

THE PUNISHER'S BRAIN

Why do we punish, and why do we forgive? Are these entirely learned behaviors, or is there something deeper going on? This book argues that there is indeed something deeper going on, and that our essential response to the killers, rapists, thieves, and liars among us has been programmed into our brains by evolution. Using evidence and arguments from neuroscience and evolutionary psychology, Morris B. Hoffman traces the development of our punishing brains throughout human history.

Humans, he argues, evolved to cooperate with one another, albeit grudgingly, in order to ensure our survival. That grudging cooperation focused on two areas that were essential for our survival as a social species: not stealing each other's property or well-being and not breaking promises. Punishment made stealing and breaching sufficiently expensive, and therefore deterred enough of it, to enable our intensely social species to survive and flourish. We blame and punish based on our assessment of two factors: the wrongdoer's intent and the harm caused. But punishing wrongdoers was also costly to the group, because it risked retaliation and the loss of group members if the wrongdoers left the group. We therefore also evolved a deep reticence to punish and a corresponding urge to forgive, also based on intent and harm. Our ancestral groups delegated the responsibility and authority for punishing and forgiving to one group member – the judge – or a subset of the group – the jury. Over time, these urges to blame, punish, forgive, and delegate became codified into our present legal systems. After tracing the trajectory of this development, Hoffman shows how these urges inform our most deeply held legal principles and how they might animate some legal reforms.

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The Punisher's Brain

THE EVOLUTION OF JUDGE AND JURY

Morris B. Hoffman



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107038066

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First published 2014

Reprinted 2019

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data

Hoffman, Morris B., 1952–

The punisher's brain : the evolution of judge and jury / Morris B. Hoffman.

pages cm – (Cambridge studies in economics, choice, and society)

Includes bibliographical references and index.

ISBN 978-1-107-03806-6 (hardback)

1. Punishment – Social aspects. 2. Human evolution. 3. Social evolution. I. Title.

GT6710.H64 2014

303.3'6–dc23 2013037018

ISBN 978-1-107-03806-6 Hardback

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ACKNOWLEDGMENTS

Before I thank the many people who have contributed to this book, a few apologies and explanations are in order.

Although I spend my days punishing people, I am no expert in the science of punishment. Amateurism is, unfortunately, part of this interdisciplinary territory. Whether you prefer a scientist stomping around in law or a lawyer in the china shop of science may be a matter of taste and perspective. I just hope the chasm I leave between the law and the other disciplines I invade is not so great that I cannot be saved by helping hands from the other side.

Some of my descriptions of natural selection and neuroscience may sound naive or even flat out wrong to science-savvy readers. No doubt there are many examples of both naiveté and error. But other times missing the mark has been quite intentional, when I've decided to sacrifice scientific precision on the altar of readability. Examples include phrases that seem to suggest evolution is goal-oriented, including the very first sentence in the Introduction ("Evolution built us to punish cheaters"). I know that natural selection proceeds by chance, driven by random mutations and the ineluctable fact that genes will tend to be selected for whenever they give their carriers a fitness advantage in a particular environment.

A special apology goes to my biologist friend Tim Goldsmith, who schooled me early on in our joint writing efforts never to use the words "urges" or "instincts" to describe behavioral predispositions. But until Tim or someone else comes up with words substantially less clunky than "behavioral predispositions," "urges" and "instincts" will just have to do.

I have sacrificed some of the legal discussions in the text on the same altar of readability, including summarizing some difficult criminal

law concepts like attempt, insanity, and the four modern theories of punishment. Special apologies in this regard go to my friends Gideon Yaffe, who has written what I think is the definitive book on attempt, and Stephen Morse, a pre-eminent criminal law theorist with whom I have written about the insanity defense. Throughout the book, whether short-shrifting science or law, I hope readers find that the notes, and especially the sources mentioned in the notes, will be an adequate safety net.

Now for the thanks. I owe my interest in law and biology to the late Margaret Gruter, whose foresight and inspiration continue to animate this discipline, and to her granddaughter Monika Gruter Cheney, who has carried on Margaret's work as executive director of the Gruter Institute for Law and Behavioral Research with fierce dedication and panache. Monika has been assisted by the irrepressible Oliver Goodenough, an extraordinary law and biology scholar. My introduction to the Gruter Institute I owe to Steven Pinker and especially to Al Alschuler, a powerfully creative legal scholar and a hopeless Chicago Cubs fan, who somehow managed to get me invited to my first Gruter conference in 2000.

My introduction to law and neuroscience came mostly from my colleagues at the John D. and Catherine T. MacArthur Foundation's Research Network on Law and Neuroscience and its antecedents, and especially Owen Jones, who directs the Network. It was Owen who suggested the title of this book, a vast improvement on the terrible working title I was using. Other MacArthur colleagues whose help and friendships have been invaluable include Richard Bonnie, B. J. Casey, Andre Davis, Robert Desimone, David Faigman, Martha Farah, Willie Fletcher, Mike Gazzaniga, Scott Grafton, Hank Greely, Josh Greene, Peter Imrey, Yasmin Hurd, Doug Husak, Stephen Hyman, Julie Iles, Kent Kiehl, Gerard Lynch, René Marois, Read Montague, Stephen Morse, Michael Moore, Bill Newsome, Liz Phelps, Marc Raichle, Jed Rakoff, Jenn Richeson, Adina Roskies, Michael Saks, Jeff Schall, Fred Schauer, Buffy Scott, Francis Shen, Walter Sinnott-Armstrong, Larry Steinberg, Kim Taylor-Thompson, Anthony Wagner, Amy Wax, Susan Wolfe and Gideon Yaffe. I have also been inspired by three gifted neuroeconomists I first met at the Gruter Institute: Paul Glimcher, Kevin McCabe, and Paul Zak. It was at the Gruter Institute that I also

Acknowledgments

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first met Paul Robinson, whose work on the concordance of relative blameworthiness has left its mark on much of this book. I also want to thank my very first science paper coauthor, Frank Krueger, for having sufficient confidence in me to allow me to collaborate on such interesting neuroscience experiments; I look forward to many more.

Friends who were kind enough to read drafts of the manuscript include Owen Jones, John Kane, Bill Pizzi, Stephanie Shafer, Francis Shen, Edie Sonn, and Paul Zak. Their comments were invaluable, and made this a far better book. The anonymous reviewers were also extraordinarily helpful. I thank my former editors David Pervin at the University of Chicago Press and Scott Parris, now at Oxford University Press, for encouraging me to begin, and my wonderful editors at Cambridge University Press, Karen Maloney and Kristin Purdy, who so skillfully helped me finish. Special thanks to my copyeditor Heidi Sias for her hard work, and to Shashank Shankar for capably seeing the book through production.

On a more personal note, I want to thank my late father, who taught me how to be a good husband and parent, and Charles D. Pierce, who gave me the privilege to clerk for him so long ago, and who taught me how to be a good judge.

Most importantly, this book would not be this book, and I would not be me, but for the love and support of my beautiful and talented wife Kate, on whom I endlessly inflicted requests to read and reread parts of the manuscript, and commandeered our kitchen table to boot. Writing this, my first book, often had the feel of lugging around a giant unruly child, years beyond when it should be walking on its own. I loved it and hated it, and always felt its relentless tug, reminding me I had to pay attention to it. As with everything else, Kate gave me the energy to carry on.

Denver, Colorado
2014

Cambridge University Press & Assessment
978-1-107-03806-6 — The Punisher's Brain
Morris B. Hoffman
Excerpt
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