

Chapter 9

Genes, Statistics, and Desert

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Suppose there is a population in which a certain type of criminal behavior is much more common than it is in most other populations that have been studied. To what extent can the relatively high frequency of that type of behavior in that population be ascribed to genetic, as opposed to environmental, factors? In the real world, this is always a very difficult question.

Let us suppose that – in some case, in respect of some type of behavior – this difficult question has been answered. Let us suppose that the high frequency of a certain type of criminal behavior in “population A” has been shown (to the satisfaction of all of the statisticians, criminologists, sociologists, and so on – of all political persuasions and ideologies – who have studied the matter) to be, to a significant degree, a product of genetic factors. Before investigating the consequences of this supposition for certain questions about punishment and desert, however, let us consider how such a conclusion could be established.

Suppose that, starting at a certain date, the babies born to parents belonging to population A and the babies born to parents belonging to a second population, population B – in which the incidence of the type of criminal behavior under investigation is significantly lower than it is in A – were exchanged in their cradles (the exchange being stealthy enough that the parents do not notice), the statistical profile of population A would, if no important changes occurred in the environmental conditions under which its members live, become significantly more like the present profile of population B after an appropriate amount of

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time had passed (and, of course, vice versa). And let us suppose that a similar result has been obtained with respect to A and "population C," with respect to A and "population D," and so on, for a large and varied family of populations, populations in which the environments in which children are raised vary widely with respect to all of the environmental factors that it is reasonable to suppose have consequences for the incidence of criminal behavior in a population. (And we suppose that we have found no population for which this result has not been obtained.)

Even if there were investigators who had established the results I have imagined, they would have found no absolute proof that if they had gone on to examine one more population, they would have obtained a similar result. For all they could show without collecting further data, if they had gone on to compare population A with "population Q" (another population in which the type of criminal behavior we are interested in is low), was that exchanging babies from A with babies from Q would leave A with the same high incidence of this behavior and Q with the same low incidence of it. Thus, even our fantastic imaginary evidence would not rule out the following possibility: the high incidence in A of the criminal behavior under investigation is due, to a significant extent, to environmental factors that are common to A and all of the populations with which A has so far been compared – but which might well not be features of the environment of some populations. It does seem, however, that as the number and variety of the populations with which A has been compared in the way imagined and with the result imagined increase, the probability increases that a population with the genetic makeup of A would, in any possible human environment, exhibit a relatively high incidence of the criminal behavior being studied. And this, I suppose, is what it would mean for the relatively high incidence of some sort of criminal behavior in population A to have a genetic cause.

To suppose that we have collected evidence of the kind I have imagined is to make an extravagant supposition, but not an impossible one. It would be possible, in principle, to collect such evidence, and therefore, possible in principle to demonstrate that it is highly probable that the high incidence of a certain sort of criminal behavior in a population is due to genetic features of that population. And it would not be necessary to exchange babies in their cradles to carry out the demonstration. When I say that it is in principle possible to collect such evidence, I am putting forward a more interesting thesis than that it is "in princi-

ple possible" actually to exchange the babies belonging to two whole populations. I am saying that it is in principle possible to determine what the results of such an exchange would be without making it. Justifying conclusions of that sort is just what statistical inference is for.

I must emphasize that I am saying only that it is *in principle* possible to determine whether, for two populations that exhibit significantly different statistical profiles as regards criminal behavior, the result of a "baby exchange" would be eventually to "reverse" (to some degree) those profiles. What is possible in principle might be forever impossible in practice. It might be that, although it is possible to say *a priori* what sort of evidence would establish or refute "reversal hypotheses" – and the even more ambitious hypotheses that ascribe the incidence of types of behavior in a population to the genetic peculiarities of that population – it is in practice impossible to collect evidence that satisfies these *a priori* requirements. However this may be, what is only in principle possible is often of considerable philosophical interest. I want to imagine a population in which a certain type of objectionable behavior is significantly more frequent than it is in most populations, and to imagine that it has been uncontroversially established that the high frequency of this behavior in this population is due to genetic features of the population. I want to imagine this because it constitutes a kind of "worst-case scenario" for those who worry about the relations between the genetic makeup of human beings and questions of punishment and desert. I want to investigate the consequences of the worst-case scenario. It might, after all, turn out that some version of the worst-case scenario is true, and there seems to be no reason to wait till some possibility materializes to start worrying about what to do about it. And even worst-case scenarios that, so to speak, never make it to the screen can be useful to theorize about, since they provide material for *a fortiori* arguments. ("If we shouldn't use nuclear weapons even if the other side attacked us with them without warning, we certainly shouldn't use them in any other case.")

Let us fill out our worst-case scenario a bit – at least to the extent of supplying a crime and a few figures. Let us say that within population A, rape is very common. One man in twenty, let us say, has at least attempted to rape someone. In population B, however, only one man in a thousand has attempted rape. We are, of course, supposing that the two populations are ones that people belong to from birth – or, better, from conception – or not all. Population A, for example, is not supposed to be something like "inmates of federal penitentiaries." We are supposing,

moreover, that if the male babies born to the parents of the two populations were (covertly) exchanged, then, after a suitable interval, the proportion of population A that were rapists would begin to decline and would eventually level out at a figure substantially lower than one in twenty; and, of course, we are supposing that the proportion of population B that were rapists would begin to rise and would eventually level out at a figure substantially higher than one in a thousand. And let us suppose that we have established similar results for A and C, A and D, and A and a great many other populations in which rape is significantly less common than it is in A – all we have been able to compare A with. If we had such evidence, we should have very good reason to believe that there was a genetic explanation for the abnormally high proportion of rapists in population A. We should not, of course, know *what* the genetic explanation was; that would be a matter for further investigation, investigation that would probably have to be carried out partly by examining human genetic material and not simply statistics about human behavior.

So much for the question how one might establish the conclusion that the high frequency of a certain type of criminal behavior in a certain population might have a genetic basis. I will now, as I have promised, turn to “certain questions about punishment and desert.”

The questions that interest me are these. To what extent would the facts I have imagined, if they were real facts, provide the rapists who belong to population A with an excuse for their crimes? Should we (in that case), in writing our criminal code, be “population-blind”? Would it be *fair* to write laws that prescribed the same criminal penalties for anyone convicted of (a certain type of) rape, when we know that the proportion of the members of population A who commit rape is, because of the genetic makeup of that population, significantly higher than the proportion of the members of most other populations who commit rape? Do the members of A *deserve* to be treated the same way under the law as the members of (for example) B?

There seems to me to be one possible circumstance in which it would be absolutely clear that our laws regarding rape should in no way take into account the genetic peculiarities of A. Suppose we did indeed identify the specific genetic factor that was responsible for the relatively high proportion of rapists in A. Suppose it was discovered that the possession of “Gene Combination Alpha” was much more strongly correlated with rape than was membership in population A, and that it had been proved that almost all of the “A” rapists possessed this gene combina-

tion. And suppose it had been proved that this combination of genes was so rare in population B and most other populations as to be almost non-existent. Suppose it was shown that the distribution of this genetic factor in the various populations studied (together with the very strong correlation of this factor with rape) accounted very well for the differing proportions of rapists in those populations. Suppose that there was an easy-to-perform and reliable test that could be used to determine whether a given man possessed Gene Combination Alpha. Then it would seem to be undeniable that our laws should not take the either the high proportion of rapists in A or the fact that this proportion is known to have a genetic basis into account. It is individuals and not populations that are brought to trial, at least under civilized legal systems, and any given rapist either possesses Gene Combination Alpha or he doesn't. Whether he does or does not might be a relevant matter to bring up at his trial. Whether he belongs to a population in which that combination is frequent or infrequent is certainly irrelevant.¹

If, however, we added this kind of knowledge to our imaginary case, this would in a sense change nothing about it that was of philosophical interest. What the addition of such knowledge would change would be only the question that was the focus of philosophical interest. It would be the question, To what extent would having Gene Combination Alpha provide an excuse for rape? rather than the question, To what extent would belonging to population A provide an excuse for rape? that was the focus of philosophical interest. Let us therefore simply assume that we do not know what the genetic factors are that explain the high proportion of rapists in population A.

The interest of the question “To what extent does belonging to population A provide an excuse for rape?” lies in the fact that members of population A do not invariably commit rape. In fact, most men who are members of A get through their lives without trying to rape anyone, even when – let us suppose – they are in circumstances in which it would be reasonable for them to believe they could get away with it. Consider, by way of contrast, “population X,” in which *all* men attempt rape whenever they think they have a reasonable chance of doing so with impunity. (We suppose, again, that there is good evidence that these men would behave that way no matter what environment they were raised in.) The question, To what extent does belonging to population X provide an excuse for rape? is much less interesting than the question I have raised. It seems fairly clear that belonging to population X provides the rapist with a really excellent excuse, for it seems fairly

clear that in that case the rapist's behavior is genetically determined.² And it seems fairly clear that we do not want to blame people for engaging in behavior that is genetically *determined* (as opposed to genetically influenced). The men of population X will, it is true, have to be regarded as dangerous, but the proper attitude toward them, it would seem, ought to be like our attitude toward a typhoid carrier. We should restrict their freedom of movement, as we do with typhoid carriers, but we should feel sorry for them; we should feel sorry for them because we should feel that, however necessary it might be for us to restrict their freedom of movement, they do not *deserve* it. Just as being a typhoid carrier is a misfortune, so – I believe this would be our reaction – being genetically determined to commit rape would be a misfortune. (Of course, we might blame some member of population X for being indifferent to the consequences for others of his condition, just as we blame Typhoid Mary for being indifferent to the consequences for others of *her* condition; but, presumably, we should do this only if we did not regard indifference to the consequences of one's genetically determined condition as being itself genetically determined.)

What can be said in defense of the thesis that membership in a population like population A – a population in which, for genetic reasons, the proportion of rapists is high, but in which, at least as far as anyone knows, no one is genetically determined to commit rape³ – is at least some sort of excuse for rape? How might a convicted rapist belonging to such a population try to use this fact in court to his advantage?

Well, suppose that a man who belongs to population A has been convicted of rape, and I, who belong to population B, am presiding at his trial. The jury has just delivered its verdict, and I am about to pass sentence on him. I give him the most severe sentence the law allows, and accompany the sentencing with some remarks about the horror of rape and how mercy is entirely out of place when one is dealing with rapists. Suppose he replies, "It's not your place to judge me. I am a member of population A, and you are not. I am thus laboring under a genetic burden that fortune has placed on my back and not on yours. Since you don't share my genetic burden, you are not in a position to pass moral judgment on me. What is more, it's not at all fair that I should be given the most severe sentence the law allows. If you give me that sentence, what sentence will you reserve for a member of *your* fortunate population – there are a few – who commits the same crime?" Note that in this speech the rapist presents two arguments for two different conclusions. One argument is *ad hominem*, and its conclusion is that the moral con-

demnation is out of place. The conclusion of his second argument, which could be addressed to any judge, is that he should not receive the most severe sentence possible.

I want to approach these two arguments by looking at some analogies. Let us look at some quite different cases of statistical correlation between criminal behavior and various genetic and environmental factors. (But *can* environmental factors provide a suitable analogy? I don't see why not. If we are interested in matters of excuse and desert, the only relevant questions to ask about a factor that has somehow influenced an agent's behavior are, Had the agent a choice about whether that factor was present? and, Had the agent a choice about whether that factor, if present, influenced his behavior? That someone who did something objectionable was drunk at the time is not much of an excuse if the agent had a choice about whether to be drunk, or if it was within his power to place himself in circumstances in which his being drunk would not have led to that sort of behavior. And features of one's environment can as easily be things that one has no choice about as the sequence of base pairs in one's DNA. No one has any choice about whether he was sexually abused at age four or was raised in grinding poverty or was born a member of a despised and visible minority.) In devising examples turning on environmental factors, I shall not, of course, assume that the populations that figure in the examples are ones a person has to be born into to belong to. In presenting the analogical cases, I shall assume that we know what explains the statistical differences between the populations that are contrasted. I shall feel free to do this because I am interested in the question, What *follows* about the responsibility of individual members of various populations between which there are statistical differences that are due to factors outside the control of their members?

Now the analogies.

There are two islands. Bank robbery is much more common on one of the islands than the other: an inhabitant of Island A is in fact about twenty times more likely to rob a bank than is an inhabitant of Island B. It turns out that the explanation is not far to seek. On Island A, there are hundreds of small banks that are (as banks go) pretty easy to rob. On Island B, there are only a few large banks, and they are equipped with all sorts of state-of-the-art antirobbery devices.

Suppose that someone who lives on Island A has been convicted of bank robbery, and I, who live on Island B, am the judge at his trial and I am passing sentence on him. I give him the strictest sentence the law allows, and accompany the sentencing with some remarks on the hor-

ror of bank robbery (I was educated in Switzerland) and how mercy is entirely out of place when one is dealing with bank robbers. Suppose the convicted bank robber replies, "It's not your place to judge me. I am a native of Island A, and you are not. I am thus laboring under an environmental burden that fortune has placed on my back and not on yours. Since you don't share my environmental burden, you are not in a position to pass moral judgment on me. What is more, it's not at all fair that I should be given the strictest sentence the law allows. If you give me that sentence, what sentence will you reserve for a member of your fortunate population – there are a few – who commits the same crime?"

I do not think that most of us would regard these arguments as very convincing. It is interesting to ask why we don't, however.

Let us look at a second case.

There are two islands. Bank robbery is much more common on one of the islands than the other: an inhabitant of Island A is in fact about twenty times more likely to rob a bank than is an inhabitant of Island B. It turns out that the explanation is not far to seek. There are genetic differences between the inhabitants of the two islands, differences that have the consequence that people with the mental and physical capacities that make skilled bank robbers are much more common on Island A than on Island B. These are, let us say, manual dexterity, nerves of steel, mechanical ability, a good memory for detail, excellent spatial intuition, exceptional athletic ability . . . whatever. For genetic reasons, the inhabitants of Island B tend to be nervous, clumsy, scatterbrained couch potatoes.

If we imagine a convicted bank robber from Island A arguing that he ought to receive some sort of special consideration from the court because he was born into a population that is deficient in nervous, clumsy, scatterbrained couch potatoes (or even because he himself demonstrably lacks these genetic advantages for growing up to be a non-bank robber), we shall find it difficult to imagine anyone's being convinced by his argument.

Now a third example, again turning on environmental factors. On Island A, there are secret criminal societies (like that presided over by Fagin, but with loftier criminal ambitions) that kidnap children and raise them to be bank robbers. On Island B, there are no such societies; as a consequence, bank robbery is much more common on A than on B.

A fourth example, this time involving a genetic factor. The inhabitants of A are, for genetic reasons, much harder to "socialize" than is the human norm. As children they, or at least a significant proportion of

them, have a much greater tendency toward bullying, petty theft, and vandalism than the children of most populations. (The inhabitants of the island are aware of this unfortunate feature of the island's gene pool and, if possible, adopt children from off-island rather than conceive their own; well-conducted empirical studies of the careers of these adopted children confirm the intuitions of their foster parents.) The inhabitants of A who exhibit these tendencies as children tend to rob banks when they grow up, for the simple reason that, as Willie Sutton put it, "That's where the money is." As a consequence, bank robbery is much more common on A than on B.

In these two cases, we should probably find a convicted bank robber's plea for some sort of special leniency to have some plausibility, whether or not we in the end allowed it to influence our decisions about how he or she ought to be treated by the court.

What is the lesson of these cases? It seem to me to be something like this. A factor, whether genetic or environmental, that explains why it is that a certain type of criminal behavior is more common in a certain population is not perceived as providing any sort of excuse for those who engage in that type of behavior if its effect is due to its increasing the prevalence of the skills required for that kind of behavior or the opportunities available to members of that population to engage in that sort of behavior with impunity. (The same point would apply to the easy availability of means. A convicted bomber could not plausibly ask for mercy on the ground that high explosives were easily available in his society, although he might, with some plausibility if it were true, plead that he was raised in a society in which bombers were lionized by the news media. Nor could he offer as an excuse the fact that he had inherited the – rare, let us suppose – mechanical skills necessary for constructing bombs, though he might plead that he had inherited a disposition to violence or a sociopathic disregard for human life.)

But if a factor works by creating or strengthening a desire such that to act on that desire would be to engage in a certain sort of criminal behavior, we tend to regard the plea that that factor is prevalent in some population to which one belongs to be at least some sort of excuse for having engaged in that behavior. If, for example, there were a genetic factor that could be shown to produce in males an inordinately strong desire for immediate sexual release, or a desire to degrade women, the fact that this genetic factor was present in a given man who had been convicted of rape would probably be regarded as at least relevant to the question what sort of moral attitude we should take toward him and

what sort of action a court should take in passing sentence. If, moreover, a factor tends to have adverse effects (adverse in our judgment) on an individual's abstract or second-order desires – the desire not to cause pain, say, or the desire not to desire to degrade women – we should probably regard the presence of that factor as relevant to questions of excuse and desert. If, for example, it could be shown that a convicted rapist had been raised by parents who taught him always to seek immediate gratification of the desires of the moment and never to consider the consequences for himself or others of his actions, we might well regard this fact about his nurture as a mitigating circumstance. If, finally, a factor tends to interfere with an individual's ability to implement his or her abstract or second-order desires – if it produces a lack of self-control, low intelligence, ignorance of generally available ways of dealing with situations in which one's momentary desires are in conflict with one's abstract or second-order desires – we should probably regard the presence of this factor as relevant to questions of excuse and desert.

Perhaps we could sum up these tendencies in the following formula. Suppose a certain kind of criminal act is significantly more prevalent in a certain population than in most other populations. If whatever factor produces this effect is "external," if it produces its statistical effect only by placing some of the members of that population in certain *circumstances*, if it leads them into temptation, we do not regard it as providing any sort of excuse for those members of the population that engage in that behavior – and this despite the fact that the members of the population have no choice about whether they are members of a population in which that effect is present. But if the factor is "internal," if it produces its statistical effect wholly or partly by acting on the desires and values of the members of the population (or on their ability to alter, or to act or refrain from acting in accordance with, certain desires and values), then we tend to regard this factor as something that should at least be considered when we are judging the members of the population that engage in that sort of behavior. It should be remarked that this "formula" is only a formula – an easy-to-remember device for summing up certain tendencies we have. I do not want to place too much weight on the particular terms of this formula. I particularly warn against placing too much weight on the words "external" and "circumstance": in the sense I am giving to these words, an agent's size and bodily strength or his possession of certain items of purely factual knowledge could count as

external factors, as a component of the circumstances in which fortune has placed him.

Let us look at the case of rape. Does this tendency that I have alleged to exist manifest itself in the case of that crime? I think so. Imagine a society in which – owing to some economic necessity – women are more frequently alone and far from help than is common in most societies. For good measure, imagine that in this society, it is customary for men to cover their faces when they go out in public, like women in traditional Islamic societies. It would not be surprising if rape were markedly more common in that society than in most. But we should hardly regard the plea, "I live in a society in which it's relatively easy to find opportunities for rape, and in which it's hard for the victim of rape to note any features of her assailant that might later serve to identify him – and I have no choice about whether I live in such a society" as a very effective one. Or imagine a society in which men were much larger and stronger than women – significantly more so than is in fact the norm in human populations. In this society, too, it would not be surprising if rape were more frequent than is the norm. But, "I have to live in a society in which I am surrounded by women whom it is physically easy for me to force myself on," is not an excuse that we should be likely to find convincing.

It might be argued that the tendency that I have alleged is less clear than I have made it out to be. One could think of cases that might tell against it. Drug addiction is more common among doctors and nurses than it is among the members of other high-stress professions (such as airline traffic controllers). The usual explanation is simply that it is much easier for doctors and nurses to get drugs than it is for most people. Assuming this to be the case, cannot doctors and nurses who are drug addicts offer the general easy availability of drugs in the medical professions as an excuse for their addiction? What about bank clerks who have embezzled money? Can't a reformed alcoholic who has relapsed plead (supposing this to be true) that people were always offering him a drink? I am inclined to account for our sympathetic reaction to these proposed excuses by pointing out that widespread opportunity can mean frequent temptation, which can, in time, increase the strength of one's desires, or weaken one's will with respect to resisting them. The most convincing of the three cases is that of the reformed alcoholic who relapses; we should note that in this case an "internal" debility was present from the start and that the frequent episodes of temptation could plausibly be supposed to have been gradually strengthening it. In short,

these are not cases in which the greater-than-normal frequency of objectionable behavior in a population is due *only* to "external" factors.⁴

I continue to believe, therefore, that we do have this tendency. Is it justified? I will argue that it is not. I will begin by presenting two pairs of cases (one "environmental" pair and one "genetic" pair). Each pair will be constructed to bring out pretty strongly our tendency to regard "external" and "internal" factors as being importantly different. I will argue that there is nothing about internal and external factors that justifies us in treating them differently. Here is the "environmental" pair.

We have two societies in which rape is significantly more common than in most societies. This can be explained (we have somehow shown) entirely by features of the environments in which the members of the two societies live. The two operative environmental factors are these:

1. In Society One, there is, and has been for more than a generation, legal, ubiquitous, and very well produced pornography that is essentially a glorification of rape. Even parents with the best wills in the world find it extremely difficult to prevent adolescent boys from being continually exposed to this pornography.
2. In Society Two, there is an illegal but cheap and easily available drug that facilitates rape: it is tasteless, odorless, fast-acting, and easy to administer surreptitiously. It renders the victim semiconscious and pliable. The human metabolism breaks it down into untraceable residues very fast: a few hours after it has been administered, it is undetectable by any medical test. Those who have been given this drug have afterward only the vaguest and most confused memories of what happened while they were under its influence.

In the "genetic" pair, we have two societies in which rape is significantly more common than in most societies. This can be explained (we have somehow shown) entirely by differences in the genetic make-ups of the members of the two societies. The two operative genetic factors (they have figured in cases we have already considered) are these:

3. Among the male members of Society Three, a certain gene-sequence is very common; it has the following phenotypic effect on those men whose genotype contains it: they experience an inordinately strong urge for immediate sexual release.⁵
4. In Society Four, the men are (for genetic, and not dietary or other environmental reasons) much larger and stronger than the women, significantly *more* so than in is the human norm.

I take it that most of us would regard being a member of Society Two or Four (the two "external factor" societies) as providing no sort of excuse for rape, and that we should experience at least some tendency to regard membership in Society One or Three (the two "internal factor" societies) as providing at least some sort of excuse; membership in either of the latter two societies, we are inclined to think, is a mitigating circumstance that should be taken into account when we determine the rapist's penalty or pass moral judgment on him. But what justification could be given for this difference in attitude?

In each of the four societies, the rapist has certain desires, and – whether or not he struggles against them – he acts on them and commits rape. In most cases, the more typical cases, the rapist will also have had certain desires and tendencies that pulled him in the opposite direction. If he is a hardened, habitual rapist, he may not have had any opposing desires, for repeatedly acting on certain desires tends to extinguish any desires or tendencies that oppose the desires that are repeatedly acted on. If the hardened, habitual rapist's desire to force himself on a particular woman on a particular occasion is really *unopposed* – by any values or feelings of human sympathy or preference for a sexual partner who is actually sexually aroused or even by fear of punishment – then perhaps he can't do otherwise than act on that desire. (This would be a consequence of the conclusions of my 1989 paper, "When Is the Will Free?") But let us consider those much more common and typical cases in which something – human sympathy, childhood moral training, fear of punishment – opposes the rapist's momentary desire to commit the rape he is contemplating, and let us suppose that in these cases he is *able* not to act on his desire to commit the rape he is contemplating.⁶

If a man contemplating rape is indeed able to refrain from acting on his present desire, if he is indeed able to refrain from committing the rape he is considering, then I do not see why the fact that he had had that desire should, afterwards, provide him with any sort of excuse for what he has done. (And this even if his having that desire is not something he has any choice about.) The presence of this desire in his psychological economy is not a mitigating circumstance. If, moreover, the man contemplating rape is able to refrain from acting on his present desire, then I do not see how any facts about the *source* of that desire can provide him with any excuse if he decides to act on it. In Society One, the desires on which many rapists act are due to their repeated exposure during their formative years to a certain kind of particularly vicious

pornography. In Society Two, the society in which the drug that facilitates rape is easily available, it is *opportunities* to commit rape, rather than momentary desires to commit rape, that are due to a corrupt environment. In Society Two there may be no one cause that produces all or most of the momentary desires to commit rape that are experienced by the men of that society; still, each particular momentary desire will have *some* cause – one that will quite possibly be outside the individual's control. In Society One, a large number of the momentary desires that issue in rape have a common cause; but why should that fact be relevant to the question how we should judge the men who act on them?

The following speech, surely, is not an excuse a rapist could plausibly offer, even if everyone were wholly convinced of its truth: "I admit that I raped the woman who has accused me. But before I attacked her, I experienced a strong desire to rape her. And I was born a member of the Ruritania lower-middle class, in which a higher-than-normal proportion of men experience such desires, and it has been proved that there is a common cause – some factor widespread in the Ruritania lower-middle class – for many of these episodes of desire." If the momentary desire itself does not provide the rapist with an excuse, why should he be provided with any excuse by the existence of a factor that caused the desire, is widespread in a population to which he belongs, and produces similar desires in other members of that population?

It seems to me that internal factors like desire do not have importantly different implications for questions of excuse and desert from external factors like opportunity. Every rapist has of course had opportunities to commit rape, and an opportunity, we all agree, is no sort of excuse. If many of the opportunities to commit rape that are available to the rapists in some population have a common source (a common environmental source, as in Society Two, or a common genetic source, as in Society Four), we do not regard the existence of this common source as relevant to questions of excuse or desert. And desire would seem to be no different from opportunity in this respect: the existence of neither a (resistible) desire to commit rape nor of an opportunity to commit rape is any sort of excuse for the act; the discovery of a source of desires or a source of opportunities (whether a genetic or an environmental source) that operates across a population to which a rapist belongs would add nothing of relevance to the deliberations of those deciding how to punish or judge him. Just as a rapist cannot put forward a common, population-wide source of particular opportunities to commit rape as a mitigating circumstance, so a rapist cannot put forward a common, popu-

lation-wide source of momentary desires to commit rape as a mitigating circumstance.

There are, of course, other internal factors than desire that are relevant to questions of excuse and desert. There are, for example, the agent's internal resources for dealing with desires that are in conflict with his or her values or higher-order desires. But the point I am making is quite general: if the presence of some particular factor in an agent's internal economy is not an excuse for some act of the agent's, why should the fact that the agent belongs to a population in which that factor is more common than in most other populations be an excuse for that act?

Perhaps there are some who will not find this argument convincing. We might try to articulate their reservations by imagining someone, who because of his or her special relationship to a convicted rapist is inclined to regard any circumstance that could conceivably be regarded as mitigating as really being so. We might imagine a mother who appeals on behalf of her son to the court (either a court of law or the court of public opinion) along the following lines. "You should regard my son's having grown up in a society that permits vicious pro-rape pornography as a mitigating circumstance. You should be merciful in passing sentence on him [in making moral judgments about what he did]." The plea is – to my ears, anyway – a poignant one, but I don't think we should allow it. (Unless, of course, the effect on the young man of his having grown up in an environment in which such pornography was prevalent was to render him literally *unable* to refrain from acting on the desires the pornography generated. But if that were the case – and we are supposing that it isn't – we should not have an example of a mere mitigating circumstance: we should have a case in which the rapist should be absolved of all blame, a case in which he should simply be regarded as a "rape carrier.") As long as we are convinced that the rapist had a choice about what he did, we should not reduce his sentence or soften the moral judgments we make about his act. What we can do, and what I believe we *should* do, is feel sorry for him.⁷ And it would certainly do us no harm – the men among us, that is – to reflect that we might well ourselves have done what he did if we had been raised in the same corrupt environment. (Come to that, it would probably do us men no harm to ask ourselves seriously how we should have behaved if we had been raised in a society like Two or Four in which it was absurdly easy to commit rape with impunity.)

To have to deal with a recurrent desire (or, for that matter, with recurrent opportunities)⁸ to commit some wrong act is a misfortune, a

burden. We can, and should, feel sorry for those who have to bear burdens that we don't, and we may profit from asking ourselves how we should have borne up under them. We should not, however, regard them as mitigating circumstances. If a mother steals because she and her children are starving, that is a mitigating circumstance. If I betray my country or the Revolution (or whatever) under torture or because my family is being held hostage, that is a mitigating circumstance. If someone commits rape as the alternative to the murder of his family (one can easily imagine this alternative being forced on someone in one of the nasty little ethnic wars of the present decade), the fact that he faced this alternative is a mitigating circumstance.⁹ Having a (resistible) desire to do ill that most other people do not have is, however, no more a mitigating circumstance than is having an opportunity to do ill that most other people do not have.

This general judgment applies if the (resistible) desire to do ill has a genetic cause; the source of a desire is irrelevant to the question whether its presence in an individual should be regarded as a mitigating circumstance. And it applies if the desire is significantly more common in some population to which the agent belongs than it is in most other populations; the presence of a desire in other individuals is irrelevant to the question whether its presence in a given individual should be regarded as a mitigating circumstance. It therefore applies if the desire is significantly more common in some population to which the agent belongs than it is in most other populations owing to genetic differences between that population and the populations in which it is less common. I conclude that even if it could be proved beyond the shadow of a doubt that the high incidence of some type of criminal behavior in a certain population was due to genetic causes, causes that operated by affecting "internal" factors – by producing resistible desires; by warping values that the agent could see to be warped by reflecting on other values that he or she has; by diminishing (but not eliminating) the agent's capacity to deal with desires he or she wishes not to act on – this discovery would be morally and legally irrelevant. The laws governing that sort of criminal behavior ought to be the same for, and applied with the same degree of rigor to, the members of that population as everyone else.¹⁰ And we should make the same moral judgments about those who are members of that population and engage in that behavior that we make about those who are not members of that population and engage in that behavior.

NOTES

1. This point applies not only to gene combinations, but to any factor that might be a cause or partial cause of bad behavior in an individual. We shall later apply it to desires and other psychological factors.
2. Marcia Baron has asked me how it can be that the behavior of the members of X is genetically determined if they are able to take into account the possibility of being punished, and (by implication) sometimes refrain from an act of rape they would otherwise have committed if they believe the risk of punishment is too high. I think we must distinguish between being determined and being irrational (i.e., not being rational in the "value-free" or "Humean" sense). The men who belong to X, as I am describing them, have the following dispositional property: whenever they see an opportunity to commit rape and believe that they could get away with acting on it, they do act on it. I am supposing, moreover, that there is good evidence that it is genetically determined that they have this dispositional property.
3. It is consistent with the evidence we have imagined that each rapist in population A was genetically determined to commit rape on the particular occasions on which he did. But the evidence would provide no reason to suppose that this was in fact the case.
4. The fact that "external" factors (like temptation) can reinforce or otherwise affect "internal" factors (like desire) suggests that the distinction between the prevalence of a kind of behavior in a population being due to external factors and its being due to internal factors is considerably more complicated than what I have said in the text allows – perhaps even that it is a dubious distinction. But if this is so, it can only strengthen the case for the conclusion that we ought to resist our tendency to regard this distinction as morally significant.
5. I am not supposing that "an inordinately strong desire for immediate sexual release" is normally or ever the "cause" of rape. I am supposing that if an inordinately strong desire for immediate sexual release was much more common in some population than in most, this could explain why a higher-than-normal proportion of the men in that population were rapists. This is like supposing that the fact that the summer of 1982 was very dry could explain why there was a higher-than-normal number of forest fires that summer. It certainly does seem plausible to suppose that if terrorists were to add to the New York City water supply a drug that causes men to experience an inordinately strong desire for immediate sexual release, the number of rapes committed in New York could be expected to increase: no doubt many men whom various factors predisposed to rape, but who would, nevertheless, not have committed rape in the normal course of events, would be "pushed over the edge" by ingesting the chemical.
6. Even the man who is now a hardened, habitual rapist will almost certainly have been in this state "at first" – when he committed his first rape or his first few rapes. We may therefore hold him responsible for the rapes he commits in his present state, for we may hold him responsible for the fact that

- he now lacks the ability to resist those desires. Or at least this seems reasonable to me. I have defended a position of which this thesis is a special case in "When Is the Will Free?" (1989).
7. I am here discussing only questions concerning the sorts of judgments we should make about, and the attitudes we should take toward, a particular individual and a particular act he has performed. I do not mean to imply that we have no obligation to try to find a way to lighten or remove the psychological burden that an individual bears. And I certainly do not mean to imply that we have no obligation to try to find a way to reform the corrupt environment that has placed that burden on him.
 8. Recurrent opportunities to commit some wrong act will be a misfortune only for those who have some "standing" desire to commit that act. But then being subject to recurrent desires to commit some wrong act will not be much of a misfortune for those who have no opportunity to act on them.
 9. These examples are cases in which circumstances mitigate the wrongness of an act because they are cases in which circumstances dictate that the alternative to performing the wrong act is to cause or allow something very bad to happen. (Indeed, if the alternative is bad enough, most of us will want to say that the act was not, in the circumstances, wrong; most of us would probably judge that it is not wrong to steal food if one's children are starving. But the examples can easily be modified so that they are clear cases of wrong acts whose wrongness is mitigated by the circumstances under which they are performed. Suppose, for example, that the children in the "starving children" case are in fact not starving but are nevertheless painfully thin and ill-nourished, and that the mother steals food from a family even more needy than hers.) But there is no "bad alternative" to rape - except in extremely rare cases like the one imagined in the text. It may be that the rapist would regard the existence of an unfulfilled desire to commit rape as a "bad alternative," but most of us will not, and we shall therefore say that the presence in him of a desire to commit rape was not a mitigating circumstance.
 10. At least if the only thing the legislatures and the courts are considering is the *fairness* of the laws and the sentences. If deterrence is a factor in their considerations, it might be advisable for them to adopt a different legal strategy with respect to members of that population.

REFERENCE

- van Inwagen, Peter. (1989). When is the will free? In *Philosophical perspectives* vol. 3, ed. J. Tomberlin, 399-402. Atascadero, Calif.: Ridgeview.