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The Elephant and the Felon:

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Abstract

Criminal sentencing in the United States has shifted over the years. This paper outlines the current role morality plays in the sentencing and punishment of criminals. Recent work in moral psychology points the way to a better approach. Jonathan Haidt's moral matrices, from his book *The Righteous Mind: Why Good People Are Divided by Politics and Religion*, provide a signpost for more efficacious treatment of those on parole or under community supervision, overall contributing to the reduction of recidivism. In sum, Haidt's work in moral psychology could lead to fairer sentencing and more effective treatment.

"The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong."

-Oliver Wendell Holmes, The Common Law, 1923

Introduction

Jonathan Haidt is a social psychologist who studies and researches moral psychology at the University of Virginia. He identifies as a "partisan liberal." A central metaphor in his book *The Righteous Mind* is "the mind is divided, like a rider on an elephant, and the rider's job is to serve the elephant," where the rider is the rational mind and the elephant is the person's emotional life. Ultimately, he is treating the human mind as a story processor, not a logic processor. He maintains Western culture and morality appeal to the idea that humans operate on logic. This is paramount when looking at the divisive nature of conservative and liberal politics. Since humans are intuitive, not rational, he proposes that in order to persuade others, one has to appeal to the non-rational elements that lie behind their thinking.

To illustrate this, Haidt walks the reader through his experiments, one of which involved asking participants to sign a piece of paper that says, "I _____, hereby sell my soul, after my death, to Scott Murphy for the sum of $2" (Haidt, 2012). Scott Murphy was an undergraduate who worked with Haidt conducting experiments such as this to examine the responses of participants to harmless but taboo violations. From his research, he discusses that people had the tendency to formulate their impressions about whether something was taboo quickly. Upon being asked to explain why, they were unable to do so. Ultimately, they concluded reason does not operate like a judge or teacher, but is actually more comparable to a press secretary responding to a scandal (Saletan, 2012). He holds that emotion and reasoning are two separate paths to moral

judgment, and moral judgment can sometimes result in post-hoc reasoning (Haidt, 2012). To further explain the utility of appealing to sentiments, he points out the evolutionary benefit of being able to influence or persuade others as moral psychology coevolved with religions and other "cultural inventions" such as tribes and agriculture (Haidt, 2012). Westerners evaluate morality differently than other cultures, and Haidt and his research team highlight several foundations, or matrices, of this morality. They include care/harm, fairness/cheating, loyalty/betrayal, authority/subversion, sanctity/degradation, and liberty/oppression. *The Righteous Mind* examines how this is relevant to political opinions and ideologies in America; specifically, liberals are more focused on individual rights and conservatives are more concerned with what keeps society cohesive.

Purpose of Paper

The purpose of this paper is to better understand the goals and intentions behind criminal sentencing through the lens of Haidt's moral matrices and how they can be applied to reduce recidivism. This will involve looking at the politics involved in criminal sentencing (assessing where the "left" and "right" are coming from on criminal sentencing). Ultimately, in using Haidt's moral matrices as a guide to treatment with offenders, this will hopefully produce some insights regarding this treatment: specifically, in working with offenders, how moral matrices can be identified in the treatment and how guilt is assigned from both a litigious and moral perspective. I will argue that Haidt's moral matrices point to a post-binary approach that replaces the punishment/therapy dichotomy with a richer perspective.

Layout

As previously mentioned, this paper will yield insights regarding treatment of offenders: specifically, in working with offenders, on how morality has shaped the current attitude towards crime and punishment in this country and whether moral matrices can be identified in the treatment of these individuals. By evaluating various approaches to sentencing through the lenses of Haidt's moral matrices, Haidt can clarify the history and function of punishment. Then the paper will move to cover therapeutic jurisprudence, restitutional justice, and how harm fits into sentencing. Then, the reader will explore how Haidt's moral matrices are upheld in current sentencing practices, how Haidt can clarify how sentencing practices relate to moral judgment. Finally, this paper will take the reader through how these moral matrices can help us understand criminal behavior ideally so we can work more effectively with people on parole. Specifically, by informing psychological techniques and approaches in treatment as well as by facilitating a person's understanding in what they did wrong.

Historical Dive into Literature

To understand the current attitude toward sentencing and imprisonment, one must first understand the origins. Until about 700 A.D., crimes and disputes were settled privately, typically between tribes, via bloodshed and tribal warfare (Punishment in America, 2005). From that time onward, evidence suggests society began demanding compensation for injury and harm. Out of these demands came the development of the Justinian Code in 529 A.D., striving to "control disorder" and "keep the peace." Instead of presuming a person innocent until proven guilty, the zeitgeist was to believe a person guilty, only privileging few the opportunity to prove their innocence (Punishment in America, 2005). This desire to assign guilt was typically

achieved through three different ways. The first was trial by battle, which gained traction during the middle ages, in which the just decision would be revealed as the gods would grant victory to the just party. The second was through a process known as ordeal, in which the accused would have to survive punishment via torture (i.e. carrying hot iron or walking through fire) in order to be deemed innocent by the gods. Both of these practices ceased in the late 13th century. The third way, called compurgation, allowed the accused to gather a group of friends and relatives, typically 12, known as compurgators. These compurgators would then take an oath vouching for the accused's professed innocence. This method was typically reserved for those on a higher rung of the social ladder and it transformed over time to a form of testimony attesting for the good character of the accused individual (Punishment in America, 2005). The use of 12 is attributed to Christ having 12 disciples; it is important to evaluate the history of crime and punishment through the eyes of the church, as it was the power at the time.

Eventually throughout the middle ages as kings began using a process known as "inquisition" to resolve issues surrounding land ownership, trial by jury became the standardized way of determining guilt and therefore punishment (Barnes, 1972). While the grand jury had taken its form across Europe, torture was still utilized to obtain confessions or sometimes used as a punishment or penalty. Alongside the advent of the grand jury came the spread of capitalism. During this economic shift, the status and influence of those who were deemed poor was noticed by those in power. This prompted those with power to initiate legislative attempts to control the behavior of the less wealthy. This shift in seeing wealth as merit and poverty as bad character constituted the poor in this era as a criminal class. In the mid-16th century, the concept of "workhouse" had developed in England, meaning those who were considered poor and thus immoral were thought to be transformed by being subjected to labor and discipline (Punishment

in America, 2005). During this time, publicized corporal punishment grew in popularity.
Towards the 18th century those in power feared the public would begin empathizing with those being punished and conceptualized punishment to occur outside of the public eye in more private settings.

Those in power were not off base; eventually philosophers and authors began weighing in on punishment. New ideas were being expressed in regard to severe punishment and this served as a catalyst for great reform in Europe, ultimately grooming France for the French Revolution in 1789. The Enlightenment in Europe and the elevation in the status of man permeated the English colonization of America. Following the Revolutionary War, physical punishment was equated to monarchial systems, and the founding fathers felt it necessary to develop a separate justice system in the new democracy (Punishment in America, 2005). With this new political entity came the notion that the government was not intended to serve itself, but ultimately its citizens or "the common good" (Punishment in America, 2005). The investment of public virtue removed the individual from the microscope of guilt and deviance and prompted the new republic to evaluate the role of circumstance and environment; crimes were seen as acts of free will, not inherent sin. Following the mindset of those who fled England and Europe from religious persecution, there was a distancing from the deterministic law of Calvinism. This supported the notion of rehabilitation, and the importance of removing an individual from his environment to restore his virtues. Imprisonment was perceived as deterrence to crimes in America as early as 1776. In 1794 in Pennsylvania, the death penalty was abolished for all other crimes besides 1st degree murder. Most states by the early 19th century replaced the death penalty with incarceration (Punishment in America, 2005).

Simultaneous with this paradigm shift in addressing guilt and instituting punishment in America, criminal philosophies were also changing across the pond and down into the Mediterranean. A political economy professor from Milan by the name of Cesare Beccaria published an essay on crime and punishment in 1764. He proposed the notion of speedy and public trials, proportionality in punishment, swift punishment, using imprisonment as the primary form of punishment, decent facilities for those imprisoned, as well as numerous others. Largely he advocated for crime prevention as he deemed it more important than crime punishment and focused on punishment as serving only to deter others from committing similar crimes. These thoughts began influencing criminal jurisprudence throughout Europe and eventually spread to America (Punishment in America, 2005). Oliver Wendell Holmes (1923, p. 29) preached a similar ideology as a Supreme Court Justice: "It has been thought that the purpose of punishment is to reform the criminal; that it is to deter the criminal, and others from committing similar crimes; and that it is retribution."

By the 19th century, imprisonment became the most utilized method of punishment (Punishment in America, 2005). Though it may be seen in today's anti-harm mindset as a much better alternative to guillotines and flogging, French philosopher Michel Foucault removes the reformers from this pacifist pedestal ascertaining that the initial function of imprisonment was "not to punish less, but to punish better" (Punishment in America, 2005). It is hard to evaluate the criminal justice system without referencing Foucault. In looking at his interpretation of crime and the punishment of said crime we can glean some information regarding the current utility of today's penal system. In his work *Discipline and Punish*, he addresses the paradigm shift from punishment being a primarily public event (i.e. guillotine, public flogging, etc.) to a private, behind the scenes intervention for prevention.

Along with this physical change came a metaphorical change as well. With punishment shifting to being less of a public spectacle, punishment also shifted from reforming the body to reforming the soul (Foucault, 1995). Reformation of the soul in post-monarchial society communicated an individual violated a societal norm as opposed to a sovereign ruler. The utility of prisons then became intended to serve as a correctional cotillion, a secluded etiquette to relearn how to behave and carry one's self in society to ensure they are acting properly. Interestingly this is where the intention of prison architecture becomes relevant; Foucault outlines that in the 19th century, prisons were modeled off Jeremy Bentham's "panopticon." Bentham's concept involved a tower with the prison cells built in a circle around it, so one guard could keep eyes on all prisoners. Because all prisoners thought the guard could see them at any point, they would refrain from disobedience (Foucault, 1995).

An important component of Foucault's commentary on prison is that prisons are not fool-proof gatekeepers for upholding that which they are intended to uphold. Criminals who are not reformed or rehabilitated are released all the time, yet prisons continue to be utilized because, at least from Foucault's perspective, of the symbolic nature prisons have. Prison holds power over society in the way it provides organization and "classes" of people, i.e. the model citizen versus the "delinquent" promulgating the nature of a civil society being comprised of people of "good" and "bad" natures (Foucault, 1995).

Currently, the United States of America is the world's leader in incarceration. Upon taking even a cursory glance over research in criminal justice in America, it is hard to ignore the correlation of booming prison population with the War on Drugs. Though there was a 1.2% decrease in prison population from 2016 to 2017 (1,508,129 inmates to 1,489,363), nearly half of all prisoners were serving a sentence for a drug-trafficking offense (Bronson, 2019). Just to put it

in perspective, some studies show that in 1986, offenders released after serving time in prison for a federal drug offense spent an average of 22 months in prison. By 2004, those convicted on federal drug offenses were expected to serve, on average, 62 months in prison (Bronson, 2019). Once there is a felony drug conviction on a person's record, their chances of being released diminish (Alexander, 2012). In addition, for federal drug crimes comprising much of the prison population, there are notable racial discrepancies despite a dearth of research findings to suggest minority groups use drugs more frequently than white people. As of 2017, though minorities make up approximately 35% of the nation's population, they account for over 60% of the prison population (Bronson, 2019). At the fiscal year-end of 2017 the imprisonment for black males was almost six times that of white males (Bronson, 2019).

Reverting our attention back to Foucault's point of the occasional "failure to reform," the latest numbers for recidivism in this country are illuminating. Ultimately, for someone to "recidivate," they have to be released. Many people who are released from prison find themselves incarcerated again for violating the terms and conditions of their release. A large number of these rearrests are attributed to parole and probation violations, such as missing a meeting, failing to obtain employment, or failing a drug test. According to one study in 1980, approximately 1% of prison admissions resulted from violations while on parole; however, in 2000, the number increased to 35% (Alexander, 2012).

Recidivism first began being tracked in the United States in 1984 by the United States Sentencing Commission (Hunt, 2016). Recidivism is the committing of a criminal act that results in re-arrest. In an overview published in 2016, Hunt's study found that over an eight-year follow-up period, almost one-half (49.3%) of federal offenders released in 2005 were rearrested for a new crime or rearrested for a violation of supervision conditions (Hunt, 2016). Other studies

completed in a similar time frame list the rate as even higher. This number comes from the Bureau of Justice who examined recidivism patterns of almost half a million prisoners over a nine-year period. Over the nine-year period, there were 1,994,000 arrests for the 401,288 prisoners, approximately five arrests per person. From the report, 60% of those arrests happened in years four through nine. Ultimately, the researchers approximated 68% of released prisoners were arrested within three years, 79% within six years, and 83% within nine years (Alper et al., 2018).

In the 1980s, the term "criminogenic need" entered the nomenclature of the criminal justice system. Criminogenic needs, or factors, refer to circumstances that cause criminal behavior. Assessments evaluating the risks of offenders depending on the presence of criminogenic factors began in the early 20th century. These risk assessments were a way of safeguarding the public while attempting to appropriately determine the level of supervision and correctional treatment for an offender (Offender Responsivity, 2012). Though the verbiage varies slightly depending on the literature the eight categories, also known as the "big eight" or "central eight," include history of antisocial behavior, antisocial personality pattern, antisocial cognition, antisocial associates, family and/or marital, school and/or work, leisure and/or recreation, and substance abuse (Andrews & Bonta, 2006). These factors were outlined in order to match the needs of an individual offender with the proper course of treatment in hopes of reducing the overall risk of recidivism as these factors are directly linked to criminal behavior (Andrews & Bonta, 2006).

The emphasis on identifying an offender's criminogenic need or needs came out of the fourth wave of risk assessments developed to improve upon the gold standard amongst the treatment of offenders, the risk need responsivity (RNR) model. The RNR model was first

developed in 1990 and stemmed from the general personality and cognitive social learning theory of criminal conduct (Andrews & Bonta, 2006). After identifying an offender's need and level of risk, treatment would then be tailored to match that risk, low risk offenders needing less treatment to address their needs and high risk offenders needing more intervention to address their needs. One of the main components of reducing recidivism through addressing criminogenic factors is support. This support can come through various resources, i.e., community treatment, substance abuse and mental health treatment, and family. In fact, caseload size of parole or probation officers has been shown to "significantly impact" the likelihood of re-incarceration (Skeem, 2006). Though data show the advantageous nature of support, lack of funding, continued addiction, and dysfunctional family dynamics serve as persistent barriers.

Relationship Between Moral Judgement and Punishment

When there is a group of people living together and sharing resources, what should be done to those who violate the shared moral code? It can be argued, and has been argued by legal scholars, that it is right to extend punishment to those who undermine the mores of society (Maier-Katkin, 2003). Though John Stuart Mill is credited with articulating the idea that a person's actions should be directed by harm prevention (nonmaleficence) ultimately doing what will harm people the least, criminal policy was influenced by this principle long before Mill wrote it into existence. When modern day hominids began congregating, they did what other primates did not or could not. They implemented a systematic sharing of food and altruistic group defense amongst the earliest communities and tribes (Junger, 2016). To be disaffiliated from the community or from the tribe was to commit some act of violence against one's own people, i.e. murder or treason. An act so betraying was often punishable by death (or banishment,

which produced the same result). This simple ethos was enough to promote loyalty and preservation of the tribe at all costs over all other virtues (Junger, 2016).

Barring judicial districts and plea deals, today a person accused of murder or treason would be arrested and tried by a jury. If found guilty, they would be sentenced and possibly assigned a diagnosis of Antisocial Personality Disorder. This is a psychological diagnosis which the Mayo Clinic defines as "a mental condition in which a person consistently shows no regard for right and wrong and ignores the rights and feelings of others. People with antisocial personality disorder tend to antagonize, manipulate or treat others harshly or with callous indifference. They show no guilt or remorse for their behavior." The Mayo Clinic expands, adding, "Individuals with antisocial personality disorder often violate the law, becoming criminals. They may lie, behave violently or impulsively, and have problems with drug and alcohol use. Because of these characteristics, people with this disorder typically can't fulfill responsibilities related to family, work or school" (Mayo, 2019). The strong emphasis on group cohesion and sharing resources in tribes and early human communities left little time for anyone to be alone. By the time Mill wrote "On Liberty," society had already begun moving toward a more independent way of living. Fast forwarding to the 21st century, communal living is a memory of the distant past. While there remain religious communities, senior living communities, and HOAs, these pale in comparison to the extremely close and involved nature of older tribal communities, where people were rarely ever alone and where expulsion meant death.

Today it is not unusual for someone to go an entire day without interacting with humans, close kin or complete strangers. In Robert D. Putnam's book "Bowling Alone" he exemplifies this point by clarifying that though the number of people who bowl in the last 20 years has increased, the number of people who participate in bowling leagues has actually decreased

(Putnam, 2000). With this more isolated and individualized trend in modern living, humans can physically be surrounded by tens, hundreds, thousands of people yet still feel alone, unheard, and unseen.

The "Moral Tongue" and its "Taste Buds"

Stepping away from crime and punishment for a moment, it is important to understand the birth of moral psychology and its role within the scope of psychology, treatment, and of course, sentencing. In his work, Haidt initially sets a binary stage for the origins of morality, positing that the two camps are either nature or nurture. Folks in the nature camp tend to believe that moral sensibility is inherent, "preloaded" into us naturally, either as a result of being created by a supreme being or because moral emotions evolved with those who were fittest and thus survived (Haidt, 2012). For those who identify with the idea of morality stemming from nurture, they agree with John Locke in the sense that everyone born is a "blank slate" whose moral codes are inscribed by culture, religion, and experience (Haidt, 2012). After explaining the two-pronged understanding of morality, Haidt introduces a third. In 1987, he maintains the field of moral psychology became interested in this third option for the origins of morality: rationalism. He sums up rationalism as being the theory for morality that says "kids figure out morality for themselves." Expanding on this grossly truncated explanation of rationalism, Haidt categorizes a rationalist as "anyone who believes that reasoning is the most important and reliable way to obtain moral knowledge." This was formulated by synthesizing the work of the psychologists Jean Piaget and Lawrence Kohlberg and their work with child development and moral reasoning. Something important to highlight in child moral reasoning is that their morality is largely based on their experiences of harm. Of course, children in different cultures must adhere to different moral codes as there are differences in morality across the globe. Morality has largely aided with

forming, ordering, and continuing societies since early on in human existence; however, the hierarchies sometimes differ. This is where Haidt explains two primary forms or organizing societies; sociocentric which places the needs of the tribe over the individual and then individualistic which elevates the needs of the individual over the tribe.

In the modern Western world, individual rights, and protecting those rights against institutions or governments, became supreme. Haidt expands, informing that the moral scope is narrow in Western, educated and individualistic cultures (America) and that peoples' gut reactions to harm, disgust, and disrespect can drive their moral reasoning (this will be important to bear in mind for later). He states moral reasoning is "a post hoc fabrication" essentially concluding that we often justify our moral agenda using rationalism after we have already drawn a moral conclusion.

This realization paved the way for Haidt to understand moral judgment as a cognitive process comprised of intuition and reasoning. As mentioned previously, he breaks this cognition down into two roles which he analogizes to a person riding an elephant. The rider is made up of reasoning and the elephant represents automatic processes such as emotion and intuition. Based on his research and overview of numerous studies, his conclusion again is Humean in nature: intuition informs moral judgment and reasoning constructs justification for intuition. Though our inner moral compass is capable of being changed, it changes via social influence or private reflection from experience. From an evolutionary perspective, brains evaluate everything in terms of threat analysis; "Is this helpful or harmful?" These intuitive judgments happen constantly in the animal kingdom and constantly in our social and political judgments.

In moral and political matters, the group is often more important that the individual. This fits with Mill's Harm Principle and the value of protecting the tribe at all costs trumping any

other pursuit or virtue. However, in the myopic view of Western morality, the concern is typically surrounding one individual harming, oppressing, or cheating other individuals whereas other societies broaden their moral compasses to maximize benefit of the group within the scope of the community and relevant religious morals.

If you have not gathered already, Haidt is a master analogizer. He develops a metaphor for how societal and individual morality is formed. He compares our moral guide to a tongue with six taste receptors. He opines humans have the same taste receptors; however, not everyone or every group likes the same food. Before Haidt embarks with his readers on an epicurean expedition of our moral tongue, he calls attention to prior theories of morality, such as those associated with Jeremy Bentham and Immanuel Kant, identifying them as "one-receptor moralities." He dubs them this because they appeal more to logic than empathy. Ultimately, there is more to what constitutes morality than only harm and fairness. In order to outline what "more" there is, Haidt employs a pluralist approach to morality and attempts to identify the taste buds located on the tongue that is the righteous mind.

So, in using Haidt's Moral Foundations Theory, the matrices are grouped into the following: care/harm, fairness/cheating, loyalty/betrayal, authority/subversion, sanctity/degradation, and liberty/oppression. While the names themselves seem to be self-explanatory, Haidt provides examples of each in *The Righteous Mind*, which will be subsequently outlined. He couples each matrix with what he defines as the adaptive challenge, or evolutionary reason as to why it was important. He also provides original triggers, current triggers, characteristic emotions, and relevant virtues. For the sake of this paper, the characteristic emotions and relevant virtues will be highlighted.

For the care/harm foundation, he defines the adaptive challenge as being the need to protect and care for children which demonstrates compassion and identifies the importance of kindness. Regarding the fairness/cheating foundation, he calls attention to the benefits of two-way partnerships, highlighting the importance and benefit of fairness, justice, and trustworthiness. In the case of the loyalty/betrayal matrix, he describes the adaptive challenge as the formation of cohesive coalitions and how group pride or rage at traitors might influence what is considered a threat or challenge to the group vis-a-vis loyalty, patriotism, and self-sacrifice. In outlining the authority/subversion foundation, Haidt lists the importance of forging beneficial relationships within hierarchies, cultivating respect and fear, resulting in obedience and deference. His fifth "receptor" of sanctity/degradation was first utilized to avoid contaminants, physical or emblematic, which calls for temperance, chastity, piety, and cleanliness. The final moral matrix which Haidt outlines is the liberty/oppression foundation which evaluates dominance within small groups and restrictions in liberty and equality resulting from aggression and control.

These moral matrices assist Haidt in understanding the two ends of the American political spectrum as he uses these foundations to identify which taste buds liberals and conservatives are respectively using and which flavors appeal most to the two parties. While both the "right" and the "left" have varying opinions on crime in our country, we must next look at the plate of punishment and deterrence to outline what taste receptors appear to be the most utilized and why these flavors entered our palates in the first place.

Haidt as a Politician and Clinician

"Anything that binds people together into dense networks of trust makes people less selfish" (Haidt, 2012).

As mentioned previously, both the "right" and the "left" adhere to certain moral codes; however, they adhere to the codes differently. Haidt points out that "everyone cares about fairness," but how that fairness is portrayed is different. The table below is taken from Haidt's book to provide a visual stimulus, but will subsequently be described.
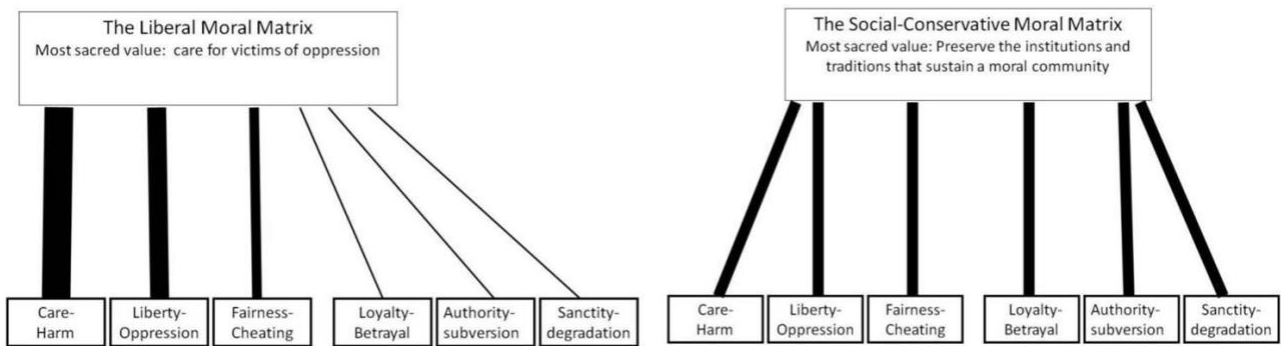
Figure 1. Description

Figure 12.2. *The moral matrix of American liberals.*
Figure 12.4. *The social conservative moral matrix.*
The Righteous Mind: Why Good People Are Divided by Politics and Religion

Those who identify as liberal adhere to the care/harm, liberty/oppression, and fairness/cheating matrices more prominently than the other three of loyalty/betrayal, authority/subversion, and sanctity/degradation, whereas those who identify as conservative have a more even-keeled approach to morality. While much of *The Righteous Mind* surrounds Haidt's attempt as a partisan liberal to better understand the successes and downfalls of the Republican and Democratic parties, his political taste receptors can also apply to legal and clinical matters. By using his moral foundations, various paradigms in punishment might be clarified.

Let us look at Donald Trump's First Step Act. While he may not be known for building bipartisan bridges, he commented, "Americans from across the political spectrum can unite around prison reform legislation that will reduce crime while giving our fellow citizens a chance at redemption." In December 2018 President Donald Trump signed the First Step Act with the aim to reform sentencing practices to be more fair. Additionally, he emphasized the need to aid inmates with their transition back into society. One of the biggest changes the First Step Act affected was in reference to mandatory minimum sentencing. A mandatory minimum is a predefined length of time an offender would have to serve in incarceration for a specific crime. Current law requires certain yearly minimums for the sentencing of offenders with prior convictions. President Trump's act would allow for offenders sentenced prior to the Fair Sentencing Act of 2010 to have their sentences ultimately reduced. The Fair Sentencing Act of 2010 eliminated the five-year required minimum for sentencing in crack cocaine convictions and increased the amount of crack cocaine needed to be possessed in order to be convicted as an attempt to reduce the racial disparity between crimes involving crack cocaine and powder cocaine.

The First Step Act also provided the Bureau of Prisons (BOP) the ability to allow sentence reduction for elderly and terminally ill inmates, the possibility of home-confinement for elderly or terminally ill inmates, and advised the BOP to place inmates in an institution within 500 miles of their homes. It is essentially taking a more human-centered approach to the way folks behind bars are treated. If we are looking at the First Step Act through the lens of the moral matrices, we can imagine what each party may find favorable in this act. There are components of this act that appeal to the care/harm and liberty/oppression foundations, foundations that according to the diagram are largely valued on a more liberal moral matrix. In looking at the

word "redemption," one cannot help but notice the syntactic link to the fairness/cheating and authority/subversion foundations, which according to Haidt, would carry more weight on a more conservative moral matrix.

Through binary lenses, punishment and therapy are two different and contradicting reactions to treating criminals. One is for deterrence and penance whereas the other is for restoration (Martin, 2006). When considering the moral matrices identified by Haidt, care/harm and fairness/cheating moral matrices become relevant here; if care/harm were the only basis in determining punishment, why would that compassion not extend to the one being punished? If sentencing only took the harm principle into consideration, there would likely be less racial disparity among those incarcerated. This would also likely be reflected in the way non-violent offenders with drug charges were sentenced.

Treating someone in a more humane manner invites them back to society. In a way, it communicates more similarity than dissimilarity. When considering Haidt's quote at the beginning of this section, people are less selfish when they are bound, accepted, and counted into a network. The whole premise behind Antisocial Personality Disorder is a person who rejects typical societal mores and expectations. They show little or no remorse for others because they feel no allegiance to others. In Junger's book *Tribe,* he gives the example of littering as an example of disunity. Someone rolling down their window and tossing a cigarette out onto the ground blatantly disregards the fact that that ground is a shared communal space, one that the litterer belongs to as well. This is not to say every person who throws a piece of trash out their car window should be diagnosed with Antisocial Personality Disorder, but it is a simple and unfortunately common behavior that gives insight into how behavior, and in particular criminal

behavior, can stem from someone feeling disaffiliated with society and not seeing themselves as part of a group.

Invoking Haidt's moral matrices, let us evaluate the act of littering specifically. Littering could potentially fall into three of the different matrices. The care/harm matrix as littering can harm nature and indicate disregard for the environment and for people walking through it; the loyalty/betrayal foundation as littering could be indicative of the sign that someone is not a team player and mostly seen as a noncriminal violation; and the sanctity/degradation matrix as littering can pose danger to water sources, soil, and animals, and to beauty. Depending on the material being discarded and the matrix or matrices being consulted, punishment for littering varies. Is the truck driver who throws his cigarette out the window going to be evaluated the same as those deemed responsible for the British Petroleum oil spill in 2010? If there were mandatory minimums placed upon littering, then he or she could be. This would align with the fairness/cheating and loyalty/betrayal foundation but misalign with the care/harm and liberty/oppression foundations.

Treatment and Recidivism

Thinking about the criminogenic needs of the offender, it is important to consider the specific dynamic risk factors that suit that offender as well as the biological, social, and psychological (age, race, gender, education level, mental illness) factors present for that offender individually. It bears stating that mismatching of treatment intensity with the level of risk an offender presents can waste resources and make recidivism reduction worse. Let us assume for the sake of example that the act of littering was not only subject to a fine, but also 10 years in federal prison if the material was deemed flammable. If the aforementioned truck driver were to

receive the same sentence and the same treatment as those liable for the British Petroleum oil spill, the truck driver may experience more harm than good in rehabilitation efforts.

In looking at the final "R" of the RNR model, responsivity involves how to treat the low, medium, or high-risk offender. Best practice recognizes the importance of the therapeutic alliance as well as the utilization of individually-tailored interventions in forensic treatment all the while considering individual client characteristics (Bonta, 2010). In the 1950s, Aaron Beck developed the original Cognitive Behavioral Therapy (CBT) model, initially known as cognitive therapy, with the intent of offering a structured and short-term approach to treat clients suffering from depression by emphasizing the importance of changing negative thoughts and maladaptive thinking (Skinner, 2014). CBT made the connection between cognition and emotion and acknowledged the relationship between thoughts, feelings, and behavior; essentially how people feel and behave is largely determined by their cognitions (Wright, 2017). By identifying cognitive errors and distortions, the client can learn about the impact their erroneous thoughts and beliefs have on their feelings and behavior. CBT is one of the most widely practiced therapies for the treatment of psychological disorders and has been praised and contested throughout the years (Wright, 2017). However, CBT is a rationalist approach to treatment, ultimately aimed at changing the rider, not the elephant. Changing riders, though arguably easier than changing elephants, will not result in the logical change Haidt believes our brains to be capable of experiencing. Invoking some real life cases, Haidt's moral matrices may assist us in determining where to start with elephant persuasion.

Let's consider the Brock Turner case, in which a 20-year-old white male was found guilty of sexual assault and sentenced to six months in jail. The maximum sentence for this case was 14 years, yet the California judge, Aaron Persky, believed him not to be a "danger to others"

thus sentencing him for half a year. He ultimately served three months and was ordered three years of probation. If we look at Aaron Persky and Brock Turner side by side, we see similarities in their presentations; race, gender, residents of California, etc. Their similarities will bear relevance in a moment.

If we consider tribal instincts, our unique ability to care for and protect and defend non-kin is exceptional. If we identify someone as being in our tribe, we are more likely to trust them and relate to them. Here is where we see a full manifestation for Haidt's concept of "binds and blinds." Back to the Brock Turner case. Considering the similarities between the defendant and the judge, and considering the general demographic in Santa Clara County, it begs the question of whether the judge imposed a less harsh sentence due to the likeness and sense of belonging the judge shared with the defendant.

Much of the uproar following Mr. Turner's sentence seemed to be stemming from the idea of the length of sentence not fitting the crime and not being comparable to sentences for similar crimes amongst minority defendants (Blankenship, 2018). Given what the judge said about Mr. Turner's reputation, we can presume the judge was operating under nonmaleficence on behalf of the defendant. The length of sentence Mr. Turner received could communicate the notion he is still welcomed in society, thus part of the tribe. Invoking Haidt's moral matrices, we can imagine which matrices the judge was operating within. When considering the sentence he delivered, it is possible the judge may have been acting primarily within the care/harm matrix as he was considering the future of the defendant, wanting to do the least harm to his reputation, while not emphasizing the sanctity/degradation matrix as the victim in this case was violated while unconscious. By betraying the victim through an act as controlling and aggressive as sexual assault, the authority/subversion matrix and the loyalty/betrayal matrix become relevant.

As a threat, Mr. Turner ostracized himself as a traitor to the tribe through his disrespect of the victim's autonomy and personhood. Matrices such as fairness/cheating, liberty/oppression, loyalty/betrayal, and authority/subversion inform the harm caused by the sexual assault to the victim rather than to the assaulter by sentencing.

Putting the matrices aside for a minute, let's look at the verdict in the case of Corey Batey. Corey Batey was a 19-year-old student athlete at Vanderbilt University. In 2013, he was accused of sexually assaulting an unconscious woman in a dorm room. In 2016, he was found guilty of sexual assault and sentenced to 15 years. 15 years is 6,000% of three months. In both cases, both men and both victims were inebriated, the victims being inebriated to the point of unconsciousness. Also in both cases, the defendants denied remembering their crimes. An important and exigent difference between the cases is Mr. Batey's race. He is black and the judge who determined his sentence was also black. Both men were convicted, but there is question surrounding the disparity in sentencing. The judge in Mr. Batey's case may have been operating through the lens of the care/harm foundation as it applied to the victim whereas the judge in Mr. Turner's case might have been employing other matrices that lessened the harm caused to the victim; ultimately perceiving Mr. Turner as confused rather than violent.

One of the components that may contribute to more effective sentencing is the way presentencing reports are utilized. Presentencing investigation reports serve to inform the legal system of circumstances that may increase or decrease the severity of punishment imposed. They include background information such as previous criminal history, information surrounding family of origin, substance use history, medical history, and mental health history. In addition to containing important facts such as criminogenic need(s) and level of risk, it may be beneficial to highlight the specific moral matrices the defendant violated. Not only will this assist defendants

in understanding their crime, but it may prompt fairer sentencing from judges themselves as it may help the judge see the defendant as a tribal member. For example, if judges received a scorecard or narrative explaining which moral matrices are most relevant to the assessment of the criminal act, they would be in a better position to make a just determination. Adding a moral matrices rubric to a presentencing report could help judges see both perpetrators and victims as members of the moral community. Applying the insights of Haidt's work in moral psychology to the therapeutic treatment of offenders holds promise for reducing recidivism. For the field of clinical psychology, clinicians and clients would benefit from sharing goals that were clearer and better aligned. This in turn, could lessen recidivism by helping identify the moral matrix that would work best for treatment. Cultivating this better connection with clients while also clarifying the goals of treatment could strengthen treatment, perhaps prompting a change in the landscape of forensic practice.

Conclusion and Recommendations

Our adversarial legal system is much like a jousting match. There is a high sense of ritual and there are rules of combat. Additionally, it is largely a product of Enlightenment philosophy. In place of the authority of the Church, Enlightenment thinkers made themselves free to follow their own reason. Now, living in a post Enlightenment era, we search for errors and prejudice in reasoning itself. Our legal system needs to reflect current insights from the field of psychology. Specifically, the results of Haidt's work in moral psychology have ramifications for America's legal system in at least two directions: one of which is improving presentencing reports and the other would be improving treatment for those on parole or under community supervision. Summarizing what we have learned from Haidt, the types of punishment and

sentencing predominantly practiced today primarily align with our moral intuitions. They are then argued litigiously in support of our preferences. Harsher punishment as a deterrent is counter-indicated in the research and has not shown any significant reduction in recidivism. The push to move from a reactive to proactive reduction in criminal behavior has been made from both a humanitarian and economic standpoint, prompting people to look more closely at community based alternatives to jails and prisons. In attempting to understand criminal behavior through Haidt's moral matrices, treatment providers for those on parole/parolees themselves might be better able to connect with one another, ultimately collaborating toward a reduction in recidivism. Presentencing reports are widely used as a guide for helping the legal system arrive at fairer sentences. These reports would be improved if they specified the moral factors that were violated.

Johann Hair, the author of *Chasing the Scream*, posits we are all more susceptible to drug addiction because we are more isolated from each other than we have ever been previously in history. While access to friends on social media platforms such as Instagram, Facebook, TikTok, or Snapchat has changed the landscape for relationships, it has not rectified this separation from community. Hair's takeaway is that the opposite of addiction is not sobriety, but it is in fact connection. The entire premise of Haidt's book evaluating the barriers between political parties understanding and respecting each other is a breach in connection. Though it is not explicitly stated in the book, Haidt implies that each side can be understood if only adequately informed of the moral foundations that side is operating within. Research in recidivism has yielded a golden standard; match the treatment of an offender to fit the level of risk and incorporate a collaborative treatment effort. It seems that an important piece of reducing recidivism is improving connection by garnering an understanding of the moral implications of crime. For

providers who identify as liberal, this could help those providers identify what is errant in certain crimes so as not to be overly sympathetic. Similarly, this could aid providers who land on the more conservative end of the spectrum identify what is not wrong with certain crimes, helping them to be more sympathetic.

Morality is inexorably connected to the politics of sentencing and treating criminals. Haidt has explained to us that we primarily implement post hoc reasoning; intuitions come first with strategic reasoning coming after the fact. In his rider and elephant example, the rider is made up of strategic reasoning and the elephant represents emotion and intuition. He finds this relationship comparable to a lawyer serving a client ultimately finding that the elephant wields more power than the rider but does not have total control. Eventually he arrives at the conclusion that the human mind is a story processor, not a logic processor. He views empathy as "an antidote to righteousness" and holds that the only way to effectively change someone's mind on a moral or political matter is that the point of view needs to be from the angle or matrix most valued by that person as well as your own. With the emphasis on positivist law, recidivism research, and evidenced based practice, it seems the delivery of emotion and empathy may be overlooked. Cognitive-based practices, like CBT, are limited because they only address the rider, not the elephant. Based on what we know about moral psychology, the best style of persuasion is not to cognitively dictate treatment and punishment, but to utilize images, metaphors, and analogies in helping folks understand what it was they did wrong. Incorporating this approach in presentencing reports and within treatment may serve as a more powerful persuasion agent for the riders, both in the legal system and tried by the legal system, to challenge and (hopefully) adapt.

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