

# Volition, Deception, and the Evolution of Justice

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Criminal justice is inextricably associated with the attributive concept of volition. Although the voluntary-involuntary distinction is subjectively vivid, causal research shows its poles to be inseparable, i.e., the dichotomy is deceptive. Why a bulwark of civilization should be founded on paradox, may be clarified by examining the role of self-deception in man's evolutionary heritage. Natural selection for an optimal degree of self-deception probably occurred, both to facilitate deception of others and to foster human cooperation. This contributed to the evolution of psychiatric disorders, the voluntary-involuntary continuum, and large scale social systems. Society and its members reach an equilibrium within the truth-deception continuum, manifest in individuals by conscious versus unconscious and voluntary versus involuntary, and in society by tension between what actually occurs (realism) and its organizing ideals (idealism). Three legal models of criminal justice are understood in this context: The (1) utilitarian, most realistic, is essential to social survival but vulnerable to abuse; (2) rehabilitative, at an opposite idealistic pole, better supports the image of social beneficence that helps to bind society's members; (3) retributive, most heavily grounded in volition, puts greater emphasis on individual autonomy, and reciprocally modulates the other models. All are legitimized by evolutionary traditions that antedate *homo sapiens*, and none is sufficient in itself. Elements of all three models necessarily coexist within any existing society, their relative strength varying with its collective values, prosperity, and perceived safety.

"Justice" is the "proper administration of laws . . . to render every man his due."<sup>1</sup> If one's "due" is to suffer painful sanctions for violating society's rules, justice requires that the offender must have knowingly and willfully chosen his actions, i.e., they were "voluntary."<sup>2</sup> This most explicitly defines the "retributive" (just desserts) model of criminal

justice.<sup>3</sup> How it is implicit but equally essential to the "utilitarian" (societal defense, protection) and "rehabilitative" (medical) models, can be illustrated by an example: vehicular fatality.

Driver A's vehicle strikes and kills Pedestrian B. If A had voluntarily executed this result, he would be guilty of first degree murder. If death had followed reckless or drunk driving, without homicidal intent, it would be manslaughter or negligent homicide. If, on the other hand, A had driven with maximal prudence and caution, and an entirely unforeseeable event had caused the tragedy, he would not be charged—under

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any model. Although B is equally dead, A presents no danger requiring social protection, nor any defect to rehabilitate. In short, *without the pivotal element of volition, no crime was even committed*. Crime requires both an *actus rea* and *mens rea*, and in this example it was only the latter component that determined the degree of criminality in what was otherwise a simple tragedy.

"Volition" is difficult to define in terms other than its synonyms: free will, choice, purpose, intent, design. Rather than a substantive entity, these terms denote a fundamental dimension of human experience that cannot be dissected or further defined without loss of essential features. Thus, volition is a "primary definition."<sup>4</sup> In its narrowest sense, it refers to the sense of active agency in our actions; i.e., we *make* them happen, instead of watching them happen as if by themselves. It is usually conceived only in contrast with its opposite, non-volition, distinguishing it from tangible entities that are better defined in terms of their component parts. Volition also refers to the motor aspect of higher cerebral function, in contrast with its cognitive-sensory corollate, "consciousness" (awareness). It is not clear to what degree they are separable. They share similar definitional and research dilemmas, and will be addressed concurrently throughout this article.<sup>5</sup>

In the broadest sense, including criminal law, "volition" encompasses both cognitive and intentional components, as concretized in the respective arms of the insanity defense,<sup>6</sup> and *whether the subject could reasonably have done other-*

*wise*. Even intentional actions are not considered "voluntary" if done in self-defense or under coercion.<sup>2, 7, 8</sup> Meaningful "freedom" thus increases in proportion to the number of reasonable alternatives available to the deciding self.<sup>4</sup>

### **Legal Theory: Volition is an Attributive Concept**

Defined tightly or loosely, volition seems more relevant to attribution of responsibility than to explanation of facts. It fits Hart and Honore's description of legal causality as "attributive" rather than explanatory,<sup>2</sup> a distinction compatible with those of other authors who differentiate legal from scientific causality.<sup>7-11</sup> Attributive constructs are justified more by social tradition than explanatory value, are defined in contrast to their opposites, as opposed to their own intrinsic features, and are used more appropriately to affix responsibility or blame than to determine causal truth. How causal reasoning differs in attributive from explanatory contexts can be clarified by a look at the insanity defense.

Insanity statutes formalize the fact that "culpability" requires both a destructive event and its voluntary implementation, exonerating individuals who because of mental defect are deemed to lack the *mens rea* component of criminality.<sup>12</sup> The following arguments are usually used in its support: (1) a long historical tradition, (2) it is an "exception that proves the rule" (that crime requires *mens rea*), and (3) justifies punishing those who are not so excused.<sup>13</sup> In science, by contrast, (1) historical tra-

dition implies being outdated, (2) even small exceptions *disprove* a rule, and (3) we simply defer judgment in areas that we cannot yet explain. Within the domain of volition, the first type of logic is often presented authoritatively in scientific discussions, and tacitly accepted as self-evident, while at the same time we act as though it were an objective entity, which should follow the second type of rules.

This suggests something quite extraordinary about the nature of volition: that it not only follows the rules of attributive causation, but effectively masquerades as a substantive explanatory phenomenon as well. Two fundamental questions emerge: first, why volition *appears* so substantive that it is usually taken for granted as something it is not; and second, why the rules of interpersonal conduct depend on such a charade.

Legal theory is yet more problematic, because it often appears to violate its own rules as well. For example, although justice requires culpability, the law often punishes individuals for factors beyond their intent or control: e.g., accidental injury to another while committing a lesser wrong, in mistaken self-defense, or in aggressive competition for scarce resources.<sup>14</sup> In contradiction to these trends, a felon whose behavior causes another person to kill a third party, is usually *not* held culpable for the death. And acts of negligent omission are dealt with differently yet, despite an equal degree of harm and volition.<sup>15, 16</sup> No extant model for criminal justice explicates these anomalous trends in our own law. "There are puzzles here so unsettling

and important that they either have to be explained by some theory of moral responsibility and dessert, or our intuitions must be revised."<sup>17</sup> That such incongruities arise, often pass unnoticed, and remain unresolved, suggests that there may be profoundly deceptive elements inherent in their subject matter.

Two lines of scientific research help to clarify these questions and are summarized in the next two sections. First, studies of proximate causation lead to intrinsic paradox: volition can only be defined in contrast with nonvolition, but is inseparable from it. Hence, the dichotomy is illusory. Second, evolutionary studies suggest that self-deception plays a dominating role in both intrapsychic dynamics and the maintenance of cooperative social systems. The voluntary-involuntary dichotomy is perhaps its most striking manifestation. If some aspects of volition and consciousness are self-deceptive, these must have evolved to serve important adaptive functions. Understanding these can provide a new framework from which to appreciate the origin, functions, and interdependence of the competing models of criminal justice.

### **Causal Research: Volition and Nonvolition are Inseparable**

To scientifically study the nature of volition requires a paradigm that can concretize its essential issues in a form sufficiently tangible for controlled experiments. Hypnosis provides such a paradigm.<sup>5</sup> "Hypnotic" phenomena include, along with altered cognition, perception, and recall, a pathognomonic

*subjective nonvolition*: e.g., one's hand "just lifts" as if by itself (hand levitation), a contrary perception "just appears" as if from nowhere (hallucination), or a dissociated "entity" (hidden observer) monitors the subject's behavior and experience, apparently beyond the latter's awareness or control. They are among the most heavily studied of all mental phenomena,<sup>18</sup> but the resulting data base has led to a paradox that cannot be resolved with traditional causal reasoning.<sup>5, 19</sup>

In short, hypnotic phenomena are validated as real, and dissociative in essence.<sup>20, 21</sup> For instance, a subject experiences his hand as "just lifting" (involuntary), while at another level he willfully made it lift. Concurrently, "nonstate" research shows that attempting to differentiate hypnosis from non-hypnosis leads to absurdity; one can always be viewed in terms of the other, with no reliable dividing line possible.<sup>22</sup> Similar reasoning must apply to volition and consciousness: what appears "involuntary" is purposefully implemented but hidden, and the "unconscious" is better seen as "co-conscious."<sup>23</sup> In addition, through careful study of the effect of social context on hypnotic phenomena, Spanos further concludes that only through actions that are goal-directed and fully voluntary, at some level, can the subjective experience of nonvolition be created.<sup>24</sup>

In summary, causal research on volition reveals an intrinsic paradox: although voluntary action can be defined only in contrast to its opposite, the two poles are inseparable. On the one hand,

the more we understand the many biopsychosocial factors that influence one's behavior, the more voluntary free choice appears to be self-deceptive,<sup>25</sup> one of Bellak's "vital delusions."<sup>26</sup> On the other, the hypnosis research just discussed shows how often that "involuntary" actions were really fully conscious *and voluntary* at deeper levels. Thus, it is neither volition nor nonvolition *per se* that are self-deceptive, but their *separability*.

It is difficult to resolve this paradox with explanatory causal reasoning. Because rejecting the voluntary-involuntary dichotomy as "unparsimonious"<sup>22</sup> would discount the subjective phenomena that it denotes, it is more appropriate to resolve the paradox by a different path; all consciousness is both hypnotic and not, at different levels. Or, overall, a subject can be said to be "hypnotized" or not only in approximation. To think in this manner requires shifting the nature of causal reasoning to encompass ambiguity, uncertainty, and complex consciousness, which may have considerable clinical utility.<sup>5</sup>

Alternatively, the emergence of paradox can be better appreciated by recognizing that volition is primarily an attributive concept, more useful to impute personal responsibility than to explain facts.<sup>2</sup> Because the voluntary-involuntary dichotomy is so subjectively vivid, however, it tends to acquire the status of a new type of objective reality, experiential, with different causal rules. This may explain both its long history as a research subject, and the paradoxical results that research studies still yield.

Less clear is how or why the law evolved to depend on such a conundrum, basing itself on a distinction that cannot be reliably made, but that is so vividly experienced that it appears as if more substantive than it actually is. This question can be better understood from the perspective of evolutionary biology, a scientific discipline that asks questions about functional adaptation: how the quirks of human nature evolved to help survive natural selection.

### **Self-Deception and the Evolution of Moral Structures**

A vivid sense of subjective nonvolition is likely to evolve in settings where it is highly advantageous to conceal one's true motives from others, and where this can best be achieved by also deceiving oneself.<sup>27</sup> Self-deception has been widely favored by natural selection at two levels: competition for survival and reproductive fitness, and the evolution of altruism from settings with conflict of interest. These will be discussed in turn.

Throughout nature, organisms gain a critical advantage by knowing their counterparts' actions and intentions, and restricting access to comparable knowledge about themselves . . . witness the widespread natural selection for camouflage and mimicry throughout the living kingdoms.<sup>28</sup> Everyday living also reveals how vital deception's role is for success in such activities as courtship and occupational advancement. One simply does not play one's cards until common interests are established. In fact, escalating competition to better de-

ceive and detect deceptions by others probably played a paramount role in the evolution of ever-greater mental complexity.

An optimal degree of *self*-deception will be naturally selected, when this makes an organism's deceptions of others more congruent, thus more likely to escape detection.<sup>29</sup> An organism may wish to escape retaliation from a stronger competitor, for example, by convincing the latter of an illness or disability. If overtly intentional, the deception is likely to be betrayed by behavioral incongruities, then harshly punished as malingering. If one instead deceives oneself into actually experiencing the symptoms of illness, the charade usually works; conversion symptoms are almost universally respected as genuine. This leads to some natural selection for the neuroses that otherwise seem so maladaptive.<sup>30</sup> It is well known that traumatic experience may contribute to the neuroses,<sup>31</sup> and induce hypnotic-like phenomena<sup>19</sup> and increased hypnotizability.<sup>32</sup> Because hypnotic phenomena are themselves self-deceptive, it is likely that they represent a proximate mechanism for the self-deceptions shaped by natural selection.<sup>33</sup>

Self-deception also contributes to the evolution of altruism. Social cooperation appears to have evolved via two concurrent parallel processes: honest communication and collective self-deception. The first is self-evident, and stated only briefly. Where group members share common interests, it benefits everyone to share accurate and complete information. Science, justice, and civili-

zation all require ever more refined abilities to communicate honestly. Equally self-evident, but problematic, is that interests of the members often clash—even in closely knit groups like families. Honest communication can then become so maladaptive, and motives to deceive others so powerful, that heavy sanctions are needed to avoid fraud, perjury, and simple lying. Where interests conflict, social cooperation may still evolve,<sup>4,34</sup> but reciprocal deceptions of both self and others now play an essential role.

Complex systems of “indirect reciprocity” evolve in primate societies. Members continually scrutinize one another for their level of altruism, indiscriminately benefit those perceived as altruistic, and ostracize those who aren’t. One who successfully projects an altruistic image is thus likely to receive indiscriminate benefits from others that more than compensate for the cost of the altruism.<sup>34</sup>

Primates also evolved to reward altruism only when reciprocity was not asked—when the altruism was genuinely unblemished. It is thus desirable to project an altruistic image, so that others will notice and indirectly reciprocate, but *not to be aware of any instrumental motives for such behavior*. An individual will be deemed a “moral person” only if self-serving motives are concealed, best accomplished by being rendered “unconscious” or “involuntary.” If too open, one is likely to be rejected as “manipulative,” “narcissistic,” or “antisocial.”<sup>28</sup> It is equally desirable to obey the Golden Rule and respect the com-

parable self-deceptions of others. Through indirect reciprocity, tacit agreements are made regarding what topics are off-limits or “taboo.”

“Moral systems” evolve by equilibration between society and its members along all of these dimensions, leading to often-tacit “rules” for how to get along, whose essential elements become codified in law. These need not be logically consistent nor always just, but simply support whatever patterns of both honest communication and collective self-deception are reciprocally reinforced. Both their irrational elements and power are acknowledged in common prescriptions for how to get along in life, and manifest in the resistance of established belief patterns to change even in the sciences.<sup>35</sup>

Because these selective pressures apply to all, the separation of voluntary from involuntary action will be so widely reinforced that it becomes a shared experiential reality. This is probably the source of the dominating role of volition in law and ethics, and the reason why volition follows attributive rules of causality, at the same time masquerading as a phenomenon more substantive than it really is. In the narrow psychological sense, “involuntary” denotes those strategies whose intentionality is concealed by self-deception (unconscious), “voluntary” those in which it remains open. In the broader legal sense, “involuntary” approximates those actions that tacit social contract grant diminished liability for retributive consequences. Volition *per se* encompasses those actions that are excluded from this

protective umbrella. It thus follows the rules of attributive causation: defined only in contrast with its opposite, justified by social tradition, and serving to impute responsibility rather than to explain.

In summary, moral systems evolve to encompass two aspects, manifest in both individuals and societies: (1) a system for honest communication of accurate information, dominant where common interests prevail, and (2) a system to foster an outward image of altruism, self-deceptive to the extent that honest motivators are excluded. They lie on a continuum, with "realism" at one end and "idealism" at the other. Contrary to common connotation, it is maladaptive to maintain too realistic a view of either oneself or one's society. An optimal degree of idealism is more functional: maintaining beliefs that are self-deceptive *vis-a-vis* our deepest natural motives, but support the shared ideals, myths, or self-deceptions that bind society's members to one another. But psychiatrists have long known how maladaptive too much self-negation can be, when one's real self is replaced by a "false self" that betrays autonomous strivings to the defensive function of traumatic avoidance.<sup>5</sup>

Most likely, there is a necessary tension between realism and idealism within both individuals and societies. In health, both poles reciprocally intermingle. If one excludes the other, overly dominates, or is persistently misdirected, psychopathology results. Within this context, we can better understand the competing models of criminal jus-

tice. All evolved to serve essential roles in social systems, all are interdependent while sometimes conflicting, and all stand in variable relationship to the attributive concept of volition.

### **Three Models of Criminal Justice**

Two additional models of criminal justice are often contrasted with the dominating "retributive" (just desserts) model. Both are "utilitarian" in justifying criminal sanctions more by their social effects than by what an offender deserves, but I will limit that term to only the first, whose explicit rationale for criminal sanctions is protection, or social defense. The other is the "rehabilitative" (medical) model, which emphasizes rehabilitating offenders to become cooperative members of society. These can be contrasted with one another, and with the retributive model, along three dimensions.

First is realism versus idealism. Utilitarian justice is most realistic, as no living system can persist without provision for defense of boundaries from external and internal threat.<sup>36</sup> Criminal justice is the primary mechanism for internal defense in most societies, with involuntary commitment only a distant second.<sup>37</sup> Thus, whatever our model, no society will survive whose criminal justice system fails to serve this function. At the opposite pole is the medical model.<sup>3, 38</sup> This is most idealistic, because rehabilitation of wayward members is not essential to survival of systems, nor is there evidence that most criminals are reformed by current therapies.<sup>39, 40</sup> Yet, it better supports a societal self-image of

beneficence (altruism), heavily reinforced by natural selection to promote social cooperation.<sup>34</sup> Retributive models occupy a middle ground on this continuum, serving utilitarian ends and providing some protection for accused offenders, but deceptive in basing themselves on the illusory distinction of voluntary from involuntary. That only one model is maximally realistic, should not be misconstrued to connote greater validity or desirability. All share evolutionary traditions that predate *homo sapiens*, all three serve essential functions, and all have fundamental liabilities when considered as exclusive.

Second is free will versus determinism. Here, retributive and rehabilitative models occupy the opposing extremes. The first both assumes and requires an offender's behavior to have been free, whereas the second looks to the deeper root causes such as social deprivation and illness, attempting to correct natural injustice at these levels. Utilitarian factors lie in-between here, not requiring volition, but generally using it to justify its otherwise untempered social control.

Third is the temporal continuum, past versus future. Both medical and utilitarian models are future-oriented, whereas the concept of just desserts is firmly grounded in the past. Yet, ironically, the latter may yield more predictable future benefits, because our only reliable predictor of future actions is past behavior.<sup>3, 41</sup>

The models can also be contrasted along a composite of the first two continua, dependency versus autonomy of the individual. The medical model, hand

in hand with the *parens patriae* functions of society, is unique in the extent to which it places offenders in a dependent role—as well as depriving them of physical liberty, also attempting to reshape their self-perceived personal identity.<sup>42, 43</sup> To do this logically follows from integrating causal determinism of offenders with an idealistic image of the system (ourselves) as beneficent.

These models—utilitarian, medical, and retributive—will now be discussed in turn from the interdependent perspectives of natural evolution, philosophical, and scientific beliefs about volition and responsibility, and their positive and negative social effects.

**Utilitarian Model** The utilitarian model can best claim ultimate validity, because only it can be justified entirely on realistic grounds: that any surviving social system must contain effective provisions for its defense. Packer sees this protective function as “unanswerable; anything else is the merest savagery.”<sup>44</sup> Despite its realism, the model is offered less often than its competitors, probably because its recent abuse at the hands of Hitler and Stalin so vividly reveals its hazards. Rehabilitative models better support an image of beneficence, but can evoke similar images like the brainwashing of captured servicemen during the Korean war.

It is probably to counter the potential for tyranny in either model, that the retributive concept of “just desserts” is most needed as an antithesis. Packer notes that because “the utilitarian calculus is uncertain . . . there are instrumental reasons to require culpability as



a condition for punishment," i.e., just desserts actually serve utilitarian ends. Also, "concepts of 'dessert' define the upper limits of allowable punishment"<sup>41</sup> and thus protect against unrestrained utilitarian zeal.

In summary, the utilitarian model is the most fundamentally valid and can be ignored only at society's peril, although at the very same time its unrestrained implementation carries the greatest potential threat to social cohesion, ironically undermining its own premises.

**Rehabilitative Model** The rehabilitative (medical) model has enjoyed a period of sovereignty in this country, dating to the past century.<sup>3</sup> Most idealistic, it was offered as a humanitarian replacement for the "barbaric" practice of vengeance, supported by growing evidence for psychic determinism that undermined the attribution of fundamental blame.<sup>25</sup> Rather than further abuse individuals already deprived, we could instead elevate them to share the rewards of cooperative citizenry, to the benefit of all concerned. Halleck notes additional utilitarian benefits: the model is flexibly adaptive to individual needs and can further a therapeutic outcome, especially in "disorders of will" like substance abuse, dissociative disorders, and their equivalents.<sup>38</sup>

This goal requires three corollary assumptions, however: (1) consensus as to what end results are desirable, (2) that a reasonable prisoner would accept these goals, and (3) that they can be implemented reliably enough to be practical. The first is not achieved, and the second

conflicts with the law's demand for respect of autonomy.<sup>45</sup> The third has been proven for some individual cases and offers promise in disorders of will, but large surveys fail to show overall social benefit.<sup>39,40</sup> Both utilitarian and retributive factors contribute to a recent shift away from this model.<sup>3</sup>

An important question is how the rehabilitative model achieves such enduring stature, in the face of these apparent flaws. From the standpoint of evolution, the answer can be found in the social status granted both the sick and their caregivers in societies of higher primates.<sup>46</sup> Sick or disabled individuals are granted deference by their peers, and evidence for willful malingering of illness has been seen in both dogs<sup>47</sup> and chimpanzees.<sup>48</sup> Further, macaque mothers devote more attention to disabled than normal infants,<sup>49</sup> and a chimpanzee caregiver will attack an otherwise more dominant individual in defense of a sick peer.<sup>48</sup> Such altruistic behavior confers selective advantage to the recipient at the apparent expense of the caregiver.<sup>46</sup> As Alexander noted, however, being viewed as an altruist favors selective advantage by encouraging indirect reciprocity from others, more than compensating its cost.<sup>34</sup>

*Anlagen* of the medical model were thus well established in evolutionary tradition by the advent of primates, and probably earlier. Their force arises from the status granted to those who successfully project a beneficent image, over and beyond whatever social benefit may accompany care for the ill. In addition, as greater appreciation of everyone's vul-

nerability to illness evolved, to defer to caregivers may have become a type of social investment, like medical insurance, providing greater hope for receiving care in the advent of some unexpected future disability.

***Retributive Model: The Role of Just Desserts*** Although punishment is commonly viewed as social vengeance, it is likely to have evolved in large part to serve functions far more benign: reinforcement of utilitarian goals,<sup>44</sup> protection against indiscriminate utilitarianism,<sup>41</sup> and anchoring in a relatively certain past as opposed to the indeterminate future.<sup>3, 41</sup> The greatest strength of the just desserts model is its commanding respect for the autonomy of the human individual. Responsibility is focused on the offender himself, away from the purposes of the society that defends from or attempts to reform him. This clarity of boundaries helps to avoid regressive dependency and instead foster therapeutic change, especially in Halleck's disorders of will.<sup>38, 50</sup> Further, a potential offender is able to avoid legal trouble by matters entirely under his control, in principle. This protects against the abuses of rehabilitation noted by social critics like Lewis<sup>42</sup> and Szasz,<sup>43</sup> and the risk that pure utilitarianism could just as easily punish the innocent when this suits societal needs.<sup>14</sup>

The evolutionary precedent for retributive justice, as differentiated from pure social defense, is probably the role of subjective nonvolition in forming and maintaining moral systems.<sup>34</sup> As noted, "moral behavior" is better rewarded socially when *not* voluntary, instead ap-

pearing to flow from a good person's basic being. If overtly instrumental, it is likely to be rejected as manipulative. Thus, openly voluntary actions are sometimes punished covertly, even when good. When one's self-serving actions are not only voluntary, but blatantly violate society's rules, they are likely to become punished openly and overtly.

Volition's role in criminal law thus grows out from the role of the voluntary-involuntary dichotomy in the formation and persistence of social systems. Even though profoundly self-deceptive, it underlies the very essence of how we experience our humanness, and has evolved because of its facilitating effect on social cooperation, as well as evolution of justice. It is thus ultimately "utilitarian" at the deepest levels. Because of its unique emphasis on individual autonomy, it provides a nodal point in Anglo-American criminal law that modulates all the other factors.

Like the other models, however, it is insufficient in itself and requires other perspectives for balance. Though providing much of its strength, the self-deceptive elements undermine it at the same time. First, culpability, like freedom, can be seen as but a surface phenomenon.<sup>4, 25, 51</sup> The more we understand the causal factors beneath free choice, the less we can attribute fundamental blame. Also, without attempting to reconcile with our criminal element, we collectively disown our own potential for evil, and risk worsening it.<sup>52</sup> A medical model may provide some corrective here. And if we fail to adequately deter

potential offenders, society as a whole can become endangered, and utilitarian correctives are then needed to protect society, just as the retributive perspective had protected the individual. As noted by Ciccone and Clements, the needs of society and its individuals exist in a necessary tension that requires a functional balance.<sup>53</sup>

### **What Actually Happens: A Synthesis**

If the two primary premises of this paper are accurate, that volition is a fundamental paradox but still essential for justice, and that ethics and law require a balance between truth and collective self-deception, several predictions can be made and tested in the laboratory of history. First, whatever model dominates will vary with the prosperity and perceived safety of a particular society. Mortal threats will remove blinders, and permit a degree of utilitarian realism otherwise intolerable; e.g., only during Nazi bombardment could English society have permitted Churchill to willfully abstain from defending a city (Coventry) to preserve vital intelligence. At times of prosperity, an image of beneficence is more likely to dominate. It feels better, fosters cooperation and morale, and if illusory compared with what really happens, it is safe during good times. Retributive justice should provide a protective and stabilizing effect, occupying a middle ground in which specific predictions are less clear.

Second, contradictions within the law should betray law's evolved function of maintaining social illusions. When what

we do conflicts with what we say, the disparity should reveal aspects of reality that we wish to deny, and how we defend against them. A simple example is accidental death to another while committing a lesser offense. Although entirely unintended, it is punished as "felony murder."<sup>14</sup> Perhaps the implicit offense here is the implicit challenge to the idea that the world is or should be a safe place, one of Bellak's "vital delusions."<sup>26</sup> Blaming and punishing may restore our comfortable illusion of safety.

In summary, theories of justice have "existing practices in mind, and do not usually stray too far from the reflective views of ordinary citizens."<sup>54</sup> Hopefully, we can better understand these practices by gaining more data on the roles played by all the models of justice; how they evolved, intersect, and interdependently coadapt to changing circumstances. As in individuals,<sup>31</sup> to appreciate the interplay between manifest and latent processes may help us to understand the society in which we live, better promoting its justice and overall health.

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