

Evil gene would make punishment a tricky business

April 26 2013, by Allan Mccay

Are there evil genes or is it only people who can be evil? A recent story in *The Age* ("[Deep Divide of 'Evil Genes'](#)") raised the question of whether criminals might evade responsibility for their crimes by blaming their genes.

The suggestion that there may be biological causes of crime is troubling in many ways. It reminds us of the horrors of the Nazis and the evasion of responsibility seems like a slap in the face for victims of crime.

The very notion of a crime gene makes us reflect on the purposes of [punishment](#). Should the courts try to give offenders what they deserve, or should they just protect the community from those with dangerous genetic profiles?

An example of a so-called "evil gene" might be the low activity MAOA gene. MAOA is a neurotransmitter in the brain and some research has suggested that those males who have low levels of the substance are particularly vulnerable to the effects of being maltreated when young.

Experience of [childhood maltreatment](#) has long been thought to be an influence on criminal conduct but it seems that being maltreated and having the genetic vulnerability is particularly likely to lead to [bad behaviour](#).

But children don't get to choose their genetic profile nor whether they are maltreated. These are just things that happen to them and it is a

matter of luck whether they receive the "evil gene" and a matter of luck whether they are abused. Some are very unlucky on both counts.

So it's not a level playing field. Some people appear to have genetic and environmental [misfortune](#) that brings difficulties in complying with the [criminal law](#).

This becomes problematic when punishing offenders. Once a person has been convicted of an [offence](#), it is up to the judge to sentence them. But if a person has "evil [genes](#)" - or, put another way, a [genetic vulnerability](#) - and is unlucky enough to have been maltreated, one might ask whether it is fair to give them the same punishment as an offender without these issues.

It is well recognised in the law that the characteristics of the offender are relevant to punishment. A mentally impaired young person from a severely dysfunctional background deserves less punishment than an unimpaired adult, even if they have committed the same type of crime.

It's just not fair to treat them the same because one has more difficulty in behaving well.

Similarly, it seems unfair to treat maltreated low-activity MAOA offenders the same as those who are more fortunate in their [genetic profile](#) and family circumstances.

But things are not so simple. Those with the "evil gene" and difficult backgrounds may still be very dangerous.

This is how the purposes of punishment come into question. Should judges focus on giving offenders what they deserve or should they just try to prevent future crimes?

Perhaps judges should just lock them up until they won't cause any more trouble. Or even lock up those with "evil genes" before they cause any trouble.

But that doesn't seem right. It seems to be a condition of a decent society that only the guilty are punished and that they not be punished in excess of their guilt. [Criminals](#) shouldn't get a worse punishment than they deserve and people who haven't committed a crime shouldn't get any punishment.

The late David Hodgson had the unusual distinction of being both a judge of appeal in the NSW Supreme Court and a philosopher of some note. His last book was on the problem of free will. This is a difficult issue to tackle and has perplexed some of the greatest figures in the history of philosophy.

Hodgson's philosophical position was that we are "partly free". Perhaps his experience as a judge drew attention to some of the factors that limit people's freedom to choose.

To be just, it seems the courts must pay attention to how partial an offender's freedom of the will is. But they also need to protect us and, at times, they must do all of this amid all of the pain of a victim or grieving loved ones.

The proper consideration of "evil genes" just draws attention to the complexity of the practice of punishment. It is easy to present it as a simple matter but it just isn't.

However, one thing seems clear. The ethical issues described here are likely to be forced on the courts by developments in science and there is no simple resolution in sight.

Provided by University of Sydney

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