THE MINDFUL WAY TO FREEDOM: AN ENQUIRY INTO THE METAPHYSICAL QUESTIONS BEHIND LEGAL RESPONSIBILITY

Abstract

This Article discusses the metaphysical basis of criminal responsibility and tries to determine whether free will or determinism should inform the debate of theories behind criminal sentencing from retribution to rehabilitation. The author also tries to draw a distinction between Western conception of free will which involves freedom of action from Eastern concept of free will which emphasises on freedom from desire while highlighting a compatibilist view based on mindfulness and rehabilitation.

I Introduction

ON 16TH DECEMBER 2012, an incident of utmost savagery took place in the Munirka region of South Delhi. A 23-year-old female physiotherapy student, later named "Nirbhaya" meaning "The fearless one", by the media, was returning from the movie theatre to her hostel, after watching the cinema 'Life of Pi' with a friend when they were offered a ride in a private bus. Six men, including a juvenile, beat Nirbhaya's friend unconscious before raping and torturing her with an iron bar as the bus drove loops through the city. She was dumped on the streets 45 minutes later with horrific internal injuries and died 13 days later in a Singapore hospital.

The gruesome violence of this attack shook the collective conscience of a society which since ancient times had prided itself in a reverence for female deistic figures but lately had been increasingly struggling with such episodes of abhorrent crimes against women. This atrocity was too brutal in its magnitude for the Indian civil society to remain silent any longer and it led to immense soul searching and sparked a feministic revolution in which people from all age and backdrops poured into the streets, protesting with candle marches and slogans, demanding justice and an end to this cycle of sadistic barbarity.

Termed as India's Arab spring, the "Nirbhaya Movement" triggered a complete overhaul of the Indian criminal justice system with faster prosecutions, speedier trails, harsher punishments and the dreaded capital sentence for repeat offenders of sexual crimes.

Last week, the death penalty of all the four surviving convicts in this infamous trial has been confirmed by the Supreme Court, terming it as one of the "rarest of rare" cases which completely warrants such harsh punishment.

Being a 20 something female student, living in Delhi myself, I cannot in good conscience say I do not find this judgement incredibly satisfying on a personal level, appealing as it does to my deepest primordial need for extracting the proverbial "just desserts". My conviction towards the retributive *lex talionis*[1] justification of this sentence becomes even more stronger when I recall snippets of the 2015 documentary on this issue titled the "India's Daughter". Directed by the British filmmaker Leslie Udwins, this BBC series interviewed one of the prime convicts of the case Mukesh Singh from his Tihar Jail cell. When asked about his motives and intentions, behind the crime, he simply laughed before saying, *"When being raped, she shouldn't fight back. She should just be silent and allow the rape. Then they'd have dropped her off after 'doing her', and only hit the boy.*[2]*"* He later added*, "A girl is far more responsible for rape than a boy … A decent girl won't roam around at nine o'clock at night … Housework and housekeeping is for girls, not roaming in discos and bars at night doing indecent things, wearing indecent clothes.*[3]*"*

Such a sickening interview leaves little scope for compassion towards the perpetrators of such violence.

And yet, pause and consider for a moment the fact that a background story by the media on the juvenile offender, brought to light a tragic story of childhood abuse, an alcoholic father, a merciless third grade schoolteacher who meted such intense corporal punishment for not doing his homework, that the minor lost his faith in any form of institutionalized education and later ran away from home and led a life of homeless destitute for many years before falling into the company of hardened criminals. Out of the other 5 major convicts Ram Singh committed suicide while another Vinay Sharma attempted to but was rescued by the prison authorities.

These facts may not completely soften our stance towards the nauseating acts of sexual violence committed by these offenders but they do make us pause and consider what sort of pathology could be behind such actions? Is it possible that Mukesh Singh's psychotic sinister laughter and entitled, objectifying attitude towards women signifies a deep seated psychological disturbance? Could the loss of a stable childhood of the juvenile offender have contributed to his propensity towards such violence? Is the act of suicide by the other two convicts somewhere a tacit acknowledgement of a hidden guilt, regret and shame at not being able to have a better control over their baser desires and behaviour?

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1 E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* 140 (The Lawbook Exchange, New Jersey1906).

2 Kevin Rawlinson, "Delhi gang-rape documentary airs early on BBC following objections" *The Guardian*, March 5, 2015.

3 Editorial, "Interview with Delhi gang rapist left 'stain on my soul', says British film maker" *The Daily Telegraph*, March 2, 2015.

Such details certainly give us a food for thought and a pause in our chain of thoughts of immense moral indignation. After all, can we for certain say that having been born in their exact similar life circumstances, and biologically trading places with them atom for atom, would we have turned out different?

This case is a somewhat distant reminder of the 2007 US Hayes trial where two career criminals Steven Hayes and Joshua Komisarjevsky were convicted of murder, arson, rape and sexual assault of a Connecticut family. During that trial as well, Hayes attempted suicide while Komisarjevsky was reported to be a victim of childhood physical and sexual abuse himself[4].

In roughly the same timeframe another seemingly normal American schoolteacher was sentenced to prison for molesting young children, visiting child pornography websites and soliciting prostitutes. Before he could start his prison sentence, however, he was admitted to hospital complaining of terrible headaches. In turned out he had an egg-sized brain tumour, and while remanded in psychiatric care, he had an operation to have it removed. His deviant behaviour stopped. Throughout all this experience, his conscious mind was unaware of what was driving his desires and actions.[5]

What is common in all the above cases is that for the same act of sexual violence, finding a neurological cause, a psychological disorder or a tragic life story of childhood abuse and neglect, dramatically shifts our moral institutions and notions of free will and responsibility.

After all, how can we make sense of our lives and hold people accountable for their choices given the unconscious origins of our conscious minds?

Our conviction towards vindictive retributivism becomes further challenged when we consider more of such findings of neurocriminology which prove that crime is only partially a social and environmental problem, and biological factors along with medical conditions play a significant role.[6]

Murderers, for instance, tend to have poorer functioning in the prefrontal cortex—the "guardian angel" that keeps the brakes on impulsive, disinhibited behavior and volatile emotions. Low number of neurons in the prefrontal cortex is a leading cause of impaired ethical decision making. A study in 2000 determined that people with a history of persistent antisocial behavior had an 11 percent reduction in the volume of gray matter

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4 Sam Harris, *Free Will* 17 (Simon & Schuster, New York 2012).

5 J. M. Burns and R. H. Swerdlow, "Right Orbitofrontal Tumor with Pedophilia Symptom and Constructional Apraxia Sign", 60(3) *Archives of Neurology*,172 (2003).

6 Nicole Hahn Rafter, *The Criminal Brain: Understanding Biological Theories of Crime* 217 (New York University Press, New York, 2008).

in the prefrontal cortex, while white matter volume was normal[7]. Similarly, a 2009 meta-analysis study, which pooled together the findings of 12 anatomical brain-imaging studies conducted on offender populations, found that the prefrontal cortex of the brain is indeed structurally impaired in offenders.[8]

Of course, not everyone with a particular brain profile is a murderer—and not every offender fits the same mold. Those who plan their homicides, like serial killers, tend to have *good* prefrontal functioning. That makes sense, since they must be able to regulate their behavior carefully in order to escape detection for a long time.

So, what explains coldblooded psychopathic behavior? About 1% of us are psychopaths—fearless antisocials who lack a conscience. A recent study published that psychopaths had an 18% smaller amygdala, which is critical for emotions like fear and is part of the neural circuitry underlying moral decision-making[9]. In subsequent research by Andrea Glenn and Professor Adrian Raine found this same brain region to be significantly less active in psychopathic individuals when they contemplate moral issues. Psychopaths know at a cognitive level what is right and what is wrong, but they don't feel it.

Over the course of modern history, increasing scientific knowledge has given us deeper insights into epilepsy, psychosis and substance abuse, and has promoted a more humane perspective. Just as mental disorders were once viewed as a product of evil forces, the "evil" we see in violent offenders today may someday be reformulated as a symptom of a physiological disorder.

There is no question that neuro-criminology puts us on difficult terrain, and some wish it didn't exist at all. How do we know that the bad old days of eugenics are truly over? Isn't research on the anatomy of violence a step toward a world where our fundamental human rights are lost? Will acknowledging biological risk factors for violence result in a society that takes a soft approach to crime, holding no one accountable for his or her actions? And does such an approach has a potential of using biology to stigmatize ostensibly innocent individuals? Either way, doesn't a seeming effort in either of this direction simply negates the very concept of free will and the idea of the responsibility of human agency?

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7 A. Raine, T. Lencz, S. Bihrle, et al., "Reduced prefrontal gray matter volume and reduced autonomic activity in antisocial personality disorder" 57 *Archives of General Psychiatry*119–127 (2000)

8 Y. Yang, & A. Raine "Prefrontal Structural and Functional Brain Imaging Findings in Antisocial, Violent, and Psychopathic Individuals: A Meta-Analysis" 174(2) *Psychiatry Research* 81-88 (2009)

9 Y. Yang, A. Raine, K.L. Karr, et. al. "Localization of Deformations within the Amygdala in Individuals with Psychopathy" 66(9) *Archives of General Psychiatry* 986-94 (2009)

This debate as to the ultimate cause of human action has been at the core of Criminal Jurisprudence philosophy for centuries[10]. Most of this debate centres upon what constitutes freedom of action, and whether an individual has the capacity to choose between alternatives.[11]

Without the ability to choose between different actions, punishing children or the insane simply because they deserve it seems to make less moral sense, and our focus tends to shift towards preventing harm from occurring and away from inflicting suffering on the actor that caused the harm. But what if even seemingly sane, rational adults, like us, are unable to act except as the neurochemistry of our brains, which we are wholly unaware of, leads us to act? Would a moral and just legal system punish us—purely for vengeance's sake—for something beyond our control?

These are some of the questions, this paper attempts to explore.

II Free Will, Determinism and Responsibility: Conflicting Concepts or Friends in Tandem?

"Free Will is the most difficult and the most important philosophical problem confronting us today. It's important because of the long-standing tradition that free will is a prerequisite for moral responsibility. So, our system of law and order, of punishment and praise and blame, promise-keeping, promise-making, law of contracts, criminal law – all of this depends on one notion or another of free will."[12] *- Daniel Dennett*

A neurobiological study of criminal minds not only questions our assumptions of a freely willed universe but also compels us to redefine our notions of responsibility. As neuroscientist Sam Harris says of rapists and murderers, *'To say that they were free not to rape and murder is to say that they could have resisted the impulse to do so (or could have avoided feeling such an impulse altogether) – with the universe, including their brains, in precisely the same state it was in at the moment they committed their crimes*[13]*.'*

This is not to say that free will is entirely absent but as the noted neuroscientist Dr. Adrian explains: *"Free will may exist (it may simply be beyond our current science), but one thing seems clear: if free will does exist, it has little room in which to operate. It can at best be a small factor riding on top of vast neural networks shaped by genes and environment. In fact, free will may end up*

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10 Richard C. Boldt, "The Construction of Responsibility in the Criminal Law", 140 *U. PA. L. REV.* 2245, 2247 (1992) , It contents that the criminal law creates and maintains a society based on the notion of free will).

11 *Id.* Another way to phrase this conception of freedom is the ability of the individual to do otherwise.

12 Daniel C. Dennett, *Intuition Pumps and Other Tools for Thinking* 408 (Allen Lane, London, 2013).

13 *Supra* note 5.

being so small that we eventually think about bad decision-making in the same way we think about any physical process, such as diabetes or lung disease."[14]

But will negating free will to the background in this way, diminish our notions of responsibility? Another neuroscientist Sam Harris disagrees, *"We fight natural epidemics and the occasional wild animal, without attributing free will to them. Clearly, we can respond intelligently to the threat posed by dangerous people without lying to ourselves about the ultimate origins of human behaviour."*

The popular conception of free will seems to rest on two assumptions:

1. Each of us could have behaved differently than we did in the past, and
2. We are the conscious source of most of our thoughts and actions in the present.

However, even a moment of conscious self-introspection makes us realize that we cannot choose most of our thoughts and volitions. They arise spontaneously and its almost impossible to trace their point of origin in our conscious minds.

What this implies is that either our wills are determined by prior causes or they are a product of chance; either way how are we responsible for them? If I am perceived as a good person because I do good deeds which arise out of my compassionate volition, can I really take credit for it? Similarly, how do my bad actions make me responsible if they arose not out of a conscious exercise of free will? Rather than blameworthiness, don't I then deserve sympathy?

Another scientist, Richard Dawkins also argues in the same vein that, *'a truly scientific, mechanistic view of the nervous system makes nonsense of the very idea of responsibility, whether diminished or not. Any crime, however heinous, is in principle to be blamed on antecedent conditions acting through the accused's physiology, heredity and environment … Assigning blame and responsibility is an aspect of the useful fiction of intentional agents that we construct in our brains as a means of short-cutting a truer analysis of what is going on in the world in which we have to live."*[15]

Yet when I pause and re-consider again my feelings about the Nirbhaya judgement, its very difficult for countless like me to give up on the notion of a just desert. Like I quoted earlier, sure one can feel some degree of sympathy for the juvenile offender on account of his dysfunctional family background, troubled childhood and the education system which failed to educate him.

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14 Adrain Raine, *The Anatomy of Violence: the Biological Roots of Crime* 306-315 (Vintage Books, London 2014)

15 Richard Dawkins, 'Let's All Stop Beating Basil's Car', *available at*: www.edge.org/q2006/q06_9.html (Visited on July 29, 2018)

However, how much sympathy can one muster for convicts like Mukesh Singh who thinks that girls are meant for nothing but a life of domestic servitude and if we dare step out of the confinements of the four walls of our homes, be it for education, employment or entertainment, we deserve to raped!

The reason, I think, why it is so hard to banish ideas of desert altogether is that to be human is to respond both emotionally and morally to each other, to have what philosopher P. F. Strawson describes as 'the non-detached attitudes and reactions of people directly involved in transactions with each other'.[16] Strawson argues that not only is it desirable that we have such responses, it would be futile to try to rid ourselves of them.

So, when scientists like Sam Harris call upon us to shift our attitudes from blame to sympathy, they are not asking us to give up all notions of moral and criminal responsibility. Instead they exhort upon us to recognize its sliding degrees and not consider responsibility as an all or nothing concept.

Let us consider the following examples of human violence:

1. A four-year-old child playing with his father's gun, accidentally shoots it and kills a young woman. The gun was kept by the parents fully loaded in an unlocked and easily reachable drawer.
2. A twelve-year-old boy who has been a victim of intense emotional and physical abuse, takes the gun from his father's drawer and shoots a young woman who was mocking his personality and mannerisms.
3. A 25-year-old man who had been a victim of continual abuse intentionally shoots and kills his wife who cheats on him with another man.
4. A 25-year-old man with wonderful parents and a good upbringing fires a fatal shot at a young woman he had never met before, just "for the fun of it."
5. A 25-year-old man with wonderful parents and a good upbringing fires a fatal shot at a young woman he had never met before, just "for the fun of it." An MRI of his brain reveals a golf ball sized brain tumour in his medieval prefrontal cortex(brain's centre for emotional and behavioural impulses).

In each case, a young woman dies and in each case her death was the cause of events arising in another human being's brain. Yet do we feel the same degree of moral outrage in each case? Clearly not! We suspect that a 4-year-old child cannot truly kill someone on purpose and the intentions of a 12-year-old boy do not run as deep as they do of an adult. In both cases our criminal system would acknowledge the fact

16 P. F. Strawson, "Freedom and Resentment" in Derk Pereboom (ed.), *Free Will* 151 (2009).

that the psyche of the culprits was not fully developed, and could no way be compared to that of a cold-blooded adult murderer.

Similarly, in case 3, the history of childhood abuse and the act of betrayal by the victim to some degree mitigates the culpability of the offender and arouses our sympathy. We see it as a crime of passion, a reprehensible act certainly but one committed out of "grave and sudden provocation", a legal defence which calls for the act to be considered a "culpable homicide not amounting to murder."

The 4th case however calls for no such excuse and is a clear illustration of the working of the minds of a criminal psychopath. But then again if we refer to the neurocriminological study of Prof Adrain Raine, psychopaths have an18% smaller amygdala, which is critical for emotions like fear and is part of the neural circuitry underlying moral decision-making[17].

The last and final illustration also points to a psychopathic behaviour but the diagnosis of a brain tumour at such a critical neural junction nonetheless, completely redirects our moral compass and we are easily able to see him as a victim of his own biology.

What these examples prove is that despite the biological and behavioural causes leading to the same consequence, the death of a young woman by a gunshot wound, we adjudge each of the offenders with gradations of moral responsibility and guilt, based on their *conscious intentions to do harm?*

Why is the conscious intention to do harm so blameworthy? Because what we do after conscious planning tends to most fully reflect the prominent predispositions of our mind – our beliefs, desires, goals, prejudices etc[18]. Thus, to say I was responsible for my behaviour is simply to say that what I did was sufficiently in keeping with my thoughts, intentions, beliefs, and desires to be considered an extension of them.[19]

However, the interesting thing which follows from this line of logic is that intentions themselves appear to be metaphysically neutral, i.e., once it is established that you have a harmful intention, it does not matter if it arose out of inevitable biological or environmental causality or was randomly produced or freely willed[20].

So, though you are punished for your actions which have resulted from your intentions, at the end of the day, the idea of responsibility is quite detached from any concept of determinism or free will.

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17 *Supra* note 10.

18 *Id.* at *52*

19 *Id.* at 49

20 Daniel Dennett, *The Intentional Stance* 17 (MIT Press, Massachusetts,1987).

As, the philosopher Julian Baggini says, *"You deserve what is appropriate. It is 'suitable reward or punishment', and so is only loosely connected with responsibility. Someone deserves to be paid the appropriate wage for a job, for example, whether free will is an illusion or not*[21]."

This way of thinking has an antecedent in Aristotle, as philosopher Michael Frede explains. According to Aristotle, 'for us to be responsible for what we do, our action has to somehow reflect our motivation', but that does not require us to postulate that our motivation is the product of free choice. 'Responsibility does not involve a will,' says Frede.[22] After all, despite our profoundest belief in the notions of free will, we all know that the disorders of brain can trump the best intentions of mind.

Now, on the surface, this may appear a dicey notion because it would seem very wrong to hold one accountable for their intentions if they are not freely and intentionally intended. This is what the compatibilist Harry Frankfurt calls the "principle of alternate possibilities" ("PAP"), according to which a "person is morally responsible for what he has done only if he could have done otherwise.[23]"

Frankfurt challenges this notion by arguing that just because a person could not have done otherwise does not imply that he is not morally responsible for his actions. He supports this by a Black, secretly implants a chip in Jones's brain, so Black can monitor and manipulate Jones's neural/mental states, should Jones attempt to behave in ways that displease Black. As it turns out, of his own accord Jones makes a certain decision that pleases Black (say, he votes Democratic) and Black does not intervene. But because Black has effectively removed Jones's alternatives, Jones could not have done otherwise, even if he had tried. It seems intuitive (to most)[24] that because Black did not intervene, Jones "acted on his own" or "for reasons of his own," as Frankfurt puts it,[25] and so Jones is responsible for his choice and action, though Jones could not have done otherwise.

To support this intuition, Frankfurt states, "Now if someone had no alternative to performing a certain action but did not perform it because he was unable to do otherwise, then he would have performed exactly the same action even if he could

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21 Julian Baggini, *Freedom Regained: The Possibility of Free Will (*CPI Group Ltd., United Kingdom,2015).

22 Michael Frede, *A Free Will* 25-26 (University of California Press, California, 2011).

23 Frankfurt, Harry. "Alternate Possibilities and Moral Responsibility," 66 *Journal of Philosophy* 829-839 (1969).

24 John Martin Fischer, "Frankfurt-type Examples and Semi-compatibilism." in Robert Kane (ed.) *The Oxford Handbook of Free Will* 281-290. (2002). Fischer argues that it is as intuitive as it gets, and one either gets it or doesn't, like jazz, but there have been many challenges to this counterexample in the literature.

25 *Supra* note 24 at 838.

have done otherwise."[26] That is, because Jones would have made the same choice even if he could have done otherwise, the fact that he could not have done otherwise does not explain his choice. Likewise, even though determinism precludes one's doing otherwise, the fact that one could not do otherwise does not necessarily explain why one does what one does. Thus, determinism is technically irrelevant to moral responsibility, and PAP is false.

Another way to look at this problem is to let go of our notion that the only real responsibility is the ultimate responsibility. Just as free will is not an absolute factor but diminished by various biological causes, so is responsibility. To look at the idea of responsibility as an all or nothing construct is a folly because responsibility is always a matter of degree. Any conscious decision making requires a fully functioning prefrontal cortex, but as the neuroscientist Dick Swaab points out, its development is 'a slow process, continuing at least until the age of twenty-five. It's only at that age that an individual is fully equipped to control their impulses and make moral judgements[27].' This has important implications on criminality because it shows that people with an underdeveloped prefrontal cortex do not lack all the capacities necessary for free will. It's just that they do not have them all, or they are not fully functioning. Agency, and so responsibility, is diminished, not absent. There is no binary distinction between those who have diminished or full responsibility. Rather, it is 'a sliding scale', one on which individuals can move. Like Dr Gwen Adshead, a forensic psychotherapist says regarding her treatment of criminally insane, *'I want to both respect [the patient's] autonomy as an individual and help her regain autonomy in terms of acting more safely in the future. I have to treat her as a person with intentions and actions.*[28]' She insists that the criminally insane are therefore not really in a category of their own, but just at the more extreme end of the spectrum of diminished responsibility.

So, whether you raped and murdered because of defective neural wiring in your brain or whether you did so even after conscious deliberations the point ultimately no longer remains whether you are the ultimate and independent cause of your actions, but the point becomes that you have the dangerous psyche of a rapist and a murderer and you are a threat to the society at large.

This shifts the parameters of the debate out of the metaphysical jargon to the realistic pragmatics of managing harm, for those who have caused harm intentionally are likely to do it again under similar set of trigger factors and those who harm unintentionally are genetically or neurologically predisposed to harm again. So, in both cases the concept

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26 S*upra* note 24 at 837; emphasis added

27 Dick Swaab, *We Are Our Brains* 396 (Allen Lane, London ,2014).

28 Gwen Adshead, 'Vice and Viciousness', 15(1) *Philosophy, Psychiatry, & Psychology 23-26* (2008).

of intention becomes immaterial. What really matters is how we prevent such harm from happening again and transform these people to productive members of society.

Thus, our traditional notions of vindictive retribution no longer make sense and instead the present system of sentencing needs to shift more towards a compassionate rehabilitation.

After all, as the great Mahatma Gandhi reminded us:

"Man and his deed are two distinct things. Whereas a good deed should call forth approbation and a wicked deed disapprobation, the doer of the deed, whether good or wicked, always deserves respect or pity as the case may be. 'Hate the sin and not the sinner' is a precept which, though easy enough to understand, is rarely practiced, and that is why the poison of hatred spreads in the world. An eye for an eye will one day make the whole world go blind. It is quite proper to resist and attack a system, but to resist and attack its author is tantamount to resisting and attacking oneself. For we are all tarred with the same brush, and are children of one and the same Creator[29]*."*

Thus, a more profound understanding of the early biological causes of violence can help us take a more empathetic, understanding and merciful approach toward both the victims of violence and the offenders themselves. In doing so, we do not expect the legal system to exculpate one from the consequences of their intended actions but rather to shift its understanding towards a more progressive, scientifically consistent, deeper and more compassionate view of our common humanity.

Now some might argue that looking at the notions of morality and criminal responsibility via the lens of the pragmatics of managing harm is not appropriate. However, as Patricia Churchland argues in her book *Braintrust* that 'what we humans call ethics or morality' is a 'scheme for social behaviour'[30]. The very development of the concept of morality was for social problem solving in an amicable manner. Its purpose is to enable us to live together for mutual benefit, not harm. So in this sense morality is not on an opposite spectrum to pragmatism but rather integral to it.[31] but that pragmatism is integral to morality. And once you accept that, you can see that justifications of all sorts of social control, punishment, blame and so forth need not rest on any deep metaphysical assumptions, but merely on what is required to keep us from each other's throats. So our concerns about free will need not be as threatening to the notions of morality and ultimately criminal responsibility which draws from it as we might think them to be.

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29 M.K. Gandhi, *The Story of My Experiments with Truth,* (Fingerprint Publishing, New Delhi, 2009)

30 Patricia Churchland, *Braintrust* 9 (Princeton University Press, New Jersey, 2011).

31 Julian Baggini, 'Interview with Patricia Churchland', 57(2) *The Philosophers' Magazine 63* (2012).

III Reconceptualising Sentencing through the Prism of Neuroplasticity

These notions are further reinforced when viewed from the prism of neuroplasticity and mindfulness- one of the most pioneering scientific discoveries of our times and yet in many ways a restating of an ancient spiritual wisdom! Neuroplasticity signifies that the brain is constantly generating new neurons and is therefore constantly changing[32]. Our Brain is adaptable, hence "plastic", which means:

1) Our brain is constantly being reshaped throughout our lives by each new experience and thought process.

2) We can actually train our mind to train our brain to train our mind to lead a better life. It signifies that at any stage of life we all have the ability to learn and change by rewiring our brains.

This new paradigm contrasts with traditional ideas of the human brain being a fixed and essentially limited system that only degrades with age. New neurons can appear in certain parts of the brain up until the day we die[33]. The adult brain is not entirely "hard-wired" with fixed neuronal circuits. There are many instances of cortical and subcortical rewiring of neuronal circuits in response to training as well as in response to injury. The evidence for neurogenesis is mainly restricted to the hippocampus and olfactory bulb, but current research has revealed that other parts of the brain, including the cerebellum, may be involved as well.[34]

The recent branch of neuroscience borrows from the concept of localization in astronomical studies, propounded by the astronaut Galileo Galilee. According to Norman Doidge, Galileo's studies of space and its celestial bodies led him to believe that "all nature functioned as a large cosmic clock" and that these bodies "began to explain individual living things, including our bodily organs, mechanistically".[35] He saw the universe as a giant machine rather than a living organism. When applied to the brain, this means that its parts have hardwired functions as a machine has parts designated to a certain area.[36] According to this theory, the functional specialization of

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32 Jeffrey M. Schwartz, Sharon Begley, *The Mind and the Brain: Neuroplasticity and the Power of Mental Force* (Harper Perennial Publication, New York, 2003).

33 P. Rakic,"Neurogenesis in adult primate neocortex: an evaluation of the evidence" *Nature Review Neuroscience* (2002).

34 Giovanna Ponti, Paolo Peretto, Luca Bonfanti, "Genesis of Neuronal and Glial Progenitors in the Cerebellar Cortex of Peripuberal and Adult Rabbits" 3 *PloS ONE* 649-679 (2008).

35 Maurice Finnochiaro, *The Galileo Affair: A Documentary History* 300, 330 (University of California Press, California, 1998)

36 Norman Doidge, *The Brain that Changes Itself* 22 (Penguin Books, Australia, 2007)

each brain area could mean that localized damage to one area would lead to a loss of the function that it served and enhancement in the physiology of an area would raise its associated functionality. Simply put we have different pathways that can facilitate different behaviors. Overuse the regions associated with depression, and the pathways for happiness—which aren't being used—become weaker.

And this localized function of different brain areas can be improved by individual synaptic connections which are constantly being removed or recreated, largely dependent upon the activity of the neurons that bear them. The activity-dependence of synaptic plasticity is captured in the aphorism which is often used to summarize Hebbian theory: *"neurons that fire together, wire together"/"neurons that fire out of sync, fail to link"***.** If two nearby neurons often produce an impulse in close temporal proximity, their functional properties may converge. Conversely, neurons that are not regularly activated simultaneously may be less likely to functionally converge[37].

This process of neurogenesis (the birth of new neurons) and neuroplasticity (the malleability of neural circuits) not only gives great insights into the genesis behind antisocial and criminal behavior but lends further support to a more therapeutic and rehabilitative sentencing mechanism.

IV Neuroplasticity and Mindfulness

"As an archer aims an arrow, a carpenter carves wood, the wise shapes their life."- Dhammapad

"By focusing on wholesome thoughts and directing them we can influence and shape the plasticity of our brains beneficially." - Dr. Richard Davidson

The convergence of statements of an ancient Buddhist Scripture and a world renowned Neuroscientist represents not merely a theoretical reconciliation of science and spirituality but are instead the result of a series of experiments led by Dr. Davidson in cooperation with the Dalai Lama on effects of meditation on the brain[38]. The findings are collated below:-

30 minutes of meditation per day can:-

1) Increase grey matter/cortical thickness in

    i. Anterior Cingulate Cortex: A structure located behind the brain's frontal lobe, it controls Self Regulatory processes including the ability to monitor attention conflicts and allows for more cognitive flexibility.

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37 N. Caporale, Y. Dan "Spike Timing-Dependent Plasticity: A Hebbian Learning Rule" *Annual Review of Neuroscience* (2008).

38 A. Lutz, L.L. Greischar *et. al.* "Long-Term Meditators Self-Induce High-Amplitude Gamma Synchrony During Mental Practice" *avaialble at* http://www.pnas.org/content/101/46/16369 *(Visited on July 23, 2018)*

ii. Prefrontal Cortex: Responsible for executive functioning such as planning and problem solving as well as emotional regulation.

iii. Hippocampus: Part of the limbic system which governs memory and learning and neurological response to stress and depression.

2) Decreases the size of Amygdala-Our brain's fight or flight centre and the seat of our fearful and anxious emotions.

3) Diminishes or weakens the functional connections between the amygdala and the pre-frontal cortex. This allows for stilling of our Default Mode Network (DMN), which is also sometimes referred to as our wandering "Monkey Minds." The DMN is active when our minds are directionless as it goes from thought to thought, a response that is sometimes likened to rumination and not always adaptive with regards to overall happiness.

4) Improve functionality in brain's neural pathways which leads to less reactivity, high attention and high concentration.

The effects of meditation on a neurotransmitter level, have already been well established and documented in terms of increasing serotonin[39], decreasing cortisol[40] and in regulating addiction[41] and neuroticism [9, 10]

This research further reinforces the fact that the brain we're born with is not static and the neural circuitry cards we're dealt are not the only ones we can play long-term. Our brain is designed to adapt constantly and meditation is a beautiful technique to accomplish this change for the positive. Emotions are educable. Traits of well-being and happiness like empathy, kindness, warm-heartedness can be as much an acquired skill as learning a new language or playing the piano. As Dr Hanson's Project shows, the brains of Buddhist monks has an increased ability to process awareness to stimuli and react with very high levels of compassion. The very act of meditation trains their brain to be more attuned to the needs of others.

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39 Lowered serotonin levels have been associated with impulsive aggression and attempted suicide. Post-meditation study has shown increased serotonin metabolites. David W. Orme-Johnson, The Use of Meditation in Corrections, *International Journal of Offender Therapy and Comparative Criminology*, 1–3 (2010).

40 *Ibid.,* States or behaviors associated with aggression, such as hostility and alcohol consumption, have also been correlated with elevated cortisol secretion, and [Transcendental Meditation] practice has acute and long-term effects of reducing cortisol.

41 *See* Sarah Bowen et al., Mindfulness meditation and Substance Use in an Incarcerated Population, 20(3) *Psychology of Addictive Behaviors*, 343 (2006); Tracy L. Simpson et al., 20(3) Symptoms, Substance Use, and Vipassana Meditation Among Incarcerated Individuals, *Journal of Traumatic Stress*, 239 (2007).

The impact that mindfulness exerts on our brain is borne from routine: a slow, steady, and consistent reckoning of our realities, and the ability to take a step back, become more aware, more accepting, less judgmental, and less reactive. Just as playing the piano over and over again over time strengthens and supports brain networks involved with playing music, mindfulness over time can make the brain, and thus, us, more efficient regulators, with a penchant for pausing to respond to our worlds instead of mindlessly reacting.

Mindfulness when flows effortlessly into our lives induce plasticity in the brain. The "conscious appraisal" of thought which one when sitting in meditation is trying to apply with concentrated crusade gradually becomes automatic and translates into greater levels of happiness, calm, contentment and self-satisfaction.

"The more you sit in meditation, the more your everyday non-meditative life looks like meditation."- Dr. Fadel Zeidan, Department of neurobiology and anatomy at Wake Forest School of Medicine

V Penalize the Offense, Purge the Offender

"The people in prison are us. They're not monsters. And, more importantly—whether we want them to or not—they're getting out. So do you want them to come out angrier and meaner" [42]

A 2013 study, Kent Kiehl of the University of New Mexico, looking at a population of 96 male offenders in the state's prison system, found that in the four years after their release, those with low activity in the anterior cingulate cortex—a brain area involved in regulating behavior—were twice as likely to commit another offense as those who had high activity in this region. Such a finding imposes upon the criminal justice system a responsibility of providing adequate prison environment which would help to modify and remedy those aspects of convict's personality which make him an offender and also compel criminal justice administration to reconceptualise sentencing from a coercive mechanism to a rehabilitative one[43].

Rehabilitation is an attempt to train and refrain the convicts till they attain maximum functional capability. This view that incarceration should be used to improve the individual to help him return in a more well adjusted way to the mores of society is increasingly gaining momentum with the prison Vipassana courses[44].

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42 Roberta Richman, *Prison Programs Video*, *http://www.prisonmindfulness.org/projects/ri-doc/* (Visited April 2, 2015).

43 Philosophical Foundations of Law and Neuroscience, Edited by Dennis Patterson and Michael S. Pardo, Oxford University Press

44 Stephen Holden, "Prisoners Finding New Hope in the Art of Spiritual Bliss". *The New York Times*. July 8, 2005.

Vipassana, a Pali word, origination from the Sanskrit prefix "vi" and the verbal root "pas" refers to a special type of insight which helps us to see things as they really are to grasp a complete, firm, unshakable inner understanding into the true nature of reality[45]. It is one of India's most ancient techniques of meditation rediscovered by Gautama Buddha more than 2500 years ago. This non-sectarian technique aims for the total eradication of mental impurities through a self exploratory journey of mindful attention on one's breath and bodily sensations and the resultant highest happiness of full liberation. Vipassana meditation consists of the experiential observation of mind and matter (nama and rupa) in their aspects of impermanence, dissatisfaction and lack of an inherent, independent essence or self. To see through the mode of impermanence means to examine things as to whether they are permanent. To see through the mode of dissatisfaction means to examine things as to whether they are satisfactory or are imbued with suffering. To see through the mode of non-self means to examine the phenomena that are the objects of the meditation to see if they have a permanent, isolated, and enduring entity. In other words, to see through non-self relates to having a sense of non-doership and a sense of non-possessiveness while examining things.

The foundation of Vipassana meditation is "sila—moral conduct". The practice is strengthened through "samadhi—concentration of the mind". And the purification of the mental processes is achieved through "pañ?—the wisdom of insight." Thus, Vipassana meditation is the purification of the mind, cultivating the highest form of awareness—the total perception of the mind-matter phenomena in its true nature and the observation of things as they are. Through Vipassana anyone, irrespective of race, caste, or creed, can eliminate those tendencies that have woven so much anger, anxiety, and fear into our lives.

This technique of body scan meditation also finds roots in respectable modern psychotherapy called mentalization. Mentalizing is the process by which we make sense of each other and ourselves, implicitly and explicitly, in terms of subjective states and mental processes. It is a profoundly social construct in the sense that we are attentive to the mental states of those we are with, physically or psychologically.[46]

Nicola Lacey and Hannah Pickard have especially done considerable work in arguing for a therapeutic approach to punishment in line with therapeutic techniques that are successful with personality disorder patients.[47]

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45 Robert E. Buswell JR, Robert M. Gimello (eds.) , *Paths to Liberation. The Marga and its Transformations in Buddhist Thought* (Motilal Banarsidass Publishers, Delhi, 1994).

46 Peter Fongay, Anthony Bateman, "Mentalization Based Treatment for Borderline Personality Disorder" ,1 *British Journal of Psychiatry*, 188(2006).

47 Nicola Lacey Hannah Pickard , "From the Consulting Room to the Court Room? Taking the Clinical Model of Responsibility Without Blame into the Legal Realm", 33(1) *Oxford Journal Legal Studies* 1-29 (2013).

This technique of self transformation through self observation by exploring the deep interconnection between the mind and the body was introduced in Tihar Jail as a rehabilitative measure with astounding success. It helped the inmates to look within themselves and understand the nature of how one grows or regresses, how one produces suffering or frees oneself from suffering.

The pivotal role of this disciplined attention based self exploratory journey in producing a balanced mind filled with love, peace and compassion was recorded in a documentary Doing Time, Doing Vipassana. It inspired similar rehabilitative endeavours in USA in Donaldson Prison of Birmingham, Alabama and North Rehabilitation Facility in Seattle[48].

Both these prison projects clearly document how meditation directly furthers rehabilitation goals, namely:-

1) Help the prisnores cope better with environmental stressors

2) Equip them with the tools to explore meaningful goals.

Prisoners are often individuals who struggle with their control over emotional responses and ability to cope with circumstances;[49] meditation empowers them to take control of their lives. An internalized locus of control, along with meditation's tendency to reduce aggression, stress, and addiction, helps prisoners to reconstruct their identities, confront feelings of remorse and guilt, have a firmer grasp upon their anger and hostility along with considerable reduction in neurotic predisposition thus helping them improve their lives and developing the skills necessary to return to the mainstream society[50].

"A reformative philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner's personality through a technology of fostering the fullness of being such a creative art of social defense and correctional process activating fundamental guarantees of prisoner's rights is the hopeful note of national prison policy struck by the constitution and the court." – Justice V. Krishna Iyer

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48 Kiran Bedi, *Its Always Possible: Transforming One of the Largest Prisons in the World* 307 (Sterling Publishers Pvt. Ltd., New Delhi 2005).

49 *See* Linda A Teplin et al., "Psychiatric Disorders in Youth in Juvenile Detention", 59 *Arch. Gen. Psychiatry* 1133–1143 (2002); Elizabeth Cauffman et al., "Psychological, Neuropsychological and Physiological Correlates of Serious Antisocial Behavior in Adolescence: The Role of Self-Control", 43(1) *Criminology* 133–176 (2005).

50 *Supra* note 49.

VI Free Will: From Freedom of Action to Freedom from Desire

This approach towards a rehabilitative form of sentencing seems very humane and compassionate but one might still ask where it stands on our earlier determinism versus free will spectrum. Even though in the first part of the article we argued that responsibility is in a lot of ways detached to the metaphysical conception of free will and determinism, a liberalist may still contend that trying to bring therapy into punishment rather than seeing people as free responsible agents and retributively punishing them is committed to denying offenders' agency and thereby to opening the door to manipulating them in nightmarish ways.

To placate these qualms, we first need to understand the difference between the Eastern and Western philosophical conceptions of free will. The Western notion of free will is generally focused on the freedom of action but in Eastern philosophy, free will is understood more in terms of mental freedom, i.e., the West looks at free will as the volition to do as one wants to satisfy one's desires while the Hindu Buddhist notion of Moksha or Nirvana (Liberation) talks about freedom from those wants and desires themselves.

Noted Indian philosopher, J. Krishnamurthy explains it with his own beautiful imagery:

"One finds this undying, unalterable happiness when one is liberated from the tyrannies of the self - its desires and longings. As the potter molds the clay to the delight of his imagination, so can man mold his life through the desire of his heart."[51]

Just like philosophical thinker Isaiah Berlin[52], conceptualized liberty as a convergence of two opposite perspectives, a negative condition in which an individual is protected from tyranny and the arbitrary exercise of authority, while also a positive form of having the means or opportunity, rather than the lack of restraint, to do things, similarly our notion of free will too cannot simply be understood in terms of only the freedom to act according to one's own volition without the right awareness, education, environment and physical structure to have a regulative capacity over those volitions.

As Julain Baggini explains, *"A person dumped in the middle of the dessert has the negative freedom to walk out of it, because no one is standing in his way. But without shade water and food to convert this into a positive freedom, it is meaningless."*

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51 J. Krishnamurthy, "How is Freedom to be Understood and Lived, Third Public Talk", *available at :* http://www.jkrishnamurti.org/krishnamurti-teachings/view-text.php?tid=1293&chid=992 (visited on jaunary 05, 2018).

52 Isaiah Berlin *, Two Concepts of Liberty (*Clarendon Press, London, 1959).

The closest link to the Eastern notions of liberation can be found in Harry Frankfurt's compatibilist's views of free will and determinism. As we discussed in the first section, Frankfurt completely negated the PAP notion of free will. He then went on to construct what he calls the positive conception of free will, having nothing to do with determinism but consistent with deterministic causation which can briefly be explained as follows:

1. "Freedom of action" as accord between action and volition (say, when one does what one wants to do),
2. "Freedom of the will" as accord between volition and metavolition (say, when one approves one's volition), and
3. "Weakness of will" as discord between action and metavolition (say, when one eats gluttonously, but disapproves of gluttony).

Frankfurt stated that since determinism can be true in either and or all of these cases, essentially determinism is independent of the freedom of will and moral responsibility.

If we go into some of the philosophical underpinnings of Vipassana in Buddhism, we find a notion similar to the deterministic causality called Pratîtyasamutpâda, commonly translated as dependent origination, or dependent arising.

This law of conditionality can be illustrated by this formula:

"Imasmim sati idam hoti; Imassuppada idam uppajjati.Imasmim asati idam na hoti; Imassa nirodha idham nirujjhati."[53]

A simple formulation of the principle of pratityasamutpada is translated by Thich Nhat Hanh as follows:[54]

This is, because that is.
This is not, because that is not.
This ceases to be, because that ceases to be[55].

The first part of the formula, the positive part, explains the conditional arising of phenomena. The second part explains their conditional cessation. This law of conditionality embraces all existing phenomena. From a particle of dust to world systems, from a fleeting thought to a whole empire, everything that is put together,

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53 Satipatthan Sutta. Chapter II. Verse 28,65.

54 Nan Huai-Chin, J.C. Cleary (trans.), *To Realize Enlightenment: Practice of the Cultivation Path*, (Weiser Books,China , 1994)

55 Thanissaro Bhikkhu (trans.) "Paticca-samuppada-vibhanga Sutta: Analysis of Dependent Co-arising" *available at:* http://www.accesstoinsight.org/tipitaka/sn/sn12/sn12.002.than.html (visited on august 23, 2018).

that is compounded, comes into existence only through its appropriate conditions. And if the conditions do not exist, then the phenomena will not exist.

And yet despite this commitment to deterministic doctrine, Buddhism is not hard determinist[56]. The Buddhist meditative path gives the practitioner insight into the mechanics of this dependently-originated situation, and thus provides perhaps the only means to cultivate volitional freedom. On this view, without reflection on the volitional springs of action, we have very little autonomy, but with meditative reflection we can increase our volitional freedom[57]. Buddha again and again emphasized that all conditioned volitions can be regulated, all mental bondages overcome with the right insight of conscious awareness i.e. vipassana.

"Sabbe sankhara anicca tiyada pannaya passati. atha nibbindati dukkha esa maggo visuddhiya"

"All conditioned phenomena are impermanent ; when one sees this with Insight-wisdom, one becomes free of all suffering. This is the Path to Purity"[58]

For Frankfurt, freedom of action is realized when action accords with volition. However, beings not normally held responsible for their actions— animals, small children, and mentally-ill adults—exhibit freedom of action. Therefore, what moral responsibility requires is freedom of will. Freedom of will is what distinguishes moral agents from other volitional beings. It obtains when volition appropriately accords with metavolition. An animal can act as it pleases, but only a person can approve or disapprove of his wants, permit some to lead to action, and restrain others.

Thus, Frankfurt's analysis captures a key link between moral agency and autonomy: the ability to regulate volitions. This ability lies at the crux of the mindfulness practice of Vipassana which teaches the cultivation of freedom by a detached observation and self awareness between mental states (say, rage) and metamental states (say, introspection of rage), a relationship similar to the Frankfurtion notion of freedom from volition. Introspection of a mental state, like rage, generates an element of detachment from the mental state, and thus makes it possible to control, rather than be controlled by,

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56 Most Buddhists writing on free will think it is compatible with determinism, e.g., Walpola Râhula, *What the Buddha Taught* (Grove Press, New York, 1974); Luis O. Gómez, "Some Aspects of the Free-Will Question in the Nikâyas," 25(1) *Philosophy East & West* 81-90 (1975); Franscis Story, *Dimensions of Buddhist Thought: Essays and Dialogues* (Buddhist Publication Society, Sri Lanka, 1976). But arguments on both sides are highly complex, and it is disputed whether dependent origination is deterministic.

57 Charles Goodman, "Resentment and Reality: Buddhism on Moral Responsibility," 39(4) *American Philosophical Quarterly* 359-372 (2002).

58 Bhadantâcariya Buddhaghosa and Bhikkhu Nanamoli(trans.) , *Visuddhimagga: The Path of Purification* (Pariyatti Publishing, Onalaska, 2003).

the rage. Such metamental states enable the agent to regulate the influences of mental states that otherwise overpower the deliberative system and engender mental bondage. Because meditators are increasingly able to control volitions through liberation oriented metavolitions, their practice increases their Frankfurt-style (determinism-compatible) autonomy.

However, this is not to say that Frankfurt style autonomy totally encompasses the Eastern conception of Liberation. Infact it forms just a small spectrum of the Buddhist Nirvana because liberation in the Nirvanic sense is the cessation of all karma(action) generating ego volitions[59] while in the Western perspective ego volitions are what constitute the agent status and enable the morally responsible agents to freely choose according to their own reasons for actions and thus become the person they aspire to become. This free expression of volitions is not valued for its own sake in any of the Eastern philosophy which view even the desired karma or action as a form of bondage. So, although the path toward liberation presupposes autonomy (metavolitional regulation) and increases it, liberation transcends ego-volition and autonomy altogether. However, that is a larger theological debate much outside the scope of the present paper.

For our discussion on sentencing models, we can simply understand a simplistic version of autonomy which is based on organismic self regulation. These self regulations are based on feedback loops connect cognitive and volitional features of behavior. Cognitive features are sensory-theoretic, and involve what may be analyzed as a world-to-mind movement of information (input), such as perception of the environment. Volitional features are motor-theoretic, and involve what may be analyzed as a mind-to-world movement of information, such as an impulse to move the organism in some way (to respond to its environment).

Our abilities to coordinate our bodily movements, are all forms of self-regulation involving such cognitive/volitional (sensorimotor) feedback loops. As Dennett argued,[60] there is an intuitive causal connection between the extent to which the mind can "go meta" on its own input/output processes and self-regulation (autonomy). A "metaphenomenon" is, loosely, any phenomenon that is about itself in some sense. Thus, metacognition is any mental phenomenon about another mental phenomenon, say, volitions to not act on volitions.

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59 Asaf Federman, "What Kind of Free Will Did the Buddha Teach?" 60(1) *Philosophy East and West* 1-19 (2010).

60 Daniel Dennett, *Elbow Room: The Varieties of Free Will Worth Wanting* (MIT Press, Cambridge, 1984).

Autonomy may be identified as a function of the mechanics of metamental causation—mental causation that loops within metamental states.[61] Meditation cultivates an increasing awareness of pre-conscious, impersonal cognitive/volitional forces that fuel distractions, engage and direct attention, and trigger actions, and it simultaneously cultivates volitional detachment and liberation-oriented volitions and metavolitions. As the practitioner becomes more aware of behavioral triggers, she becomes more able to refrain from acting on them. Thus, Mindfulness Meditation is a form of metamental training that increases volitional self-regulation (autonomy)[62].

All action or karma is volitional and thus involves freedom of action, but the key to liberation is metavolitional regulation which involves freedom of will. Thus, both Frankfurt and the Buddha attach greater value to freedom of will than to freedom of action.

So, the kind of regulation autonomy which is required for the offenders with a biologically predisposed tendency to criminality is indeed cultivated by the mindfulness practice and rather than denying their human agency and free will enables them to take better control of it.

Even the most arch-critic of free will like neuroscientist Sam Harris acknowledges, 'Becoming sensitive to the background causes of one's thoughts and feelings can – paradoxically – allow for greater creative control over one's life[63]. It is like developing an understanding that you bicker with your co-worker when you have a low blood sugar level. On the one hand such an understanding can be seen to reduce you as a biochemical puppet but then on the other it also enables you to grab hold of one of your strings, a bite of food to alter this specific behaviour trait.

Thus, cultivating an awareness transforms one from being a puppet to a puppeteer, from being steered to being the steerer. And when it comes to being aware of one's thoughts, feelings, impulses and subtlest motivations, mindfulness is an effective technique.

VII Conclusion

"Freedom is from within." – Frank Lolyd Wright

The free will versus determinism debate is as complex in its nuances as it is wide in its literature. It is a debate which has gripped the philosophers, thinkers, jurists, scientists and metaphysicists alike for millennia.

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61 Rick Repetti, *The Counterfactual Theory of Free Will: A Genuinely Deterministic Form of Soft Determinism.* (LAP Lambert Academic Publishing, Germany, 2010).

62 Sharon Begley, *Train Your Mind, Change Your Brain: How a New Science Reveals Our Extraordinary Potential to Transform Ourselves* (Random House, New York, 2007).

63 *Supra* note 5 at 52

This paper has been a humble attempt to navigate through some of these meandering viewpoints and arguments and explore its implication on legal responsibility and theories of punishment.

The mindfulness based rehabilitative sentencing model is merely a sketch and although I have tried to defend it against a variety of objections, no doubt there are others, and I do not mean to give the impression that this is an absolute conception.

My humble attempt in this working paper has been to chart a more realistic midway between free will and determinism, one which steers the course between the hubris of believing we are unconditioned completely free agents and the fatalism of believing we are mere puppets of a deterministic causality; a path which encourages us to be compassionate towards the condemned making us recognize that they are not always as responsible for who we assume them to be while at the same time trying to propose a model of sentencing which may enable them to grasp a firmer control over their destinies. As counter-intuitive as it may sound but the first step to develop the capacity to make more realistically free choices is to accept and be aware of that which is beyond our choosing for free will is as free as we find ourselves ready to make it.

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