

CRIME AND PUNISHMENT

Remember the old movies in which the detective says to the criminal, "If he dies, you go to the chair."? As a kid I wondered why the bad guy's punishment should depend on where the bullet happened to hit the victim, or whether the victim is capable of recovering from a serious wound.

A man puts a bomb in a suitcase that is to go on an airplane carrying his recently insured mother-in-law. The cargo loaders put the suitcase in the middle of a bunch of other luggage, so the airplane is not damaged when the bomb goes off in mid-air. If the suitcase had been loaded nearer to the skin of the airplane, the explosion would have caused the airplane to crash with the death of all on board.

In the first case the bomber is convicted of attempted murder, getting a moderately stiff jail term, with time off for good behavior. In the second case he is convicted of first degree murder and sentenced to die or to life imprisonment with no possibility of parole. Now, why should the bomber's punishment depend on where the suitcase was loaded? Does that make sense? Shouldn't his punishment be the same either way?

The typical reaction when I put this proposition to people is, "How can you punish someone for something that didn't happen? If no one was even hurt, then you can hardly deal out the same punishment as for murder."

"I can't? Why not?"

"Because nothing happened."

"So what?"

"Well, you just can't."

Now there's logic for you. It is unfortunate that punishing the action instead of the result goes against our instincts, instincts that were all a caveman's unsophisticated brain could come up with. It's hard to go against those instincts, even when logic points to doing so. Surely the progress made by our brains since our cave-dwelling days should be utilized better in the area of criminal justice than by the primitive principle of "eye for an eye, tooth for a tooth."

Little Johnny wildly throws a rock in the house. His punishment if he breaks a valuable vase or hits daddy in the mouth may be quite severe compared to the punishment if the rock harmlessly hits a cushioned chair. Does that make sense? Most of us judge such situations by the results instead of judging the action itself, but that does not make our reaction logical. It only shows that we have not thrown off our caveman ways.

Punishing the result is the basis of civil code, and it works. It is inappropriate for a criminal code, where the proper goal is not equity but the protection of society.

Richard Dawkins: "Progressive ethicists today find it hard to defend any kind of retributive punishment."

What is a crime? My Webster's New Collegiate Dictionary defines it this way: "An act or omission forbidden by law and punishable upon conviction, including public offenses often classified as

treason, felony, or misdemeanor." Note the inclusion of "omission." Failing to prevent injury or death to another can logically be considered just as serious as causing the injury or death. That is the moral of *The Ox-Bow Incident* by Walter Van Tilburg Clark: Sins of omission are just as bad as sins of commission.

Modern day indictments and judgments are based on morality (i.e., like God on Judgment Day) instead of on public welfare. An impulsive violent murder is considered less serious than a premeditated murder. I would rather live next to a person who carefully plans a murder for cause rather than one who murders impulsively. An impaired mind is considered an excuse for murder, but I would rather live next to a sane murderer than an insane murderer. Isn't the main purpose of criminal punishment the protection of society?

What are all the aims of criminal punishment? - Perhaps these:

- Deterrence of repetition by the same person (from fear of punishment)
- Deterrence of emulation by other persons (i.e., to set an example)
- Rehabilitation - more than deterrence, rehabilitation removes the desire to repeat the crime.
- Safeguarding of society by removing the criminal from it
- Moral justice (i.e., evil ought to be punished)
- Equity (i.e., paying a "debt" incurred by the crime, either to the victim or to society), our caveman legacy. The payment can be in years spent imprisoned. "He has paid his debt to society."
- Revenge - also a caveman legacy, as "getting even" makes us feel better. It could be considered part of the previous purpose, but is more barbaric in nature. It usually requires some physical "payback" that will leave the criminal at least hurt, maybe scarred, maybe dead.

The main overall purpose, however, should be to give society a safer environment for daily life. This purpose should not be obscured by irrelevant concepts such as moral justice, equity, or revenge, which do not serve that purpose. Let's leave moral justice to God, equity to the civil courts, and not be motivated by the barbaric notion of revenge.

Minimizing criminal behavior is one good means of bettering our environment, but this sub-goal should not be achieved at the expense of worsening our environment in other ways (e.g., by eliminating privacy rights). In observing the civil rights of known criminals (i.e., those who are undoubtedly guilty of a crime), however, those rights must be balanced against the needs of society. If the criminal's rights have been violated, those responsible should be suitably charged with a criminal offense, but criminals should not be released just because of the violation. If redress is due, let them seek it in the civil courts.

The principle of "implied consent" should be recognized -- those adults who choose to live in our society imply a consent to be put to death if they commit a capital crime or make a serious attempt to do so. It is often argued that capital punishment is inappropriate for a society that is supposed to value life. How is it valuing life if we let murderers off lightly or don't punish them swiftly?

For those too mentally impaired or too young to understand that they have given such consent, imprisonment to safeguard the public is appropriate. However, people who "forget" their implied consent, perhaps after ingesting alcohol or drugs, should not be excused from it.

I close this monograph with a summarized story from the *Dallas Morning News* of April 4, 2006.

Miroslav Janusz Jozwiak, a Polish immigrant, fell asleep (his claim, probably true as records show he slept only 2-1/2 hours in the 36 hours preceding the crash) at the wheel of his tractor-trailer, which crossed the median strip and hit a pickup truck full of Hispanic workers and also hit an SUV carrying five members of the same family. Ten people were killed, including three children in the SUV. Jozwiak was charged with 10 counts of manslaughter and two counts of aggravated assault. He pleaded guilty, but a jury had to decide whether he was guilty of assault with a deadly weapon. They did not, and he was sentenced to 10 years for each manslaughter count, to be served concurrently (i.e., 10 years total). At sentencing, Jozwiak expressed great remorse.

Having been in jail for 18 months, he would technically be eligible for parole in one year, but his attorney said it was unlikely to be granted that soon because of the type of case. Had the jurors decided the tractor-trailer was a deadly weapon, he would not have been eligible for parole until he had served 3-1/2 years.

A relative of the family in the SUV had this to say: "For each of the people you killed, you're going to serve one year. One year per life is not sufficient. There is no justice there."

Another relative said she had hoped to get answers to many of her questions, such as why the truck driver didn't fall asleep five minutes earlier or five minutes later, thereby killing no one. Of course if that had happened he would have received only a mild slap on the wrist, if anything, for falling asleep at the wheel.

Others who contributed to the tragedy, such as whoever was responsible for carrying workers in the back of a pickup truck, or those who let someone drive a tractor-trailer without sufficient sleep, paid no penalty.

This is a strange sort of justice we have.