

A justice system that denies free will is not based on justice

A recent article by Cashmore (1) addressed the ways in which the criminal justice system might be affected by not recognizing free will. The Oxford philosopher Bradley (2) examined this issue from a Darwinian perspective over 100 years ago. Like Cashmore (1), he found that the nonexistence of free will undermined the retributive principle of justice (2). Bradley (2) went on to note, however, that if the guilty are not morally culpable then justice, in its traditional sense, ceases to be the foundation of the judicial system, because justice predicates a person's ability to conform his behavior to an ethical standard: justice "is the assignment of benefit and injury according to desert; but this man is not a moral agent, and hence it is unjust to injure him. But, if he is not a moral agent. . .surely what follows is that justice is

indifferent to his case" (2). Without free will, the judicial system must be based on something other than justice. Perhaps, as Cashmore (1) proposes, it should be based on what is necessary to preserve "orderliness in society" (1). Under this system, the guilty are not, in fact, guilty, but neither are the innocent really innocent. It follows that they are not exempt from punishment, as Bradley (2) realized: to "remove the innocent is unjust, but it is not, perhaps, therefore in all cases wrong" (2). The same unsavory conclusion is reached by any argument that detaches justice from free will.

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1. Cashmore AR (2010) The Lucretian swerve: The biological basis of human behavior and the criminal justice system. *Proc Natl Acad Sci USA* 107:4499–4504.
2. Bradley FH (1894) Some remarks on punishment. *Int J Ethics* 4:269–284.

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