

CRIME, INDIVIDUAL CULPABILITY AND PUNISHMENT

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Under the mental illness model of today, the criminal is not held responsible for his behavior, in fact, society is generally censured instead of the criminal. Many blamed Dallas rather than Oswald for President John F. Kennedy's death. When Charles Whitman, from a tower in Texas, "picked off" innocent passers by with a rifle, it was said that society must be held responsible for the tragedy. When a Jordanian immigrant assassinated Senator Robert F. Kennedy, television was filled with indictments of the American public. And most recently when a Black ex-serviceman shot and killed from a roof-top of a New Orleans' motel once again it was society that was faulted.

Contemporary theories of human behavior have been fashioned after the deterministic model of classical physics in that human behavior is considered the product of antecedent events. Each psychological event is viewed as fully determined by its antecedent, in the same manner as physical events are by theirs. Under this view, it is entirely natural for a criminal to act as he does, since his criminality is a natural product of prior events. Punishment becomes inappropriate, for it only has justification when the person punished is capable of a meaningful choice of behavior.

Human behavior that deviates substantially from what is commonly expected is considered "abnormal." In an effort to explain such abnormal behavior, behavioral scientists have been guided by a medical model of behavioral pathology. Behavioral maladjustments have been looked upon as analagous to a kind of organic disease. Just as physical illness is attributed to alien factors that attack the healthy organism, so human misconduct has been viewed as a kind of "mental" illness which stems from a variety of environmental factors that adversely affect the individual's adjustments to life.

The medical analogy has been carried even further to the point where persons who behave in ways defined as abnormal are considered "sick" and are "treated" in clinics and hospitals in much the same fashion as people suffering from physical (organic) illnesses. Since "sick" people are generally considered helpless victims of their illness, by analogy social deviants are also considered as hapless victims of adverse environmental conditions and should be protected rather than persecuted. Obviously, there is no room for value judgments about their socially unacceptable behavior, since they are really not personally responsible for their condi-

tion. According to this view, it makes no more sense to punish people for their criminal (or other deviant) behavior than to punish them for having appendicitis or the mumps.

IN LIGHT OF THE MEDICAL MODEL

Historically, illness was considered as a physicochemical disorder of the body which had manifested itself, or was about to manifest itself, in the form of a disability. When disabled, the patient was to be rewarded in certain ways (e.g. he need not work, he could rest, and he could expect special kindness, etc.). As for those whose clinical pictures only suggested or resembled neurological diseases they were called either hysterics or malingerers, depending on the observer's point of view.

Approximately one hundred years ago, a Frenchman by the name of Charcot, a neurologist, began to focus his work upon disorders which simulated organic neurological conditions. He redefined hysteria and malengering so that those labeled "hysterics" were, by virtue of this designation, regarded as suffering from an illness while those classified as "malingerers" were merely trying to fool the physician or exhibiting willful misbehavior. These pronouncements on the part of Charcot, as well as their eventual acceptance, mark the beginning of the modern study of so-called "mental illness." With Freud, a disciple of Charcot, and psychoanalysis a new system of classification came into being. These men did not "discover" that hysteria was a mental illness. Rather, they advocated that so-called hysterics be *declared* "ill"¹. Accordingly, hysteria, obsession-compulsion, neurosis, depression, paranoia, and so forth were regarded as disease that happen to people. Mentally sick persons did not "will" their pathological behavior and thus were not considered "responsible" for it.

This unsupported—and, I submit, false—theory of human conduct has become widely accepted. It has even received legal approval, so to speak, by American criminal statutes that codify certain types of actions as potentially the result of "mental illness." This process can be clearly illustrated in the evolution of the legal definition of insanity. As originally defined in the M'Naughten Rule, announced in 1843 by the chief justice, Sir Nicholas Tindal, it stated "to establish a defense of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of mind, as *not to know* the nature and quality of the act he was doing; or if he did know it, that he did *not know* he was doing what was wrong."

From the absolutes of the M'Naughten Rule one finds that today nearly all of the courts across the United States rely upon the conditional contingencies of the American Law Institute Rule which states "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks *substantial capacity to appre-*

1. Szasz, T. S. *The Myth of Mental Illness*. New York: Dell Publishing Company, Inc., 1961.

ciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.”

The logical conclusion of the mental model is found in the Durham Rule, only used in the State of Maine, which simply says that “An accused is not criminally responsible if his unlawful act was the *product of mental disease or defect.*”

What has happened over the last fifty years or so with the increased acceptance of “mental illness” is the compromising of the concept of individual culpability, specifically as related to criminal law and its sanctions.

Under the influence of the medical model the point of focus has shifted from the crime to the criminal, from an *act* deserving to be punished to an individual victimized by “mental illness” and hence not deserving of moral devaluation. Historically, the ideas of crime and punishment have been inseparable. A crime was any conduct which, if duly shown to have taken place, would incur a formal and solemn pronouncement of the moral condemnations of the community. The consequences of conviction were described as a matter of course as “punishment.” The Constitution and its amendments use this work or its verb form in relation to criminal offenses no less than six times.

IN LIGHT OF BIBLICAL PRINCIPLE

“Mental illness” and its deterministic presuppositions have brought us to a state of confusion. Is the individual to be treated as patient, unresponsible for his situation or behavior, or is he to be seen as a free moral agent responsible for his actions and hence deserving of moral condemnations and punishment? The Bible speaks quite expressly to the points of personal responsibility and punishment.

Biblically, the individual is to be held accountable for his act. Man is considered a free moral agent who elects to do wrong rather than right not because of some predeterministic experience but by choice. While the Scripture clearly speaks of human depravity it does not say that every man is as bad as he is capable of being, nor that man must choose wrong over right. In fact, to this end it admonishes parents to discipline their children while warning that in failing to do so the child will have difficulty in later years because of this undisciplined life.²

Scripture emphasizes the act of crime rather than the agent of crime. Each crime and its fixed penalty are given in advance so that in a very real sense there is but “one law” for those found guilty of a specific crime. While differentiation of liability does occur its basis is founded in the act itself, premeditation as compared to accidental, not individual “mental illness.”³

2. Proverbs 22:6

3. Exodus 21, 22; Leviticus 18-20; 24-27

Biblically, the chief end of punishment^a is not to restrain the criminal from further crime nor to deter others from doing similar acts of violence or theft. Instead, the wrong act is said to be punished because it deserves to be by its very nature, irrespective of the effect which the punishment may have upon the offender himself or others. And, too, if the State fails to execute justice and punishment, it is held guilty of participation in and condoning the crime.⁴

The Bible teaches punishment. Though through the years some have gotten away from this concept, classifying it as unusable or inhumane, it is still the approach of the scripture. James M. Johnston in his article, *Punishment of Human Behavior*, surveys the literature on punishment. He concludes that there is no indication from any data that any one of the proposed "alternatives" to punishment provides an effect which is as immediate, enduring, or generally effective as that produced by the *proper* use of punishment procedures. Punishment acts to decrease the rate of a response in a manner similar to the way in which reinforcement, or reward, serves to augment the frequency of behavior. He continues that it seems as irrelevant to consider the question of whether or not punishment should be used with humans as it is to ask whether or not reinforcing stimuli should be used since both are facts of life. The question therefore is one of appropriateness. That is, the punishment should fit the crime in intensity, and when possible in kind.⁵ Biblically the punishment is, also, to be administered without undue delay.⁶

With the exception of premeditated murder and several other crimes Biblical punishment evolved around a system of restitution with the offender allowed to remain in society. If an item were stolen it was to be replaced. Depending upon the particular situation the amount of restitution could vary from two times to five times the cost of the item stolen. In either case the victim was to be compensated for his loss.

In regard to personal injury, the law required restitution in the form of punishment of a like kind. In later Jewish law and quite possibly from the beginning a ransom in lieu of maiming might be accepted by the injured person.⁷

The movement from personal restitution to the victim to crime as a crime against the state came over a long period of time. Originally the victim and his family were the sole beneficiaries of restitution. As time passed a portion of each composition, representing reparations of money or goods, was claimed by the community overlord or king. As rulers grew in power, they demanded shares of compensation as commissions for services rendered in reconciling the parties. As a result, the compensation was divided into two portions: one for the victim and one for the community

^aPunishment should not be confused with torture or other forms of inhumane treatment.

4. Leviticus 20:4, 5; Numbers 25:4, 11; Deuteronomy 21:8; Joshua 7:11-15.

5. Johnston, J. M. "Punishment of human behavior," *American Psychologist*, November, 1972: 1033-1054.

6. Ecclesiastes 8:11

7. Exodus 21:29, 30

or king. By the time of the division of the Frankish Empire by the Treaty of Verdun, 842 A.D., the practice of composition had virtually died out with the king or overlord claiming the entire compensation, private crimes thus became public crimes and restitution became nationalized. There is some movement today in our country to once again compensate the victim though this time the compensation would be by the state.

CONCLUSION

The Scripture clearly speaks of man as a free moral agent, responsible for his acts and thus fully liable for their consequences. The deterministic, non-responsibility of the medical model of today finds no quarter with Biblical principle. The doctrine of human depravity however does suggest some interesting implications. While it does not state that man is as bad as he could be it certainly teaches that man has an inherent bent toward non-conformity and deviancy. Perhaps then, as expressed by Wrong we are answering the wrong question.⁸ Should we address ourselves to the more fundamental question "How is it that man becomes tractable to social discipline given his natural bias?" Could it be as suggested by Durkheim that crime is really the "normal phenomenon." As man is discussed in regard to his criminal culpability and potential rehabilitation should we not more closely consult the Scriptures and take more seriously their declared propositions concerning the nature of man and his actions.

8. D .H. Wrong. The oversocialized conception of man in modern society. *American Sociological Review* 26, 1961, 183-193.