



# Indispensability of Free Will in Criminology

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## Commentary

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Whether or not we have belief in free will has an impact on our moral behavior. Whether offensive behavior is a result of rational choice and free will, or offensive action is a result of biological, psychological and sociological factors is a continuing debate among criminologists, and this reflects how belief in free will shapes our understanding of crime causation. Schafer points out to the free will problem which has been neglected by people who treats the issue of crime. The problem of freedom of will indeed reflects the ongoing debate on the contentious issue of causality in terms of determinism against indeterminism.

Determinism suggests that man's will- if there is such a thing as "will"- does not motivate action and that our conduct results from extraneous sources. Indeterminism, however, suggests that because the human will is not motivated by physical and environmental factors, man can do anything he wants to do; if "will" did not exist, causal reality would be an illusion Schafer S, et al. [1].

It seems that all penal systems stand on indeterministic assumptions. Schafer lists that criminal law operates on several assumptions:

1. That we humans have the free will to decide our action,
2. That we are intelligent and reasoning creatures who can recognize values and
3. That we can distinguish between right and wrong

Schafer proposes that only a moderate determinism or a moderate indeterminism will solve the problem of free will [1]. He says that "from a pragmatic point of view, and in order to approach the crime issue somewhat more safely, usable answers have to contain a mixture of both the indeterministic and the deterministic elements [1]." Schafer tells that it is safe to say that men do have freedom of will, but "it is a will that has been influenced, limited, and arrested even before it has evolved to the stage where man could will to will freely." Differentiation of traditions such as classical and positivist in the

study of criminology gives us a hint for assessing legal judgments. Positivist tradition addresses that offensive behaviours result from deterministic factors [1]; while classical tradition holds that offense is the result of cost/benefit analysis based on free will.

Considering several theories of criminology is an attempt to see how the belief of free will shapes our understanding of crime causation. Thanks to insoluble nature of free will, the criminological theories grounds on their own assumptions in terms of their attitude towards free will. Akers proposes that all theories of crime allow for some rational choice, but different theories give emphasis on different factors that limit free will. As a result, criminological theories differ from each other according to how they put emphasis on the factors which constrain free will.

Thinking that all of the offenders are always rational and they always behave rationally is misguided. For instance, when we regard the offenses committed salaciously, or juvenile crimes, crimes committed due to mental deficiency, genetic, psychological, and biologic problems, we can understand that people do not always make logical decisions and they do not always behave rationally. By the same token, rationality assumption proposed by classical tradition is criticised by other criminological theories with several dimensions [2,3].

Herein, existence of the environmental, biological, and psychological factors which influence human rationality lead us to the concept of the restricted rationality to reach a reconciliation between classical tradition and positivist tradition and a compromise by raising the views of *conditional free will* and *degree determinism* [2-4]. Herbert Packer says that "the law treats man's conduct as autonomous and willed, not because it is, but because it is desirable to proceed as if it were [5]". As I have mentioned above, all penal systems stand on the assumption that humans have free will, although

it might be a kind of fiction that penal systems presume. Dividing line between who is or is not responsible is not clearly defined and these arbitrary dividing lines in the law reflects our confusion on free will and determinism.

American legal system prefers free will as the basis for its underlying philosophy. "While most areas of law carry free will as a base assumption, criminal law relies on it to an even greater degree because it provides a philosophical basis for individual punishment [5]". Due to the fact that criminal justice theory relies on free will, any modification of free will concept may have considerable consequences. Thus, recent findings from genetics and how they tie in theories of free will and determinism is significant. Whether or not people have the belief in free will has an influence on their moral behaviors [5-7]. It should be discussed that how the intuition of free will shapes criminal justice system and reflects where you stand on crime causation [6]. It is noteworthy to keep in mind that which theoretical approach in criminology you follow is surely chosen in terms of your intuitions of free will.

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