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Kids Who Kill

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Response #10 and #11 (Final Reflection)

Does evil exist? This question is truly at the core of the Kids Who Kill class. No amount of knowledge of the juvenile justice system or of youth killers themselves can give us an easy answer. Nor can the domains of neuroscience and psychology present a logical, concise “reason” why some children commit murder. In short, there are many realms of study, both scientific and philosophical, that must be analyzed in tandem to even begin to answer such questions.

In *Brainwashed*, Sally Satel and Scott O. Lilienfeld argue that much of the neuroimaging work currently at play in the various scientific realms of study is simplistic and its “conclusions” are often faulty. The data scientists acquire from brain imaging studies is complex and immense, and is not often able to be summarized or “dumbed down” as other laboratory data can be. This conundrum leads to confusion when the data is distributed through the media to laypeople with little to no knowledge of neuroscience and the imaging process. Thus, many researchers become fearful when individuals attempt to apply the neuroimaging process and results to other fields of study, such as forensic science and law.

In Chapter 1 of *Brainwashed*, Satel and Lilienfeld address the dichotomy of the mind-brain identity theory and its implications for neuroimaging: “What can the workings of the brain tell us about the mind?” (p. 3). They define fMRI technology in relatively basic terms, as a form of imaging that measures which areas of the brain are experiencing increased blood flow and, consequently, consuming increased amounts of oxygen at a given point in time (p. 5). These areas are then correlated with various abstract brain functions such as feeling or thinking.

There are several issues with drawing conclusions from this type of research. For one, Satel and Lilienfeld point out that “the idea that a specific area in the brain is solely responsible for enabling a given mental function… is rarely the case” (p. 11). Rather, brain functions are the result of neural pathways between multiple brain regions or lobes. Additionally, a single brain region may have a variety of functions. In the case of the amygdala, this small brain region is responsible for the emotional states of not just fear, but also arousal, anger, and hunger (p. 12-13). Therefore, researchers may attempt to use faulty “reverse inference” to come to the conclusion that a participant is experiencing fear because their amygdala shows increased activity on an fMRI scan when, in reality, they are experiencing feelings of extreme happiness.

Additionally, fMRI imaging is an imprecise science. Although it may be a “proxy for changes in neuronal activation,” “the link between blood flow and neuronal activity is not straightforward” (p. 17). There is a time delay in fMRI data between neural activation and the accompanying rise in oxygenated blood flow to the region. Also, activity on an fMRI may show the behavior of inhibitory, rather than excitatory, neurons, leading researchers to falsely conclude that a brain region is being activated when it is, in fact, being inhibited (p. 18). Brain regions may also show no activity on an fMRI, even though they are being activated, simply because the region of activity is too miniscule to show up on a brain scan (p. 18). fMRI imaging, especially BOLD (blood-oxygen-level-dependent) data is also based on statistical science, which can lead to false “statistically significant” results by chance alone (p. 19-20).

Though the authors respect and understand the importance of neuroscience and neuroimaging research, they address these caveats in Chapter 1 to emphasize the points they make later in the book, that neuroimaging results should be used with caution when applied to other sciences or realms of study. “The danger comes when scanning leaves the experimental realm for socially consequential domains… where much-needed interpretive restraint often gives way to extravagant claims about what brain scans can tell us about the mind” (p. 24).

One of these “socially consequential domains” is that of forensic science. Satel and Lilienfeld warn of applying the results of lab-based neuroimaging research because of several challenges in doing so, namely the question of “whether one can infer deception in real-world settings from brain scans” (p. 76). Additionally, they stress the importance of “keep[ing] immature technology from finding its way into routine use and implicating innocence,” as well as the need to worry about privacy concerns that may stem from using this data in a real-world forensic environment (p. 76).

In Chapter 4, the authors argue for the exclusion of forms of imaging such as lie-detection tests from the fields of criminal law and forensic science. As they note, “polygraph evidence has been excluded from trial in nearly every state and federal court for the past ninety years” because the science behind polygraph testing is “at best wildly oversimplified, at worst… patently false” (p. 78-80). Polygraphs, Satel and Lilienfeld explain, simply measure a subject’s autonomic nervous system arousal at one point in time; they do not, that is, actually measure whether the subject is lying.

Other forms of lie detection, such as the guilty knowledge test (GKT) and fMRIs, also tend to measure a subject’s beliefs about a situation or arousal during the test, rather than whether they are lying or telling the truth. Satel and Lilienfeld explain that this is because human memory is notoriously fallible and easily altered or manipulated by later memories. Additionally, there is no specific brain region that “lights up” when a person is lying. In fact, “not all lies are psychologically similar” (p. 89).

So, to summarize the information and arguments the authors provide, though brain imaging techniques may work well in the lab, “there is no evidence that [their] capabilities extend safely to forensic settings” (p. 92). Attempting to generalize these findings anyway may be harmful, as it can result in false positives, false negatives, or just generally inconclusive results.

Reading Satel and Lilienfeld’s book, *Brainwashed*, has been a bit of a confusing experience for me. On one hand, I agree with much of what they say in terms of brain imaging and its increasing use in fields such as law and criminal justice. On the other hand, some of their finer points irk me or, worse, make me a little angry. In a similar sense, much of Ron and Thane Rosenbaum’s respective arguments regarding the existence of evil and our complicated relationship with the concept of revenge strike me as engaging and well thought out, though some of their opinions annoy and even aggravate me.

In *Brainwashed*, Satel and Lilienfeld address many of the tenets of “neurolaw” as it exists today, namely the claims of its proponents that the adolescent brain is immature and hyperreactive to stimuli, while the adult brain is more mellow and reasonable. Neurolaw “rests on the assumption that brain function, and brain images more specifically, can help explain the defendant’s behavior,” though Satel and Lilienfeld point out several issues with this assumption, boiling down to the fact that “overstating the significance of scans in forensic settings can have dire consequences for the accused and the criminal justice system more broadly” (p. 101). Additionally, “by the time brain scans are performed, the deed has already been done” (p. 107). Thus, it seems, brain scans hold no sway in preventing crime before it happens.

I think my own feelings about the use of brain imaging, such as fMRI, to exonerate violent offenders are summed up rather well by a psychiatrist Satel and Lilienfeld quote as a witness for Herbert Weinstein’s 1991 trial: “ ‘The PET was abnormal… [but] that has nothing to do with the fact he threw his wife out the window’ ” (p.109). As the authors go on to say, “not everyone who experiences an urge acts on it” (p. 110). I personally believe in the concept of free will and I value it highly as a fundamental aspect of what it means to be human. The aim of so-called neurolaw to prove that our decisions are based on faulty brain functioning, rather than conscious decisions we each make regardless of our brain structure, bothers me to no end. In fact, I think sometimes it gives offenders an easy “excuse” for their actions; a loophole, if you will. Another point Satel and Lilienfeld make shows us the implications of this exception becoming the rule:

But good intentions aside, these reformers would do well to remember that neuroscientific evidence is a knife that cuts both ways: If teens’ brains render them irresponsible, what are the implications for the rights or opportunities teens now enjoy? Are they too immature to enter into contracts, as one state senator insists? To get an abortion, as pro-life advocates claim? To play violent video games, as consumer watchdogs allege? (p. 119)

The current state of neurolaw looks, at least to my mind, like a slippery slope.

Chapter 6 of *Brainwashed* is closely linked, thematically, to Chapter 5, though it focuses more on discussion of moral responsibility and the various theories surrounding blame. And it is in this chapter that Satel and Lilienfeld start to lose me. I realize they are mostly re-stating the ideas of various theorists and philosophers; regardless, the views these other thinkers express run deeply against my own thoughts and beliefs. I think, ultimately, my distaste stems from the obvious hypocrisy these individuals display. As Clarence Darrow said at the Leopold and Loeb trial, “ ‘They killed him because they were made that way’ ” (p. 126), which speaks to me of the existence of innate evil. Yet he continues, “ ‘you have no more power than a machine to escape the law of cause and effect’ ” (p. 127). Other theorists quoted by Satel and Lilienfeld share similar beliefs: “Being free is just an illusion” (p. 129).

I could discuss extensively the arguments these other theorists have, but it would all result in the same conclusion on my part; that is, that it is ludicrous to think that free will does not exist. Many of these great thinkers pushed for reduced power and authority on the behalf of the American criminal justice system, due to the fact that offenders have an innate inability to control their own actions and are completely unable to just choose not to commit crime. Perhaps I am a bad person for thinking otherwise, but I could never write off a rapist or murderer as forgivable and, perhaps, pitiable because they had no control over their actions. That line of thinking is, to use a colloquial term, absolutely bananas to me.

So what about Rosenbaum and Rosenbaum? Thane Rosenbaum, in “Eye for an Eye: The Case for Revenge,” argues that, though our society sees civilized, morally superior people as proponents of justice but not vengeance, justice and revenge are truly one and the same. In fact, our justice system is a “proxy” for vigilantism; that is, a way of putting a civilized face on a condemned practice. This leads to some level of cognitive dissonance in our society, because some 95% of criminal cases are resolved with a plea bargain. Rosenbaum asserts that these plea bargains are “against the social contract” and that “justice is satisfied only when wrongdoers are properly punished and victims have their voices heard and losses avenged.” I have to say, I agree with him. The need for vengeance in some form is undeniably a part of human nature. Vengeance and justice, as Rosenbaum surmises, are simply mirror images of one another. And perhaps it’s time we understand this and stop pretending vengeance isn’t a reasonable and perfectly acceptable component of being human.

Ron Rosenbaum, in *The End of Evil?*, looks at another component of the criminal justice system: the concept of evil. He notes that the scientific community has an “aversion” to metaphysical concepts such as “evil” and “free will,” neither of which can be mapped out or positively identified within the brain. So, various theorists have come up with their own ideas of what evil is or is not. Rosenbaum quotes Simon Baron-Cohen as intending to replace the term “evil” with that of “empathy” or “non-empathy.” Baron-Cohen believes the “empathy circuit” in the brain results in various degrees of empathy for each person, determining how “evil” they are viewed by the rest of society. Rosenbaum debunks this as a “mechanistic” view of the world.

Rosenbaum also looks at Stephen Morse’s view of “evil” and neuroscience’s major flaw in terms of defining this undefinable concept. Morse points out that “discovering the neural correlates of mental phenomena does not tell us *how* these phenomena are possible” (italics added for emphasis). The distinction between neuroscientific thinking and the reasoning of the rest of society in regards to “evil” is just a reformation of the mind-brain problem. For me, personally, I lean more towards the “mind” side of this argument. Though I am in nursing school and know much about the brain and neuroscience, I cannot deny the fact that some people are just… evil. In my experience, much as we’d like to believe otherwise, some things just cannot be explained by science. I do think evil is real, and it is likely that many of our worst criminal offenders have some degree of evil within them that enables them to do the horrific things they do.

It is with this personal opinion in mind that I turn to the current state of the juvenile justice system in regards to seriously violent youth offenders. I have discussed my views on the death penalty in previous responses for this class: namely, that it is a reasonable and appropriate punishment for certain types of crimes that fall *far* beyond the realm of what is deemed “okay” in our society. However, I do believe juvenile offenders, even those who commit murder or similarly horrific crimes – except in perhaps a few specific circumstances – should *not* be sentenced to death the same way adult offenders may be.

As determined in the 2004 Supreme Court case, *Roper v. Simmons*, the death penalty for children and adolescents is a “cruel and unusual,” and, therefore, unconstitutional punishment. In Justice Anthony Kennedy’s words, declaring capital punishment unconstitutional serves to “secure individual freedom and preserve human dignity.” Additionally, as determined in the 2012 *Miller v. Alabama* case, sentencing a juvenile to life in prison without parole is also unconstitutional.

Personally, I agree with the Court’s decision in these two cases for the most part. I do think the death penalty and life in prison without the possibility of parole are two extremely harsh sentences, and most child offenders have not committed crimes worth receiving one of these punishments. It is even possible that minors who commit murder or other crimes that *do* warrant a stricter punishment are not 100% “responsible,” so to speak, for their actions. There is much to be said for brain chemistry and other scientific findings that demonstrate that the brain is not fully developed until, sometimes, age 25. Additionally, legal punishment is designed to be rehabilitative for offenders convicted of a crime. Keeping a child in prison until they die or killing them straight out does not seem very rehabilitative to me.

Of course, there will always be a small percentage of youth offenders out there who commit crimes so heinous, so unspeakable, one could begin to understand how the death penalty would be an “appropriate” punishment. These cases are always the exception to the rule, however, and should be dealt with individually as they arise.

Visiting the Cincinnati Youth Detention Center forced me to face the issue of what to “do” with juvenile offenders, including those who kill, head-on. I think it’s difficult to form a thorough, fully-thought out opinion about this kind of thing unless you’ve actually directly experienced the consequences of sentencing a youth offender to a facility like 2020 Auburn Ave. It’s one thing to philosophically develop an opinion on what *should* be done with a child or adolescent who breaks the law. It’s quite another to truly experience and understand the environment and institution to which you are advocating to sentence them.

To be honest, my first impressions of the detention center were that of pleasant surprise. In my head, I think I envisioned the building to be old, decrepit, and frightening. In actuality, the facility is very clean and new-looking. Although it *is*, ultimately, a detention center, it does not look as much like a prison or jail as I expected it to. I was surprised, too, to learn that the center is currently housing only six female offenders, out of a total population of about one hundred. I suppose I knew that male individuals commit and are convicted of more crimes than women are, statistically, but it was still shocking to hear the true ratio of the Youth Center’s population.

As for my opinion on the appropriateness of this kind of consequence for juvenile offenders, it’s somewhat complicated. On one hand, I feel bad for the kids that have to live at the detention center and grow up in that environment. On the other hand, I understand that they’re only being housed there because they committed one or more felonies. It’s difficult to reconcile the images of a child and of a violent offender, and it’s strange to see these children and realize that many of them *are* violent offenders.

I think it goes without being said that I’ve learned so much from this course – significant Supreme Court cases, the state of current neuroscience and legal research, anecdotes about kids who kill. At the end of the day, I still hold onto my belief that “evil” is real in some way, and that children who kill are influenced by their genetic makeup, their environment, their parents, and a variety of other, competing factors that make them “the way they are.”

Besides that, my mind is still open to a variety of opinions on the legal and philosophical issues surrounding the phenomenon of a young person who commits murder. I have been exposed to much new information and had several new experiences this semester. And yet, many of the questions raised in this class remain unsolved and without easy answers.