

Sickness and Wickedness: New Conceptions and New Paradoxes

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This article is a discussion of the conceptual relationship between wickedness and (mental) illness, quite apart from their uses in the criminal law. One of the theses defended in the article is that in ordinary language illness has lost much of its power to mitigate and excuse, so that "sickos" are treated as if they were some strange minority or political sect.

This article is about serial killers, people who kill more than one person, but only one at a time. Some of these criminals are prepared to kill whenever doing so will help promote their own interest, such as the cover-up of an earlier crime by eliminating a possible witness. Others kill only for the sake of killing. For them, murder is a way of life and they kill frequently simply because they enjoy it.

In recent years, there have been a number of well-publicized serial killers. The name that first comes to mind is that of Jeffrey Dahmer, whose atrocities, I presume, are well known to you and need not be dwelled upon, except perhaps to mention that they included multiple dismemberment, torture, rape, cannibalism, and even necrophilic mistreatment of corpses. Almost everyone would acknowledge

that these spare-time amusements of this polite, pleasant-looking young man from Milwaukee were "sick! sick! sick!" (At least three reiterations are needed to adequately convey the speaker's disgust.) Jeffrey Dahmer seemed not only wicked but as sick! sick! sick! as a criminal can be. Indeed, we can cognize his behavior only by thinking of it as essentially inhuman, either superhuman—diabolic, demonic, or fiendish, or else subhuman—that is, ghoulish, beastly, or monstrous. Devils and wild animals are not sick human beings; they are healthy inhuman beings.

It is easy to make a mistake at this point. We must not assume, without evidence, that the more bizarre desires are necessarily the more powerful ones, that a sick! sick! sick (or triple sick) appetite must be at least near compulsive strength, that a pedophile's sex drive must be stronger than that of a person who prefers adult partners, that Jeffrey Dahmer's

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crimes were the product of an immensely powerful, intensely lustful appetite, whereas a murderer who kills for a more standard motive (money, other gain, revenge, lust, jealousy, or ideological zeal) must act from a lesser, and hence more resistible, passion.

The pattern of events from this point on is familiar. A suspected serial murderer is arrested, and further investigation reveals that he is a killer of sensational barbarity and wildly bizarre living habits. Soon after the story breaks, the Great Debate about him begins.

One side refers to the killer as "mentally sick" and in need of therapy. The other side refers to him as "sheerly wicked" or "plain evil," and demands that severe punishment be inflicted on him as soon as he is proven guilty. These are not mere quibbles. How we come to categorize him determines in large degree how we come to treat him and others like him, and putting him in the right category, essentially a philosophical task, is no easy matter.

A number of preliminary points should be made. First, we should distinguish between medical and nonmedical conceptions of sickness. It is one thing to use the word "sick" to give vent to one's disgust and quite another thing to use that word to make a medical diagnosis. Indeed, in the sense that I am describing, there is nothing "medical" in its use at all. In that respect, the current sense of the word "sick" differs from older, more established senses. Imagine a hospital nurse cautioning a noisy child visitor to be quiet on the ground that an elderly patient needs her rest. "She is a sick woman," the

nurse might say, using the word "sick" in the older, customary way. Surely, that is not to say that the patient, her wants, or her actions are "sick! sick! sick!"

Triple Sickness

Every decade seems to produce its own candidates for the century's most revolting crime. In the 1920s the most shocking felony was committed by one Albert Fish, "a mild-mannered man approaching sixty and father of six children," who in 1928 "kidnapped, choked to death, and for nine days ate parts of Grace Budd, a girl of ten."¹ He had molested, over the years, at least 100 children and murdered in similar ways at least 15 of them. Attempting to atone for his sins and free himself of obsessive guilt feelings, he had eaten his own excrement; he had inserted cotton soaked with alcohol up his rectum, and then set fire to it; and he inserted needles beneath his fingernails, causing intense pain.

In the 1980s and 1990s, this country produced a number of murderers whose crimes were as bizarre as those of Albert Fish—and as sickening. Most serial killers were thought at the times of their best-known atrocities to be triple sick. Since this article is about mental illness and some of its implications, I should say a preliminary word also about "madness," a word of the poets, and "insanity," a word of the lawyers, both of which denote only a special form of mental illness, a kind of going berserk.

Madness and Insanity

A madman is a person whose behavior is often, but not always, downright crazy;

and that introduces another distinction of some importance into our discussion, that between mental sickness, or triple sickness, and the more cognitively based "craziness," which may or may not go with it. Dahmer and the notorious rapist-murderer of the 1980s, Ted Bundy, were certainly sick—triple sick—but it is unlikely that many people would describe the criminal activities of Ted Kaczinski (the Unabomber)² and John Hinckley as "triple sick." That would be a bit extravagant. Kaczinski and Hinckley were crazy in the sense of acting irrationally by employing means obviously ill-adapted to their ends. It is prototypically crazy to court a movie star with letters sent from a distance and then to try to impress that Hollywood actress (Jodie Foster) with one's historical importance and the genuineness of one's love for her, as John Hinckley did in 1980, by shooting the President of the United States. That strategy has not generally been effective as a means of winning a lady's hand in the District of Columbia. And Kaczinski's plan to set back technology worldwide by a series of individually addressed mail bombs to various scientists was no less irrational.

If the facts are as alleged, then Ted Kaczinski and John Hinckley acted irrationally in concocting their bizarre crimes, but apart from reference to these gross mistakes in reasoning, I would be disinclined to call their behavior "sick." Behavior can be crazy without being particularly sick. They acted irrationally in making their murder attempts. Ordinary persons, I suspect, would not call the action in either of these categories sick!

sick! sick! Rather, they might say that it was a plain crazy thing to do, wild and nutty, demented and psychotic, but not necessarily sick! sick! sick!

The Trilateral Functions of Triple Sickness

The best way to interpret the triple sick language is to point out its simple although trilateral ambiguity. When a person makes a triple sickness judgment, she will be doing at least one of the following three things. First, she may be describing her own subjective feelings and propensities. The second use of the reiteration idiom claims objectivity for her initial remark. The first meaning can be rendered as follows: "When I look at or think about these things, they make me sick." So the primary focus of the expression may be on the speaker herself. She may mean by saying "sick! sick! sick!" the following: "When I look at or think about these things they make me sick, and in fact they are likely to make any reasonable person of normal sensitivity, at the very least, squeamish." The speaker's reference to a "reasonable person" is a second use of the reiterated idiom, namely to claim objectivity for her initial remark by appealing to any reasonable person, actual or hypothetical. So, clearly, she is not merely describing her own subjective impressions.

The second meaning, then, adds to the first: "Moreover, they are likely to make any reasonable person of normal sensitivity, at the very least, squeamish." In the first use, the speaker might be simply voicing her own repugnance or disgust at another person's behavior and its visible

consequences. But she could almost do that much by uttering "Ugh!" or "Yuk!" The second use of the reiterated idiom claims objectivity for her initial remark. Now she makes the much stronger claim, namely that her reactions would be those of any reasonable person, which is just another way of saying that disgust is among the emotions that can be meaningfully called "reasonable" or "unreasonable"; and of course, in this case, that (negative) emotion (disgust) is said to be reasonable. In this example, that would also be the intended message of the speaker.

Even though feelings are often contrasted with reason, it makes perfectly good sense to say (even to say falsely) that a given feeling in a given context is quite reasonable. It is reasonable in appropriate circumstances to feel gratitude, depression, resentment, affection, and yes, disgust.

The assessable disgust in some contexts is a reasonable reaction to conduct such as that of the more notorious serial killers. In the first use of the triple sick language, the focus is all on the speaker and her own states of mind. In the second use, the focus is on the "reasonable person of ordinary sensitivity," a hypothetical construct long familiar to students of the common law. The third emphasis is on the person being talked about. Imagine that A is a conspicuous sufferer from mental illness. B witnesses A's behavior and responds by addressing a triple sick judgment about A to C, a third party. B's remark also focuses on the "reasonable person," a kind of hypothetical judge. The third emphasis or focus of the triple sick

judgment is simply the person that the judgment is about, in this case, the person named "A," but in general refers to the actions of still other people. The disgusted person who makes the judgment in most cases would find her message distorted if it were merely taken to be an introspective account of her own sensations without even minimal cognitive content. If we take away belief, truth or error, and objectivity from a judgment of disgust, we are left with something very close to simple nausea, like that produced by indigestion.

Finally, there is the most obvious and straightforward of the uses of triple sick judgments. In this use, the judgment is about the person addressed or identified by the speaker. It is not an introspective description of the speaker's own state of mind, and neither is it an application of a standard of rationality to which all reasonable persons aspire. The speaker (B) is talking about A, the person he may actually accuse of being triple sick, and what he may be saying is that A frequently exhibits the characteristics that lead to impairment and malfunction and are commonly listed as symptoms of one or another mental disorder, such as excessive or deficient emotion, craziness, depression, paranoia, and so on. After A calms down, B might find it appropriate to say to him something like this: "Man you are sick (or sick! sick! sick!)."

Mental Illness as Moral Mitigation

The typical outbursts of genuine madmen (persons who are both crazy and unstable) would have led the psychiatrists

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of an earlier generation to classify them as psychotic, and a trial lawyer would have had little difficulty in persuading juries that the mad defendants on trial were legally insane. In the Anglo-American criminal law, insanity has always been a complete exculpation. Insane people can be stored forcibly in a hospital, but they are incapable of the legal guilt required for incarceration in a prison. I shall not be saying much about insane people in this article. Instead, I shall focus on convicted criminals, mostly murderers, who have some degree of mental illness, enough for us to call them "disturbed" but not enough to render them totally nonresponsible "because of insanity." Dahmer also fell into this category.

But Dahmer's mental illness may make it extremely difficult for him to be constantly obedient to the law in question. It seems no more than what is required by good sense and fairness to assign *degrees* of responsibility in proportion to the degrees of difficulty a given sort of person in a given kind of circumstances would have avoiding infractions of law. Why indeed does it matter that law-abidingness is not impossible if for persons of the defendant's type it is extremely difficult, just short of an impossibility?

The extreme difficulty need not lead to the defendant's total exculpation, but only to less severe punishment. Anyway, in recent times it has become increasingly difficult to convince impartial observers (for example jurors) that a person (for example, a criminal defendant) has violently attacked another person despite his own efforts to restrain himself, as if his choice had no effect on his action.

The "diminished capacity" system at least avoids the unrealistic assumption that all mentally disturbed persons are either wholly unaffected by their mental illness or else they are "insane," that is, impaired to such a degree that they are unable to do what is required, and obedience is simply impossible. It is more realistic, it seems to me, to think of the capacity to obey as a matter of degree. Some things people find easy to do, or omit doing. Other things are harder, or more difficult, for some persons than for others.

One reason that the diminished capacity test has not caught on in the United States is that Americans have looked in a variety of places for sources of difficulty and have not restricted their attention to internal barriers to law-abidingness, such as mental illness, but have also considered "difficulty factors" such as parental abuse, severe poverty, and slum environments. This expansion of the difficulty test threatened, for a time, to inundate us with acquittals and to release some of the most dangerous criminals from imprisonment.

I have given no compelling empirical evidence for the changes that will be predicted and described herein. In fact, I do not possess such evidence for or against the changes I expect to occur. I have only unorganized impressions and word of mouth, and these do not constitute strong evidence. Even if it should turn out that the changes I have expected do not materialize, however, a philosopher can contribute insight by considering what such changes would be like if they were to happen. That would increase our under-

standing of the concepts with which we must work, and more substantively, provide guidance and a warning in case we are truly drifting in an unpromising direction.

If a disturbed person who has just shot someone must either be held wholly responsible or not responsible at all for killing that person, and thus for committing murder, then perhaps it is preferable that he be held "100 percent." But if blame and responsibility are properly interpreted as a matter of degree, as on the British model, a whole range of intermediate treatments are still open, insofar as we have full sentencing discretion or its moral equivalent. In recent times, there have in fact been rhetorical revivals of enthusiasm for individual responsibility, and to many people who have thought about judgments of blame it has seemed clear that criminal defendants, even under a deeply conservative regime, are free to take the legally required path, and were indeed free, in an appropriate sense of the word, to take that path at any point if they had preferred to do so. Self-restraint is possible even in situations where it is difficult. Even Jeffrey Dahmer's actions were probably under his control in the sense required by the law if they were to qualify as voluntary. So, we have the case of a sick! sick! sick! crime committed voluntarily by a sick! sick! sick! person who will be held responsible for it, and rightly so.

That is not to say that the concept of mental illness over the years has had no softening effect on our moral judgments. This point can be appreciated in the case of the criminal who is genuinely ill but

whose illness was causally independent of his crime.

Anglo-American criminal law assigns the role of moral mitigation of an act of homicide only to instances of that crime in which the defendant pleads provocation as his defense. It is assumed that there are cases in which we would not want to exonerate the defendant altogether, and yet we feel a certain bond of sympathy with him anyway. We may even concede that had we been in his shoes we might have acted as he did. When this happens, the penalty is reduced to match the reassessment of guilt, and the murder charge is reduced to manslaughter.

In the past, when interested parties tried to decide whether a given defendant was sick! sick! sick!, on the one hand, or immoral (say) on the other, it was understood that, practically speaking, what was at issue was whether the person was an appropriate object of pity or, instead, a fitting object of moral condemnation. These were considered mutually exclusive alternatives, so that to whatever degree a person was judged sick, to that degree he could not be morally condemned; and sickness, as we have seen, had the tendency to weaken the moral case against the sick person, to change our opinion of the appropriateness of certain negative attitudes toward him, and to think of him as at least partially excused for what he did. Since, *ex hypothesi*, he was not insane, we assume that he knew what he was doing when he committed his crime and that he could have taken the honest path if he had chosen. Therefore, it is only proper to consider him a respon-

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sible moral agent, answerable for his conduct.

Traditionally, moralists and jurists believed that evidence of mental illness in a criminal defendant has a clear and precise sort of significance. It weakens the moral outrage naturally felt toward the wrongdoer even in the normal case in which he was not forced to act or deceived into acting as he did. Mental illness, as such, does not normally exculpate; that is, it is not an excuse, but neither is it altogether irrelevant to the degree of blame placed on the criminal. We tell the mentally ill actor that his conduct was inexcusable; nevertheless, we can find it understandable, and that is precisely the aspect that mitigates.

Sick Desires and Immoral Actions

Human desire in any given community can meaningfully be labeled "sick" (or for that matter "healthy" depending on what the facts should turn out to be). It is at least not gibberish to say that a set of actual desires are (as we say) "sick." Dahmer's desire at some point to have a solitary banquet of human flesh and his desire to have sex with a dead human body are sick! sick! sick! But simply to have desires like those is not sufficient for deserving condemnation so long as one does not act on them. I suppose that one would actually get greater moral credit for not acting on a sick desire than for "resisting" a comparatively weak one, so that in general the stronger the sick desire not acted

upon, the more favorable the moral judgment deserved by the omitter.

When is a sick desire culpable in itself? The subtle answer to this difficult question uses conditionals frequently, as philosophers are prone to do. A desire is itself blameworthy when it is such that if its possessor were to act on it, then the action would be immoral. According to Dr. Robert Schopp,⁴ as I understand him, evil is something potentially present in a desire, which becomes actual when the person with the desire acts on it and thereby brings about harm to an innocent party—which was part of his intention all along. In this example, it is the act itself that is directly blameworthy; the desires that led up to it, by overcoming a person's defenses, are culpable only in a derivative and counterfactual way. If one were to act out the desires in reality, then that dream-like intrusion, scattering harm among all those in its path, would "deserve condemnation."

The concept of mental illness that has had a softening effect on our moral judgments has been interpreted in a fairly standard and undeviating way for over a century. Its mitigating function can be appreciated in the case of the criminal who suffers from a serious *physical* illness. That is a reason for punishing him more leniently (The argument for this unpopular position (mine) is that the reduction of his life expectancy, the deterioration of his creative capacities and/or an increase in intense pain can all be assimilated, in our understanding, to his punishment.) If we do not punish him less, we shall be punishing him more.

The Sheerness in "Sheer Wickedness"

A purely evil killer, when questioned about the conscious objectives of his wantonness, is likely to reply that it is great fun to cause another person pain, to see his last twitchings and death agonies, or similar inanities. This tells us that his cruel actions were not means to any other end. They were "plain" and "pure" in that sense too. On the other hand, he might answer our questions by saying that he doesn't think about things like that; rather, he just felt like killing his victim and he did. Insofar as we disconnect the crime from any clear goal that might contribute further to our understanding of his motivation, his evil act is "pure" or "stark" or "sheer." Pure evil troubles us so much, I suspect, first because it comes from "out of the blue," without apparent rhyme or reason, and thus is more threatening to us. I doubt, however, that the purity of pure evil reflects a degree of evil.

The British classify mentally disturbed prisoners in a distinct category of relatively moderate criminals whose capacity to conform their conduct to the requirements of law has been "diminished" and whose responsibility after the fact for their failure to conform is therefore "diminished" too. I have some sympathy with the British system, although it is uniformly rejected in the United States as cumbersome, impractical, and expensive. The alternative, however, can seem to be morally unpalatable. In theory, we Americans can punish severely a person whose "disease of the mind" is so extreme that it

puts him right at the margin of insanity, and we can exempt from serious punishment a person whose mental illness creates only a minor handicap. The British system would punish the severely ill criminal very slightly because his mental illness is so severe that he is, after all, very nearly insane. But it should reserve its more extreme punishment for the person whose mental illness is very mild and whose responsibility, therefore, remains strong enough for a severe punishment. Thus, proportionality, a requirement of justice, is more likely to be observed in a system in which diminished capacity is accepted.

Our ordinary thinking (if we can call it that) about the relation between moral blameworthiness and mental illness is muddled. Many more views of the connection than those considered are possible. We have heard judgments both in the law and in the views of the ordinary man or woman in the street that suggest a variety of different kinds of relationships between sickness and wickedness. Sometimes it is suggested that sickness and wickedness bear an inverse relation to each other (the more sick you are, the less wicked, and the more wicked, the less sick). At other times, sickness and wickedness are said to vary directly: the sickest crimes are judged the most wicked and inspire the strongest moral outrage. Some writers, we have seen, even judge that sickness aggravates character flaws, that is, makes them more flawed than ever.

There are difficulties in this interpretation of responsibility that stem from efforts to keep the concepts of sickness and

wickedness separate. The crimes that appear most sick are often also considered most wicked. When a man rapes and murders his own mother, surely every licensed psychiatrist will interpret this as the clearest example of an act that is sick. But with equal unanimity, moralists from Sophocles and Euripides to the Christian fathers and beyond have claimed that the incestuous matricide is the most wicked sinner imaginable, and the history of sermons and sentences would seem to bear them out as well. Thus, the most typical and extreme moral sins seem to correspond to the most extreme and disabling (mental) illness. It is but one small step to the claim that, at least at the extremes between sickness and sin, there is no difference.

My own guess is that "sickos" are sometimes persecuted not because they are perceived to be wicked or sick, but rather because they are perceived to be odd or bizarre in the manner of ethnic, racial, religious or sexual minorities who are mistreated for no better reason ultimately than that they are different, and thus strange.

It may be that there are few bigots lying in wait among crazy people awaiting the opportunity to mistreat them. The real enemy in the eyes of the bigot is what seems to him the strangeness of those he mistreats, and nothing more effectively makes a person seem strange than an underlying craziness; and there is some reason to think that many people find that sort of oddness, or even mere unusualness or difference *per se*, harder to forgive than the mental illness that sometimes underlies it and sometimes does not.

Cultivated Fantasies

Fantasies are fictitious stories about oneself, composed by oneself for oneself, though rarely put in written form. As a person becomes more preoccupied with the stories he keeps in his imagination, he is really shifting from hopes and goals, celebrating successes, and slowly becoming a different person. No mental element plays a more vital role in self-creation than fantasies, and not only sexual ones. Obese people often knowingly aggravate the diabetes they have had since childhood. Hence, we perversely injure our bodies in a way analogous to our mistreatment of our characters when we indulge counterproductively poor dietary habits. Or character flaws can take root because of what we do to cultivate and promote them. Indeed, "cultivation" is an especially good word for what we do to make over our characters when we make them worse.

When we cultivate a character-disposition in a responsible and effective way, we convert the disposition inevitably into something as new to us as to anyone else. In time, if one can, one will exert "a central control over a dominant aspect of one's character." In summary, it is not just a matter of luck what kind of elements make up one's character.

The Crucial Concept of the Strength of a Desire

There are different dimensions along which desires can vary: how good or evil they are and how strong or weak they are.

The more evil they are, the more blame there is for acting to satisfy them. Suppose, however, that the only statistical data we have bearing upon these variables in a concrete case justify us in claiming that this single person was unable or unwilling to suppress this particular desire. Was the desire a weak one? Well, it must have had some strength. After all, this person failed to control it. Perhaps that argues for the strength of the desire; but it could also argue for the person's weakness. If A wins a boxing match against B, that may be because A is strong, or it may mean that B is weak. The only way to tell is to match A and B against other contenders. And when State U. wins its game by preventing the team from Siwash Tech from scoring, it may be because of State U.'s powerful defense, or it may be because of Siwash Tech's inept offense. It will be difficult to tell which is the case until there are more data comparing these two teams with many others.

Much the same point applies to assessments of the strength of a desire. If Mr. Triple Sick desires to make love to a corpse, that may be because of the overwhelming attraction of necrophilia to him, or it may be because of his inept defense against a desire of routine strength. We can then compare data on the percentages of those who have the admitted desire to make love to a corpse and clear opportunities to do so. If very few of these other persons ever act on their desire, that would increase the probability that the necrophilic desire in his case too was a good deal less than compulsive.

A "Sea Change" in the Attitudes Toward "Sickos"

An indication of how the term "sick" has changed its tone and associations is found in the remark of a survivor of the only death caused by the unknown bomber at Centennial Park in Atlanta during the 1996 Summer Olympic Games. He had only this one angry word for the terrorist who set off the explosion: "He must be sick!" Why must he be sick? Has "sick" come to mean what "wicked" used to mean?

Schopp³ reports that when people speak of convicted triple sick killers like Dahmer, they sometimes say that ordinary execution is "too good" for him, that "for him they ought to turn down the current and let it take a while." Many would say that such people are sick and also are deserving of increased blame, condemnation, and suffering, presumably for being sick in the particular way that they are sick.

Note the new terminology for ill people, and the sea change of basic attitudes it seems to express. A sicko, like a weirdo and a wacko, by definition is sick in such a manner that his illness actually aggravates his moral guilt and deservingness of punishment. Instead of being a kind of softening *excuse*, mental illness has become in some quarters a kind of hardening *aggravation*. Instead of saying "He is mentally disordered, poor fellow, go easy on him," some now say "he is a damned sicko, so draw and quarter him."³

Professor Schopp suggests two explanations of how these changes have come about. The first is not meant to be the

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fundamental one, but it is certainly part of the story. People who can describe repugnant conduct as both sick and deserving of severe punishment do so because the sick culprits they describe that way are among the criminals we most fear. No wonder we are hard with them: they “elicit the most undifferentiated loathing and anger.”³

In recent times, however, another change seems to have taken place in our understanding of the role of the mentally ill criminal. It is now sometimes said that a criminal should be punished severely even though mentally ill both at the time of the crime and the time of the trial. That judgment can be made in even more explicitly moral terms. It is sometimes suggested, for instance, that the reason why a certain mentally ill criminal should be severely punished despite his mental disorder is that he deserves the increased blame that actually derives from his illness. Therapeutic experience has also disclosed that blame and punishment themselves can be therapeutic.

Some of those who said such things to Dr. Schopp were no doubt expressing their wishes for a kind of vicarious vengeance. They would like the “satisfaction” of seeing the criminal suffer as much as, or more than, his victim did. If the speaker proceeds to help himself to a portion of such “satisfaction” then his action, especially if it harms a third party, is immoral. So we have a conceptual scheme in which mental sickness can logically coexist with moral condemnation of the sick person, provided only that the sickness is predicated on desires only, the immorality applies to actions only, and neither applies directly to the person in abstraction from her traits and dispositions.

References

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