justice many would endorse in principle. It is a notion that is capable of justifying, or calling into question, the entering of a guilty plea in exchange for a sentence reduction in England and Wales. As I argue here, its value is in its capacity to offer an interpretive framework for sentencing and capture the conflicted nature of the guilty plea. Although it is not yet clear whether and, if so, how, that conflict is resolvable, it might be articulated as follows.

A. The Idealistic View

An idealistic view of the guilty plea procedure is one that prioritises and preserves a defendant's self-respect. For the defendant, the guilty plea is a mere option, and he has the right to require the State to prove the case against him to a criminal standard. According to the Sentencing Council of England and Wales, 'nothing in the Guideline should be used to put pressure on a defendant to plead guilty' (Sentencing Council of England and Wales 2017; see also Gormley, Roberts and Harris 2020). The aim is to influence the timing of guilty pleas, not to influence the rate of guilty pleas entered. On this view, the entering of a guilty plea ought to be viewed as a reliable indication of criminal responsibility. The presence of an incentive to plead guilty may not always, or even typically, be treated as an admission made against one's own interest.

The redeeming features of the guilty plea process are well rehearsed in the literature but might be summarised as follows. Without a trial, crime victims and witnesses are spared the experience of attending court to testify. For many victims and others with a personal stake in the offence, testifying in a public forum can be emotionally distressing and is ideally avoided. Victims often benefit from knowing that the offender has accepted responsibility by admitting guilt and might even view the plea as indicative of remorse (even though this matter is dealt with separately by the court).

The utilitarian argument is that the guilty plea is in the public interest since it drives more efficient and expeditious processing of criminal cases (Roberts and Pina-Sánchez 2021). If the plea is entered at an early stage of proceedings, the length of time between charge and conviction is significantly shortened. The guilty plea process also generates significant savings. Aside from court costs, there will also be savings to the prosecution and defence and, by extension, in legal aid expenditure. No doubt the utilitarian arguments are powerful: if every individual charged with a criminal offence elected to proceed to trial, then the system would likely grind to a halt.

Finally, the guilty plea serves a symbolic role for the defendant as a gesture of contrition, a form of atonement, and a public acceptance of legal responsibility. When defendants admit their guilt, they affirm the court as a legitimate form

of authority. In practical terms, the plea might even constitute an important step towards a law-abiding life (Leverick 2013).

B. The Instrumental View

The alternative view is that the guilty plea process has been designed principally for the pragmatic benefit of the State. The efficiency rationale is regularly used as the basis for the sentence reduction (Leverick 2013). Yet efficiency is a flimsy basis upon which to justify a sentence reduction when weighed against the risks for the defendant. It is possible, for example, that the guilty plea process serves less to create scope for the cultivation of values such as self-respect than to marginalise or displace them.

As far as self-respect is concerned, a defendant who pleads guilty does not truly have his voice heard. This is suggestive of a transactional – even disinterested – form of adjudication. The defendant is required to utter a single word: 'guilty'. Even the word itself has a certain indeterminacy. Usually, it is deemed by the court to mean 'I acknowledge the prosecution case is true'. If there is a basis of plea, then the word might be deemed to mean 'I acknowledge the basis of plea is true'. Yet the plea will often be a deliberate construction, a strategic decision, or a compromise between conflicting accounts honed through negotiation (Watson 2021).

C. Incentivisation or Inducement?

There is a fine line between incentivisation and inducement where the guilty plea is concerned. The practice of plea-based sentence reductions could easily attract criticism from ethicists, not least because it might persuade a defendant to act against his own best interests. As part of that process, the defendant must come to terms with the fact that the public may perceive a lack of equivalence between the reduced sentence he receives and the gravity of his crime and its effect on the victim.

Arguably, the guilty plea procedure has been designed in such a way as to institutionalise the notion of inducement. McConville and Marsh coined the term 'state-induced guilty plea' (2014), implying that the guilty plea can be a tactical move facilitated by a practitioner rather than a mere admission of guilt on the part of the defendant. The current process assumes that plea decisions are truly autonomous and consensual, but there is good reason to believe that even the factually innocent defendant might be induced into pleading guilty in the face of weighty evidence against him.

The notion that defendants have complete freedom of choice over a guilty plea is a myth. There is mounting evidence to suggest that aspects of that process are non-consensual. It is difficult to accept that strategic pleading does not form part of some practitioners' everyday working practices and that this may lead to

manipulation of a client's plea. That behaviour is clearly unethical if matters such as self-interest or convenience compromise the best interests of the defendant. In *R v Turner (Frank Richard) No. 1* (1970) the court was reluctant to acknowledge that counsel may exert undue pressure on a defendant and that legal advice on plea could itself overwhelm the defendant's free choice. The Court of Appeal maintained that this was an 'extravagant proposition', which would only be made out in an extreme case (325). Yet, since *Turner*, there have been several noteworthy appeals from defendants claiming to have been pressured into pleading guilty (see eg, *R v Herbert (Stephen)* 1992; *R v Bargery* 2004).

D. The Innocent Defendant

It would be naive to assume that factually innocent defendants never plead guilty given the prospect of a sentence reduction (Royal Commission on Criminal Justice 1993). Horder in *Ashworth's Principles of Criminal Law* reminds us:

> A guilty plea may simply be accepted … at face value, as proof beyond a reasonable doubt of the allegation in question. A guilty plea is not automatically subject to vigorous testing for its veracity, in the way that a plea of not guilty is tested. (Horder 2016: 11)

The straightforward acceptance of the plea as a reliable indication of legal guilt is deeply problematic for the innocent defendant, whose self-respect will already be at risk. Self-respect – together with Horder's equation of the guilty plea with the beyond-reasonable-doubt standard of proof – paints a rather inconclusive picture of the guilty plea's ethical plausibility.

Nonetheless, some commentators maintain that pleading guilty while factually innocent is a remote possibility (Gormley and Tata 2021). Surely, the argument runs, no person would plead guilty to a crime they did not commit; not least because defendants choose rationally and freely how to plead. Moreover, some commentators maintain that skilled lawyers hold steadfastly to legal values such as the presumption of innocence, which would supersede any interest in the uncontested administrative processing of such cases (Gormley and Tata 2021).

Yet the argument will only hold if we are confident in the quality of criminal defence and the functionality of the system. Research shows a pervading cynicism among legal aid lawyers, who routinely assume guilt. Practitioners – even the defendant's own lawyer – are themselves routinely involved in directing cases towards guilty pleas (Newman 2013; McConville et al 1994). The literature on the relationship between criminal defence lawyers and their clients shows that although, in formal terms, defendants *instruct* their lawyers, the reality is much more complex. Research has consistently highlighted the relative passivity of most clients, whose often weak educational, social and personal resources can severely limit their ability to control the progression of their cases. The power differential in the professional–client relationship, which is especially acute in criminal cases, exacerbates the situation further (Gormley and Tata 2021).

E. The Vulnerable Defendant

State inducement to plead guilty is likely to play on the individual weaknesses of a defendant, treating him as anything but a person of profound and intrinsic moral worth. A defendant's vulnerability might be internal or external: the former relating to cognitive impairments, illness, age and various kinds of personality disorder that may make him more suggestible; and the latter relating to his primary responsibility for the care of children or older people, or economic or time pressures. Even if greater proportions of the vulnerable are induced to plead guilty, that would be regarded as a positive outcome by the State because of the net benefits that accrue to the system.

No doubt it can be difficult for vulnerable defendants to take firm command of their cases. Even where a defendant knows what he has done, he may not be fully aware of what crime in law it may constitute, which calls into question the assumption that guilty pleas are made freely and are always fully informed. It is conceivable too that vulnerable defendants may struggle with the demands of the court process and the personal costs it inflicts, and so regard a plea of guilty as a lesser evil (Feeley 1979). This reality is hardly conducive to a flourishing sense of self-respect.

VI. Reimagining the Guilty Plea

This chapter has been driven by a conviction and a problem. The conviction is that reflecting on the ethical dimensions of the guilty plea is a worthwhile intellectual and practical endeavour. The problem is that a defendant's self-respect – described by Rawls as 'perhaps the most important' primary good (Rawls 1971: 396) – is at risk of being undermined whenever a defendant waives his right to a trial and enters a guilty plea in exchange for a sentence reduction.

A. Against Instrumentalism

Controversy around the guilty plea sentence reduction is not new, having long tapped into deep and ingrained tensions between due process and crime control models of criminal justice (Packer 1964). A recurring criticism of the guilty plea is that it has been designed according to narrow instrumental concerns, such as the efficient and expeditious processing of criminal cases through the system, financial savings on investigations and trials, and the saving of court time (Sentencing Council of England and Wales 2017; see also Gormley, McPherson and Tata 2020).

While it is inevitable that the process of entering a guilty plea will be grounded, at least in part, in a form of means-end reasoning, it is important that it is contained,

or held in its proper place. Efficiency is, of course, a laudable goal for the sentencing process with which no one would reasonably disagree. However, implicit in the debate about the guilty plea is profound disagreement about what it means to be efficient. Efficiency in criminal justice should not be a value-free exercise. It is not simply about the number of cases processed, but also implies a normative claim about what is just. When there is a lasting preoccupation with instrumental outcomes, there is a risk of apathy towards a range of non-instrumental issues, including how best to affirm a defendant's self-respect. The implications of this approach are significant if we recall the Rawlsian claim that the presence or deficiency of self-respect in an institution is one indicator among many that it is just or unjust (Rawls 1971; Stark 2012).

The first step towards taking the guilty plea seriously from an ethical point of view will be to reorient the debate away from a marked preoccupation with instrumental outcomes and towards an increased concern with the defendant's intrinsic worth. This is not to discredit the instrumental functions that the sentencing process purports to perform. These functions must simply be contained, and scholars and practitioners alike must look afresh at the nature of the guilty plea, how it operates, and what it is for.

I propose that we treat self-respect as a side-constraint on the pursuit of instrumental outcomes at sentencing.[4] In other words, we should pursue instrumental outcomes such as the swift processing of cases *only* insofar as they preserve a defendant's self-respect. Side-constraints are not inherently weak or liable to be overwhelmed by instrumental considerations.[5] If a side-constraint is strong – like a Dworkinian trump right – then it is, in fact, a very powerful limit on the pursuit of other goals (Dworkin 1977). If side-constraints are framed in adequately robust terms (Watson 2020), they might even infuse the very foundations on which sentencing practices are based.

B. Rethinking Credit

If we were to commit to treating self-respect as a side-constraint on the pursuit of instrumental outcomes, what might that mean in practical terms? While there is no need to abandon the awarding of credit altogether, as Tonry (2009) contemplates, or implement a presumption against awarding credit unless justified by convincing reasons, as in the Scottish case (Leverick 2013; 2014), there is a need to rethink its purpose and operation. This is especially important in view of the systemic and personal pressures exerted on defendants to act quickly, often at the expense of their own self-respect, which, given their involvement in the criminal process, is likely already to be fragile.

[4] The term 'side-constraint' is attributable to Nozick (1974: 28–29).

[5] See, eg, Hart's approach to incorporating the principle of distributive fairness into his otherwise instrumental theory of punishment (Hart 1968).

The stage at which a defendant must plead guilty to receive full credit is simply too early to be consistent with the requirements of self-respect. It does not allow a defendant to reflect meaningfully on legal advice or the weight of the evidence against him. And following *R v Plaku and others* (2021), the process is arguably more prescriptive than ever. There is very little scope to argue that a defendant could not have offered an unequivocal plea at first appearance at the magistrates' court, except for the most exceptional of circumstances, such as not having been provided any papers by the prosecution prior to the hearing.

The Guideline, *Reduction in Sentence for a Guilty Plea* (Sentencing Council of England and Wales 2017), is stricter than its predecessor and too tightly drawn (see further House of Commons Justice Committee 2016). It offers certainty at the expense of flexibility and fairness, for example, in replacing the concept of the 'first reasonable opportunity' with clearly defined stages of the court process. It is hard to believe that the emphasis on a precipitous reduction in the discount was not designed to place pressure on the defendant, despite the Council's assurances to the contrary (Peay and Player 2018). In sum, the Guideline increases the risk that the defendant will act against his own self-interests, which is problematic where his self-respect is concerned.

The exception set out in the Guideline at F1 (further information, assistance, or advice necessary before indicating plea) would, in certain circumstances, retain the maximum one-third discount for a defendant who enters a plea of guilty *after* the first stage of proceedings. In considering whether this exception applies, sentencers are advised to distinguish between cases in which it is necessary to receive further advice or have sight of the evidence in order to understand whether the defendant is in fact and in law guilty of the offence charged, and cases in which a defendant merely delays the entering of a guilty plea in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal. As currently drafted, the exception is confined to rare cases. Its limited scope is especially insensitive to vulnerable defendants, such as those with mental health conditions, who may feel pressured to plead. It has the potential to detract attention from systemic coercion and to fix responsibility for the plea on the defendant alone. The vulnerable defendant must have sufficient time to process legal advice, engage in careful decision making, and take ownership of the decision.

In sum, the process is much less straightforward than the Sentencing Council presupposes. The Council has not fully recognised that a sentence reduction, substantial or not, offered against a diminishing time frame can be experienced as a coercive gamble for defendants, where the risk averse may choose to cut their losses. The F1 exception also implies a significant disregard for the defendant's self-respect, when he is already distanced from the protections afforded by trial. The exception should be expressly extended to any situation where the defendant wishes to obtain further legal advice before deciding whether to plead guilty, with a concerted effort to protect those deemed vulnerable. At the very least, the F1 exception might be applied more flexibly.

There is scope, then, to rethink the purpose and operation of awarding credit to defendants who plead guilty (see, eg, Bagaric and Brebner 2002). Of note is the need for greater flexibility in the Guideline, whose framing is unaccommodating to defendants facing the complex decision as to whether and, if so, when to plead guilty. This seems especially urgent in a system increasingly defined by its deficits in legally aided advice and representation.

Overall, the guilty plea process is currently at risk of undermining – or even directly violating – a defendant's self-respect. This is true however we classify self-respect: as a moral duty connected with the duty to respect all persons, as something to which all persons have a moral right, or as a moral virtue essential to morally good living. When self-respect is treated as a peripheral concern at sentencing, it will become increasingly difficult for the criminal process to protect its liberal credentials.

VII. The Limits of Self-respect

At the core of the guilty plea procedure there exists a fundamental – and possibly irresolvable – tension. In principle, the plea can promote a defendant's self-respect but – if State induced, as is often the case – it is likely to have the opposite effect. At best, then, the guilty plea is ethically suspect.

The immanent capacity of self-respect to function as a concept of critical enquiry for sentencing theory and practice, while notable, must not be overstated. The sentencing process is defined by a plurality of values, which are not ordered in a fixed or definite way and are not derivable from a single fundamental value. These are values which, even within one person, can conflict in ways that are not resolvable without loss (see, eg, Jacobs 2011; Zedner 1994). As such, it would be naive to propose self-respect as an overarching analytic category and suggest that we can make sense of the guilty plea exclusively in these terms. Likewise, we should not assume that self-respect can generate straightforward answers to every ethical dilemma in sentencing law and practice. Nonetheless, self-respect has great promise and there is much to be gained by foregrounding the concept, refining it, and then redirecting it in such a way that prompts deeper reflection about the guilty plea as it operates in England and Wales.

VIII. Conclusion

If we are to continue to afford the guilty plea a privileged role in the sentencing process of England and Wales, it is essential that we can explain and endorse it in ethical terms. With a sense of modest realism, we must recognise the redeeming features of the guilty plea, while viewing it more cautiously as a non-ideal form of 'negotiated justice' (Baldwin and McConville 1977) and a flawed means by which

to expedite the criminal process, which too often benefits the State at the expense of defendants.

It would be difficult to imagine the sentencing of offenders in the total absence of ethical theory. If modestly conceived as a set of organising assumptions about how we relate to each other, we might even claim that ethical theory is indispensable to sentencing and criminal justice. One way of deepening our ethical understanding of the guilty plea is to appeal to the concept of self-respect: celebrated in moral philosophy, but scarcely discussed – even elusive – in sentencing and criminal justice. Self-respect is an effective tool for moderating the ethics of pleading guilty and might even be viewed as a critical and regulative ideal for criminal justice. The flexibility of the concept is such that it provides a means by which to sharpen our critique of the guilty plea, as well as a means by which to reimagine its use.

But self-respect is not merely an analytic tool. It is also a matter of material significance. For every defendant confronted with the opportunity to enter a guilty plea, self-respect is a precious commodity to be fiercely protected. It is gained slowly but may be lost in an instant. For Rawls (1971), self-respect is an entitlement that institutions are required by justice to support and maintain.

Once the foundations for an ethical understanding of the guilty plea have been laid, it is essential that these ideas are not restricted to the legal academy. Self-respect is sufficiently fine-grained to influence policy-making, provided it is complemented by structured political deliberation. One way forward for the sentencing community would be to redesign the guilty plea process to affirm – rather than erode – the defendant's sense of self-respect and consign the State's narrow instrumental concerns to their proper place.

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