

Freedom from Fear?

How belief in a pain-free utopia has discredited punishment and de-civilized society.

by

John Staddon

Successful political slogans are usually phony. They succeed because they promise gain without pain, the reconciling of the irreconcilable and win-win in a zero-sum world. Franklin Delano Roosevelt's "four freedoms" are still remembered after two generations. Freedom of speech, freedom of worship, freedom from want, and freedom from fear all sound very fine, but this slogan bears scrutiny no better than others. Freedom of speech and religion are reasonable enough, perhaps. But freedom from want is problematic: Who shall define 'want'? When does 'want' or 'need' turn into 'wish' and 'desire'? And whose freedom to spend his own money shall be abridged to satisfy the presumed needs of others? But most pernicious of all is "freedom from fear," because it seems self-evident.

Punishment and the Creed of Mental Health

Yet the idea that mankind could ever be free of fear is as odd as it is recent. The ancients knew the world as full of evil spirits. Sin and retribution are at the root of Judaeo-Christianity. Modern biology sees evolution as frequently, if not invariably, "red in tooth and claw." But ever since Freud, a new creed, the creed of psychotherapy, has offered the prospect of mental perfection, of life not just free of evil but innocent even of the concept. The varieties of professional psychology and psychiatry from psychoanalysis to behaviorism, while they have argued about everything else, agree that fear can and should be banished. It follows that punishment, the father of fear, must go.

Why has the mental health profession turned its face so resolutely against punishment? There are several reasons. The touchie-feely types, for example, argue like this: "any of us who were raised in the traditional patriarchal system have trouble relating because we've been 'mystified' to some degree by an upbringing that compels obedience and rules by fear, a raising that can be survived only by a denial of the authentic self (John Bradshaw)." Those not bilingual in English and psychobabble may have a little difficulty with Mr. Bradshaw; but the key to his thought is the Rousseauian "authentic self" to which all else is to be subordinated. "Inauthenticity" is the ill, "freedom from fear" the offered cure. Moral issues are cleverly sidestepped. (The evidence is that Jeffrey Dahmer's "authentic self" was pretty nasty: just how "authentic" should *he* have been?) Covertly promoted is a view of human nature that few would believe if it were stated directly. "Man is born free but is everywhere in chains," is Rousseau's famous credo. It assumes that the child, left to itself is good, and becomes bad only through contact with "civilized" society. But *Lord of the Flies* is a more balanced guide to human nature than Rousseau's self-centered polemic. People are "naturally" both good and bad, and to assume one or the other exclusively is simply wrong. To see what Rousseau really believed, look not at what he said, but what he did, which was to place his own illegitimate offspring in foundling homes.

There are also powerful economic reasons for professional psychotherapists to eschew what radical behaviorist B. F. Skinner called "aversive control." Outside the old Soviet Union and a few like-minded tyrannies, patients seek out psychotherapy voluntarily. Indeed, the therapist must live by his or her ability to attract clients. Notoriously, honey works better than vinegar for this purpose. Since no profession can for long embrace beliefs that threaten its own existence, it is natural that disbelief in aversive control has come to be received wisdom among psychotherapists. Quite simply, therapists who thought their patients needed punishment were soon free of patients. So, after a while, the profession was free of *them*.

It's also worth noting that the psychotherapist need feel an obligation *only to his patient*. The impact of his work and his ideology on others and on society at large plays no necessary part in his calculations. If, as I will ar-

gue, judicial punishment is most important for its social effects, we should not be surprised to find little recognition of this fact in the mental-health profession.

Skinner and his school argued against punishment for another reason. Like Sigmund Freud and, more recently, Karl Menninger, Skinner was a master at waving the banner of “science” whenever his arguments began to violate common sense. He did not reject punishment because it is morally wrong, which would be a defensible, if controversial, view. Like all behavioral scientists, he believed he had rigorously excluded morality from his thinking. Instead, he defended an ostensibly absurd position by asserting that “science shows” it to be true. He argued that aversive control must be rejected because it doesn't work.

Skinner's argument boils down to three points: punishment is ineffective because when you stop punishing, the punished behavior returns; punishment provokes “counterattack”; positive reinforcement is better. Each of these has proved to be either wrong or to apply with equal force to positive reinforcement. The true conclusion is that the *scientific* evidence is pretty neutral in deciding between reward and punishment. They both have their advantages and disadvantages: punishment is better for suppressing behavior, positive reinforcement better for generating behavior; some aversive schedules have more persistent effects than any schedule of positive reinforcement, and so on. There is no scientific argument for the abolition of punishment. Indeed, I will argue that the attempt to abolish punishment has almost certainly caused more pain than it has eliminated.

Determinism and Personal Responsibility

There is another bit of baggage that comes along with the attempt to apply simplistic science to moral issues and it has to do with the quite reasonable idea that human behavior is determined. Science begins with the assumption that nature is deterministic, that events follow patterns that are *predictable* if we just understand the underlying principles. Physics is the model: if we know the current state of the world and the laws that take it from its current state to its next state, in each instant of time, then in principle the world is completely predictable through all future time. This was the dream of the great eighteenth century physicist Laplace -- but every dabbler in popular science knows that Laplace's vision is no longer acceptable. Chaos theory, Heisenberg's uncertainty principle, quantum mechanics, all show that the idea of perfect predictability is wrong, even in physics. Eminent physicists have constructed theories of brain and mind that use non-deterministic physics to restore human free will to the pedestal from which Skinner and other psychologists appeared to have displaced it.

In fact, there is a deal less to chaos theory and the rest than meets the eye. Space shuttles and geostationary satellites achieve their orbits through Laplacean calculations. The “physics of the macroworld” as it is called *is* pretty much predictable. And we have no solid evidence that human behavior, at the gross level that is important for much public policy, is unpredictable either.

But if human behavior really is predictable, must we accept the defense lawyer's argument that his client should get off because his circumstances made his crime inevitable? What of the infamous “twinky defense,” or the progressive's argument that poverty causes crime, or the common assertion that violent adults are products of child abuse? Is the idea of *personal responsibility* a myth? In an era when two rich young men can slay their parents in cold blood and make a child-abuse defense -- get away with it (at least for a while) -- this argument is apparently persuasive to many Americans. Must we resort to quantum theory to refute it? Or does the argument just miss the point?

In fact, the idea that human behavior is intrinsically unpredictable is irrelevant to the concept of personal responsibility. Indeed, the truth is just the opposite. As I'll show in a moment, without determinism, the idea of responsibility makes no sense. Hence, neither B. F. Skinner's attempt to ridicule the idea of personal responsibility (by equating “responsible” with “uncaused”) nor the physicists' attempt to rehabilitate it in much the same way, is relevant. To see what *is* relevant we need to get away from the individual -- the domain of psychology -- and look at the social context -- the domain of law and politics -- where the idea of responsibility makes perfect sense.

To hold someone responsible is simply to say that his actions should have consequences. Good acts are to be rewarded, bad ones punished. This is the way that judicial punishment is supposed to work, and of course it depends for its effectiveness on the fact that normal people respond predictably to reward and punishment.

Responsibility = Sensitivity to Reward and Punishment

The argument runs like this. Legal scholars normally identify two purposes for judicial punishment, retribution and deterrence. These two ideas are not in fact as distinct as they sound, because retribution, the public sense that justice has been done, itself constitutes a deterrent to potential malefactors. So deterrence is the chief reason for judicial punishment. Does punishment really deter? The argument is clouded by ideology -- many people are ethically opposed even to just punishment, and most people are opposed to "cruel and unusual" punishment. And it is in fact strictly impossible to decide the issue *conclusively* by the methods of science. We cannot do experiments on human society, so arguments about the deterrent effect of (for example) the death penalty must always be inconclusive. Did the murder rate decrease in State X when the death penalty was imposed? If the answer is "yes" the objection by death-penalty opponents may well be that the penalty was imposed only because the murder rate at the time was unusually high -- and would be expected to fall anyway (because of "regression to the mean"), so that fall was not caused by the penalty. But if the answer was "no" (the murder rate increased) the objection by death-penalty proponents will be that the rate would have been even higher without the penalty -- or that an increased penalty takes time to have an effect ("Let's look five years down the road..."), and so on. None of these arguments can be ruled out. The problem is that in the real world murder rates are affected by many things in addition to the penalties for murder. And in any case the causation goes both ways: penalties affect crime rates, and crime rates affect penalties. I propose that we just assume *some* deterrent effect of judicial punishment, and then ask how it should be sensibly applied. We can then come up with a very simple, social, view of personal responsibility.

The idea is that the purpose of legal punishment is to minimize the total amount of suffering in society, the suffering caused by crime as well as the suffering caused by punishment. The concept is simple: if theft is punished by amputation, the level of theft will be low, but the suffering of thieves will be very high, higher perhaps than warranted by the reduction in theft. On the other hand, if murderers go free, the level of murder will be high and the satisfaction of the killers will not be balanced by the suffering of everyone else. We may argue about how to measure suffering and how to assess the effect of a given level of legal punishment for a given crime, but the principle, which I call the *social view* of punishment, seems reasonable enough. It is consistent with the fundamental principle that government exists not to "feel our pain" or to comfort a sick child or to do anything at the level of a human-interest headline -- integral as these things seem to be to the political process. The purpose of government is to act *for the welfare of society as a whole*. Most people seem to agree that the social view of punishment is acceptable, although not, perhaps, the whole story. Less obvious is that far from being opposed to determinism, this view *requires* determinism.

We have already seen that "holding a man responsible" for his actions (this is not sexism, most criminals are in fact men) means nothing more than making him subject to punishment if he breaks the law. The social view of judicial punishment assumes that people are sensitive to the consequences of their actions, that people behave predictably when confronted with judicial penalties. If criminal behavior is deterred by punishment, the justly punished criminal is less likely to disobey the law again, and serves as an example to other potential lawbreakers. This deterrent effect is the only objective justification for punishment. But if behavior were unpredictable and unaffected by "reinforcement contingencies" -- if it were "uncaused," in B. F. Skinner's caricature of personal responsibility -- there would be absolutely no point to punishment or any other form of legal sanction, because it would have no predictable effect. In short, legal responsibility *requires* behavioral determinism, not the reverse.

In the social view, the case for *individual* responsibility rests entirely on the beneficial *collective* effects (on the sum total of human suffering) of just punishment. It does not rest on philosophical notions of individual autonomy, or on personal intent, or anything else at the level of the individual -- other than normal sensitivity to reward and punishment. The idea that the law is somehow concerned with the mental state of the accused, rather than with

his susceptibility -- and the susceptibility of others like him -- to judicial sanctions, is a recent error which is aided and abetted by the myopic individualism of the mental-health profession.

Surprisingly, perhaps, traditional legal practice agrees with the social view of punishment. Only when punishment is likely to be completely *ineffective* as a deterrent does the law limit its use. If a criminal is insane -- which is to say that he is not sensitive in the usual way to normal rewards and punishments -- he is not found guilty. If a prophetic angel had whispered in the ear of Mr. Menendez "If you shoot your mother, you will hang" and Menendez believes the angel -- but shoots anyway, then he is *not guilty* (although I daresay we should lock him up anyway, for the safety of the public). But if, in the jury's estimation, he would have heeded such an angel and desisted, then he is *guilty*, because he was indeed responsible for his action in the only way that makes judicial sense. (A skeptic might ask, "Well, if he would have heeded the Angel, why did he shoot? The obvious answer is "Because he thought he wouldn't be caught -- or, if caught, could get off." These are not difficult concepts...)

"Not guilty" is also the verdict if injury is the unintended result of an action that a reasonable person would expect to be harmless: if a truck crashes into a parked car, the verdict on the car driver will be different if the car was legally parked vs. double-parked, for example. "Guilt" is established not so much by the act itself, as by the potential of punishment to deter the act. Traditional law is objective in a way that recent psychotherapeutically inspired distortions are not.

Rehabilitation?

Karl Menninger was an influential psychiatrist whose work was recently cited by Ann Landers as the last word on the subject of judicial punishment. Menninger, more concerned with the criminal than the victim, called punishment a crime, argued that criminals are a creation of the law-abiding (who "need" someone to punish -- I am not making this up) and believed criminality to be a form of mental illness. To Menninger, criminals should be treated -- rehabilitated -- not punished. He would not have been sympathetic to any view that legitimates punishment. Kind-hearted people will be drawn to Menninger's apparently humane position. What are we to say to them? Just this: the issue is simply a matter of numbers. Unfortunately, like most social and political issues, we don't know the numbers and cannot find them with certainty. But we can at least understand what it is we need to know. Granted that our aim is to minimize total suffering, we need to know (a) What is the probability that a given criminal can be rehabilitated? (b) How much will he be improved by treatment, compared to his previous state: that is, how many crimes will he commit after a "cure" vs. how many would he have committed without? (c) How much effort (people, facilities) must society devote to this effort? (d) Could these resources be better employed elsewhere? But the critical question is the last one: (e) How many potential crimes by others would be deterred by punishing this criminal rather than rehabilitating him?

The best answers to the first four questions seem to be (a) low; (b) not much; and (c) a lot, and (d) yes -- all with a high degree of uncertainty. But the answer to the last question, with somewhat less uncertainty, is "several." That is, by punishing one criminal for one crime, we are likely to prevent several others. Even if our criminal is not rehabilitated at all, therefore, punishment may be a very good deal for society. And, anything that weakens its deterrent effect, including even a very successful effort at rehabilitation, may be a bad deal. Without just punishment, the level of suffering in society may well be higher than with it. Dr. Menninger's view is not so much soft-hearted as soft-headed.

Freedom from Fear?

Because human nature is both good and bad, the elimination of punishment -- of child by parent, of pupil by teacher, of the criminal by society -- just gives the advantage to the bad. The attempt by psychologists and psychiatrists to eliminate punishment that peaked in the 1960s and '70s was based on poor science, flawed reasoning and covert ideology and has probably led to a general increase in human suffering. A pain-free utopia is as unattainable as any other utopia. The best we can hope for is a world where total pain is minimized and the innocent suffer less than the guilty. This not a novel message, but it seems to be the correct one.