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MORAL AND LEGAL RESPONSIBILITY

I call free a thing that exists and works only in the necessity of its nature, and a constrained one the one which is made to exist and work by another in a certain determined manner.

Spinoza – Letter no. 58 to G. H. Schuller

In the course of time, the deterministic doctrine has known several variants, more or less rigid forms. Absolute determinism, according to which the human being does not have the freedom to choose and at any moment acts by some immutable laws which he cannot oppose, was promoted by famous thinkers, among whom Arthur Schopenhauer, Sigmund Freud, etc.

Any human, being what he is and placed in the given circumstances at a given moment, circumstances which are themselves the result of necessary causes, could not possibly do anything but what he is doing at that moment. Also, the entire duration of that man's life, in all its minor or major aspects, is as precisely determined as clockwork.

Relative determinism is illustrated in the works of thinkers like David Hume și John Stuart Mill. According to this type of determinism, there is no contradiction between accepting, together with the idea of determinism, the thesis that the human being sometimes acts freely. Free act does not signify devoid of causes, but it means that the human being, in that particular case, acted without being constrained by an external force. There are occurrences – that have been referred to previously – when the human being acts under the pressure of circumstances (self-defence, state of necessity, physical or moral constraint) or without being aware of his acts and their consequences (irresponsibility, intoxication, minority). But there are also occurrences when man acts freely, according to his will. The difference between free acts and imposed acts resides not in the absence or presence of causes, but in the categories of causes at the basis of various activities and decisions.

Similarly, the adepts of these theories deem that there are no contradictions between determinism and moral responsibility. An individual is accountable for his acts morally (and not only), if he acted freely when performing those acts. Freedom is nothing but the choice made by the human being when pursuing his goals. The promoters of determinism find this theory extremely flimsy. This is how, they say, we can be both deterministic (accepting the notion of unchangeable laws) but also free, in the sense of holding accountable and punishing those behaving improperly. John Stuart Mill stated that man could strive to get better, more virtuous, consciously living by his own free will and by his own free will, which is of course commendable. Freedom exists and character shaping is possible. Absolute determinism does not accept such a thesis. Sometimes the human being has the impression of being free, but this freedom is only an illusion. The man who considers himself free is like a butterfly flying and thinking that it is carrying the entire universe, when in fact it is the universe that is carrying it.

Man pursues all through his life the fulfilment of certain desires and the attainment of certain goals. But with regard to choosing these desires, he is not free. He will choose a path or another to fulfil his desire, but he cannot choose the desire itself. His passions take over. He is not really free to act, but he seems so, under certain circumstances. These are, in a nutshell, some of the arguments brought by Schopenhauer in favour of absolute determinism. Man knows for certain what he wants to do, but he cannot master his desires.

Determinism, whether it is absolute or relative, states that sometimes man, by his desires and the choices he makes, may influence destiny, but even so, in the opinion of certain adepts of absolute determinism, he is not responsible for his acts from a moral point of view. In fact, this is the main difference between absolute and relative determinism.

C. A. Campbell, in his paper "*Is Free Will a Pseudo-Problem?*"¹, deals with the issue of moral responsibility, from the point of view of the individual with an under normal intellectual level, on the one hand, and from the point of view of the individual with a higher intellectual level, on

¹ C. A. Campbell - *Is Free Will a Pseudo-Problem?*, Mind, 1951, op. cit. Sidney Hook - *Determinism and Freedom in the Age of Modern Science*, New York University, 1970, p. 122 and the next.

the other hand. The individual who questions life less and has a simpler manner of thinking will consider that a man acts freely and is morally responsible for his acts in case there are no external constraining factors which may force him to make a certain decision or do a certain thing. The intellectual opines that, for moral responsibility to be possible, there should be no external constraining force and the individual should have the possibility to choose and shape his character, that is, in other words, there should be no inner forces either which may force him to act in a certain manner rather than in another.

In conclusion, from the point of view of the superficial individual, moral responsibility does exist, but from the point of view of the profound individual, it does not. However, this distinction is not exactly objective. The profound man, interested in religion, science or culture, may act or think superficially when he is under the influence of strong emotions: fear, hatred, revenge, etc. Similarly, the individual who is less interested in the scientific or cultural aspects of existence, when calm and thinking rationally, realizes the importance of the inner forces dominating us, our desires, etc. The decisions each of us makes are influenced by the environment we have lived and formed in, and the experiences of the past. It is not too much to say that certain life circumstances may trigger in each of us the same responses or acts. This view is frequently used in the Anglo-Saxon legal system, in which the guilt of an individual is decided by jurors. Lawyers often plead in favour of defendants by means of the following type of arguments: any individual, if he had lived the life of the defendant (deprived of family love and attention, deprived of education, living in a hostile and aggressive environment where nobody could infuse moral values into him, etc) , if the jury had lived through what he had lived, they would have made the same unfortunate decisions. And it was not rare occurrence that such arguments could persuade a jury made up of persons who may not have had a high moral or educational level. Doubt is instilled into the man's soul and it is true that none of us can be certain about what decisions may have been made if life or fate had been so hostile. The one who is without sin should be the first to cast the stone.

The influence of the subconscious mind (i.e of factors determinantly affecting our acts and decisions, and of which, normally, we are not aware of) on the reactions of people has been considered by philosophers over time (especially important are, in this regard, Friedrich Nietzsche or Arthur Schopenhauer). The concept as such was established by Sigmund Freud

and has acquired tremendous importance with the pathology studies of present day psychiatrists. The studies on the human mind (and this is not about people suffering from serious mental illnesses who are not aware of the seriousness of their acts or their consequences) have shown that what used to be considered the free will of the human being is in fact a consequence of the influence of certain very powerful factors that, in most cases, we are not aware of. For instance, in choosing the life partner, an individual can hesitate a lot, weigh various aspects of situations and make the decision after extensive deliberation, thinking that they have made an informed, mature and conscious choice. In fact, their choice was determined by childhood trauma, the parental role model they had or lacked, the fears and phantasies dominating their first years. That is how what seemd to be a free and conscious choice is only the result of the influence of factors that the individual in question is not even aware of, in most of the cases.

John Hospers, in his essay "*What Means This Freedom?*", wonders about the foundations of the individual's moral responsibility, the freedom of choice, under the circumstances in which we are influenced by these unconscious factors, and our acts are anything but free.

Many times moral responsibility is associated with premeditation and it is considered that what is premeditated may result in imposing a penalty in case breaches of law occur, of course. But it is not every time that moral facts are premeditated. For example, if somebody witnesses a very serious car accident, he does not pass by heedlessly, but calls the emergency service, tries to help the injured, maybe even saves lives by his prompt response, but such an attitude is not premeditated or prepared in advance, it is just a spontaneous, natural reaction.

Also, in criminal law, premeditated acts are more severely punished by the lawmaker. The crime committed as a result of a spontaneous conflict, which does not show prior criminal intent, is deemed less serious than the cold-blooded planning of a crime. But even this premeditation may hide unconscious motives at the basis of the criminal act, which do not draw the attention of the transgressor, at least in the opinion of the adepts of absolute determinism.

It may also be considered that we are morally responsible for our acts that can be rationally explained. But not even this criterion is relevant: people's power of argumentation varies from case to case, and finding

rational reasons for our acts does not mean at all that we are not influenced by unconscious factors.

It is a fact that we act freely when we are not constrained by certain factors, in a sense or another. Sometimes the constraint is obvious, i.e. an external factor drives us to make certain decisions. For instance, when we are attacked or physically assaulted, the situation itself, the other's attitude forces us into being aggressive in turn to defend ourselves. It is the same in the case of a neurotic individual who has the mania of washing his hands constantly, but his impulse lies inside his own mind¹, in a trauma he is not aware of on a conscious level. He may even find a rational explanation for his behaviour: he washes his hands to remove germs and not get sick, but this is not the real cause.

An alternative to discovering which of our actions result in moral responsibility is as follows: let us assume that we are responsible for all our acts which are not determined by unconscious causes, childhood trauma. Man cannot be made responsible for his adulthood acts if these acts, no matter how reprehensible, are the result of traumatising treatments inflicted by other adults (parents, tutors, teachers, etc.) in his early years. He is not deviant at present as a result of consciously choosing this attitude, but because he was hurt in the past, and he is responding to such a situation or his behaviour and reactions are strongly influenced by it. But even in this attempt at uncovering the acts and facts for which the human being is morally responsible does not lead to conclusive results, as most acts and failures to act are also, or for the most part, based on unconscious causes.

This theory is as plausible as can be. It was proved that a human being acts in a wrongful manner, harms the others, because he was hurt at some point in the past. But there is no question of exoneration on these grounds. First, it may be stated that it is precisely the harm inflicted that should render the individual aware of the consequences of certain facts and determine him not to behave himself in such a reprehensible manner. On the one hand, accepting such a theory may have as a consequence the possibility to commit several abuses under various pretences. Related to

¹ "An unconscious representation is therefore one that we can't observe, but whose existence we are still ready to acknowledge based on other signs or evidence." Sigmund Freud - *The Psychology of the Unconscious*, Trei Publishing House, Bucharest, 2000, p. 25.

patients subjected to psychoanalytic therapy, it was proved that certain experiences they had pretended to have had were in fact figments of imagination, which had never taken place in reality.¹

Understanding the causes of criminal behaviour does not mean exoneration from law penalties. But it still has effects, from the point of view of moral responsibility, in the sense that the perpetrator no longer seems so morally responsible for his acts. It is a proven fact that helplessness and the anger caused by the lack of love and attention in early years irreparably affects the human being and may have very serious consequences, as most serial killers have such a past. To understand is to forgive, at least partially. In the end, the whole society is to blame, morally speaking, for the destiny of some of its members. They are criminally liable for their acts, in some states the death penalty is still in force for certain crimes even today, but there still remain unresolved questions about their moral responsibility. Are they really responsible? Have they really had the chance to choose another lifepath? These are questions that will always remain unanswered.

Any society should necessarily possess a legal system, criminal legislation and appropriate penalties.² Even if one agrees with the determinist thesis that people are not morally responsible for their facts and acts, from a utilitarian point of view however, it is to be remarked that the legal system is necessary in any society: in order to prevent possible abuse, to protect the innocent, to feel safe in the world we live in. It is necessary to impose penalties, to remove the individuals who, for reasons that are or not imputable to them, represent a danger to society, for their fellow humans. Otherwise, one would miss the entire purpose for which people live in communities and abide by laws, thus limiting their freedom to move and act.

The reply of moralists to the argument that there could be no question of people's moral responsibility is that there are however

¹ "It is difficult to question the fact that the phantasy world plays the same role in psychosis, that it also represents here the warehouse where the material or the model for shaping a new reality originates. But the new external, phantastic world of psychosis attempts to replace external reality..." Sigmund Freud - *The Psychology of the Unconscious*, Trei Publishing House, Bucharest, 2000, p. 280.

² Richard Brandt - *Determinism and the Justifiability of Moral Blame*, op. cit. Sidney Hook - *Determinism and Freedom in the Age of Modern Science*, New York University, 1970, p. 149 a.s.o;

individuals who grew up without care and attention, or in orphanages and still did not turn out to be criminals. Therefore it is possible to overcome this trauma, according to moralists. Thus, there are no excuses for the others.

But unfortunately things are not exactly so. Certain individuals are merely luckier than others and manage to overcome early childhood trauma. It is not a question of force, but of luck, just like it is to be born and raised in a normal, caring family who loved, educated, supported and taught how to overcome certain emotional issues. Such an explanation may seem superficial, that luck is the key to people's acts, not free will; it is merely luck that makes us be born and raised in a certain environment, overcome certain educational gaps, become criminals or not, and another better explanation is hard to find.

The moralist sheltered in his own world, who has never suffered anything too harsh, never had to make tough choices, and never lost anything important, is quick to judge: whoever did something wrong should pay. I have not done anything wrong, so I am not to blame. But science showed that evil is never gratuitous; all human acts are determined by factors that had impacted on and shaped human character and conduct long before evil occurred. The influence of evil in a man's life is most of the times stronger than the influence of good. Doing something wrong is much harder to resist than doing something right, and such a statement is by no means a sentence, but a proven fact.

According to the words of William Faulkner¹, we should not even once look at evil and corruption, but sometimes we cannot help it, we are not always warned not to do so; we should always resist such temptations, as we should start much earlier and be ready to say no long before seeing, or understanding what such a thing as *evil* means.

For lesser breaches of the rules of social conduct we are more inclined to be understanding. We easily forgive rude behaviour if we are told that such a conduct was brought about by physical pain or health problems, lack of sleep or the like. It is not hard to understand why somebody with a terrible toothache behaves grumpily, maybe even shouts at people, even if such an attitude is not justified. All these reactions and behaviours appear normal once we know their cause. They are to be excused and understood, as they may happen to any of us. Luckily, the

¹ *Requiem for a Nun*, Universul Publishing House, Bucharest, 2001.

events that may irreparably traumatise a child in his early years are not as frequent. Maybe that is why we are more intolerant and reluctant to show understanding; most of us did not have to cope with anything similar, being loved and raised in a united family, receiving instruction, help, protection and constant encouragement. Such things seem normal, as we have had them since the very beginning. They have never been denied to us, and that is why we have not realised that everything had to do with luck rather than anything else.

Another danger that has to be evinced regarding this theory of the lack of moral responsibility refers to certain unavoidable consequences it produces¹. If it is admitted that all human acts are predetermined by genetic predispositions, and mostly by the conditions in the early years, the following conclusions may be drawn: (1) people should never feel disgust or disapproval towards the behaviour of the others and should not bear judgement under any circumstances; (2) nobody should ever be punished for his past acts; (3) perpetrators of grievous crimes should not have any regrets or remorse, as they are not morally responsible for them; (4) nobody should ever feel proud for the very difficult things they achieved, as they were part of their destiny; (5) nobody should ever be admired for such things, on the grounds mentioned before; (6) no reward should exist for good deeds, for deeds hard to accomplish or for personal sacrifices, etc.

The issue is however open to debate. The theory of the lack of moral responsibility includes arguments whose validity is beyond doubt. But it also has consequences which are hard to accept. Ultimately, there are individuals who commit heinous acts, grievous offences, because of the environment they were born and raised in. They have never been protected or loved. But removing all responsibility is not possible and anyway, nobody expects it. We should probably be more careful about the people around, children's raising and education, and such a conduct at the social level should result in a drop in criminality and a higher number of accomplished individuals, normal from a mental point of view, much less inclined to harm the others around (to respond by doing harm when harmed).

¹ Richard Brandt - *Determinism and the Justifiability of Moral Blame*, op. cit. Sidney Hook - *Determinism and Freedom in the Age of Modern Science*, New York University, 1970, p. 149 a.s.o.

The philosopher's mission is to wonder, and the question if there is such an issue as moral responsibility or free will is extremely important, raising in turn several other questions. It seems that our ultimate interest resides in finding out the root of evil and the means to avoid it. Or even more importantly, can evil be avoided?