

"To the last syllable of recorded time,
And all our yesterdays have lighted fools" ¹

Macbeth is often viewed as a morally flawed character. However, he also expressed inevitability, in such a causally inevitable timeframe. The recorded time signifies predetermined outcomes and 'have lighted fools' explains the path which is unalterable stripping him of free will entirely. This concept is defined as nomological determinism which states a) laws of nature are deterministic and all encompassing, b) they are only deterministic if they occur in exceptionless regularities and c) they are not probabilistic.² Compatibilism, the belief that free will and determinism can exist, is logically redundant. Physical brain mechanisms are predeterminants for an offender, then it is illogical to punish me for an event beyond my control. There is no rational capacity for the offender to do otherwise, making compatibilism unfit. We are forced to accept that compatibilism is not theoretically fit.³ The lack of free will however arrives if we apply incompatibilism.⁴ No deterministic world can have free will if everything is predetermined. Once the law acknowledges the belief that nomological determinism exists effectively affecting the definition of retributive morality, it must be logically inclined to accept incompatibilism; consequently, the legal institutions will accept hard determinism. In this essay, I aim to depict the change in the role of legislators and judiciary in a hard deterministic world by dismantling retributive justice as invalid, examining the role played by economic disparity, and scrutinizing the effective changes to criminal sentencing in a deterministic court through a real life case study.

The law has been built by the three main departments of the judiciary, legislative and the executive, to ensure transparency. Legislators are the law makers; they set the moral standard of the law while judges enforce the law, ensuring the victim gets justice. In a retributivist court, these standards are ethically set since it believes in free will; we all ought to fulfill some moral obligations and deal with the consequences if we do not comply.⁵ A deterministic court, however, does not operate on the deontological definition of morality. To fill the space left by this major element, structurally we are forced to use utilitarianism to fill the gap. Its fundamental ideology is the greater good of the people and this will cause reconstruction of the entire foundation of the law⁶. Legislators will steadily restructure laws to fulfil the environmental limitations in terms of a) eliminating another such offender by nullifying the biological drive that caused it, b) incapacitating an unreformable offender, c) focusing on environmental factors, and d) accelerating the use of cognitive restructuring. Judges will focus on the capability of the offender to harmoniously coexist within society or the lack of capacity for cognitive restructuring which will lead to incapacitation.⁷ Deterministic law making will also be dependent on variables like external inputs or positive

reinforcement to ensure a certain kind of positive behavior. In essence, bypassing the idea of autonomous choice and focusing on maintaining peace in public will lead to more social harmony⁸.

However, the retributive framework is theoretically fragile in this deterministic outlook and consistently can be proven null and void. Retributive justice fundamentally operates on moral culpability and serving a sentence proportionate to the offense committed. However, it also focuses on the premise of punishing the offender for opting to commit a crime, essentially making it a choice made by the offender leading to nearly no sentencing based on utility such as prevention or rehabilitation of criminals.⁹ Nonetheless retributive justice becomes null and void in theory and application in a deterministic society since there is no free will. Kant stated that a punishment has to be administered on the basis of criminal guilt, not on consideration of social utility.¹⁰ Morally you can only punish retributively if the court accepts that they chose to commit an immoral deed bringing in Kant's ought implies can principle - i.e., we ought to fulfill moral duty since we have the ability to do it.¹¹ Consequently, this creates incongruence as determinism rejects this; for an offender can practically not fulfill a moral obligation when lacking the capacity to choose otherwise and an individual could not have possibly defied their biological, heteronomous and external environment. Therefore, in these circumstances such as lack of free will, retributive justice is no longer applicable.¹² The functional utility of the court of law to maintain public safety is still prominent, meaning the system must constitutively focus on other outcomes. Since the aim of sentencing changes from holding an offender responsible to ensuring the offender is not a hazard to society, the court is logically inclined to adopt utilitarian developments.

Utilitarian outcomes in the court of law significantly look at the root of crime differently. In a deterministic society, there is no free will, meaning most crimes will stem from social, biological and environmental factors. Motives of the crime will be in terms of financial and materialistic gain; the gap created amongst the rich and the poor exhibits criminal results. Marx defined superstructure as the legal system which is entirely built upon its economic infrastructure, therefore connecting the legal system to the motives of a criminal directly¹³. A law executor comprehends why a specific kind of privilege deprived environment leads to people committing heinous crimes. Social reality determines human consciousness; as a result of which a human's intentions are an outcome of their social circumstances.¹⁴ With the lack of free will, we are all driven by the intrinsic need for survival; poverty simply shapes that survival into a desperate material reality. Under such a perspective the concept of mens rea is outdated; it becomes more practical and gauges the specific triggers that provide causal inevitability for the crime to take place. We come to the conclusion that a broken sociological and poverty driven system leads to crime. Therefore, law executors step in to gauge the criminal potential in an individual due to their economic environment.¹⁵ However, poverty is not a sole reason, for causal inevitability to exist, it is a factor, not an immediate cause for consequence.¹⁶ Human nature is developed by their social interaction with other individuals and the environment; it cannot be put in boxes of good and evil due to lack of free will. Since it is the potential outcome of several variables interacting with the environment and each

other, the court of law is permitted to intervene if it can rewrite the offender's behavior as a result of external environmental stimulus.¹⁷

In a practical sense of a deterministic world, a history of poverty ridden individuals may lead to crime. The extent of it is focused on how much momentum these offenders have to operate; in this context, assessing a criminal case fundamentally requires a deterministic lens. On the night of 26 November 2008, ten young men arrived on the shores of Mumbai and as the city would later witness, they unleashed terror for 60 hours. They attacked a railway station, a tourist café, two luxury hotels, a hospital, and a Jewish community center. By the time the attacks ended in the early hours of 29 November, the damage had been done, 166 lives were lost including 26 foreign nationals and nearly 300 were injured in the process.¹⁸ This was a fidayeen attack so the perpetrators' deaths were preconditioned. The handlers miscalculated the tendency of a conditioned individual to be prone to human error due to natural biology and unprecedented stress. The lone surviving gunman Mohammed Ajmal Mohammad Amir Kasab was sentenced to death in accordance with retributivism as it was deemed appropriately proportional to his crime.¹⁹ A deterministic court would pay more attention to his biological determinants affected by socioeconomic factors like his material poverty, which had led not only to his recruitment but also to the promise of financial support to his family and the conditioning by his handlers.²⁰ As a consequence, this gave his internal biology, molded by external materialistic causes, causal inevitability to operate. Hence, a utilitarian solution would perhaps not be execution. However, using incapacitation or cognitive deconstruction to battle the deep conditioning executed by the Lashkar-e-Taiba on his mind, would benefit society in a way that execution would not.

Utilitarianism believes in maximising public peace and security and reducing, if not eradicating, pain.²¹ As most retributivists might suggest it is far more important to follow the principles of desert, or as Kant implied that even if society were to stop existing the last prisoner would have to be executed to keep the moral culpability intact²². Utilitarianism views morality as the positive outcome of any action irrespective of what the intentions are; it believes in the greater good.²³ In such a result-oriented world, it may be plausible that the perpetrator of the above case be put through deradicalization. It is because humans are capable of changing their behavior based on reason²⁴; in a deterministic society, reason is nothing but a change in input due to external cognitive interference, which mechanically leads to a change in survival priorities. This change can be leveraged by allowing the perpetrator to provide information which can be used for systemic defense. The information given by the offender assists in mapping out broader networks and creates an opportunity for prevention. Systemic harmony is created if we are able to use an offender as a counter strike towards the same offense.

Even if he is incapable of reform, keeping him under incapacitation or isolation not as a moral punishment but for public safety²⁵, and utilizing the data he provides to prevent future terrorist attacks is also an alternative with precedent. Retributivism only takes it so far as to make the offender undergo punishment for their crimes, however prevention of the rise of another Kasab is possible because there are no accidents in a deterministic world. A number

of events lead to one outcome, if we can prevent that outcome, it is a greater act in maintaining harmony than execution. Mill believed that in rule utilitarianism, elucidating the state has to prioritize long term prevention over short term satisfaction such as execution.²⁶ Consequently, it is impossible to overlook the downside of such a justice system which operates at the cost of shredding human dignity.

It is arguable that a deterministic judiciary might proceed towards a totalitarian government which would be inevitable. The legislators might introduce quarantine for people who we can theoretically predict are going to commit an offense²⁷ and then keep them in rehabilitation until science and the law deem them to be reformed cognitively.²⁸ This is a severe disillusionment and degradation of legal autonomy; we would actively be dehumanizing and weaponizing the perpetrator. It is erasure to deconstruct an individual physically and psychologically²⁹ under the guise of public peace and security. Eventually, humans will become reprogrammable animals.

This society will focus on utilitarian perspectives completely dismantling the censure of retributive justice and the illusion of morality as a conscious decision. As a result of which, it is inevitable for the court to practice incapacitation or cognitive restructuring on the grounds that an individual is determined to react drastically under external intervention. Economically weak persons will be under constant supervision to ensure rapid deescalation of criminals who operate due to the lack of privilege. In such a court, humans cease to exist as people but rather as reprogrammable forces of nature which are flawed due to external causations. The effect on criminal sentencing will be drastic, practical and persistently dehumanizing. Therefore, as legislators and judges reframe the foundation of the law to evolve towards utilitarian outcomes, which surpass retributivism to criminal sentencing, law will still operate but it would be fundamentally more consequentialist in nature and aspect. A deterministic court would be catastrophic in a retributive sense but an acceptable solution if viewed logically. Ultimately, it is important to understand that the logical inclination of the court is highly functional and neutralises criminal offenses for the greater good.

Endnotes

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