

The Concept of Choice in the Criminal Justice System

October 5, 2010: Robert Tallman* tells me that he estimates he has been in sixty one-on-one street fights. He reports that he will smile through anything but he won't let anyone take advantage of him. He says, "I smile at them. But I've been through too much to let anybody take advantage of me. I don't mind getting beat up if that's what it takes. . . . I will do anything to respond to what you do." *He made the choice to fight and never give in to intimidation by others.* On August 26, 2009, he shot and killed two teenagers who he thought had been part of a group that assaulted his stepbrother.

March 27, 2012: Junior Mercedes* tells me that as a child, "fear and anticipation of violence seemed like the norm to me. Later, when I started visiting other kids' houses I could see what's really normal. . . . I never told anyone about my home life. I just lied about it. . . . The Code is you have to take care of things yourself and don't involve outside people." *He made the choice to keep the abuse and neglect he experienced at home a secret.* On November 15, 2011, in a case of fatal child abuse, he beat to death his girlfriend's two-year-old child out of frustration with the boy's misbehavior.

Two bad choices. Two fatal outcomes. Is it really that simple? The criminal justice system runs on the principle that people choose what they do, and thus the principal issue in most cases is the matter of "good" versus "bad" choices. It all sounds so clear-cut: Human beings have free will, and therefore they should be held accountable for the choices they make. Some individuals make good choices, and they should be rewarded for those good choices. Others make bad choices, and they should be punished for those bad choices. Simple.

However, the more I listen to killers, the more I think it is quite the opposite of simple. This is particularly true in cases that involve juveniles and

young adult offenders who are not yet mature adults, but it applies to adults as well. You can't understand these boys and girls, these men and women, unless you are willing to dig deeply into the processes by which people in general make choices. You have to look at the way in which the social and psychological environment that killers inhabit shapes the options they have to choose from, and the processes they use to make those choices, particularly the bad ones. Then you have to look at what modern neuroscience tells us about how brain functions affect the choices people make.

In most cases, you must do this if you want to respond with justice based on an accurate understanding of what happened. But in *every* case, it is essential if you are to respond with compassion, not just for the victims and their families, who naturally are almost always the beneficiaries of our compassion, but for the murderers themselves, toward whom it is usually more challenging to feel compassion.

The issue of choice is always present in the courtroom, but rarely as baldly as it was when the attorney representing convicted serial killer Jorge Susindo* asked me this question: "Can the experience of prolonged, severe trauma affect a person's ability and motivation to make 'good choices' in life?"

I answered, "Yes, it can and does."

The attorney continued the examination: "Can you explain that?"

In the courtroom, I could give only a brief answer along these lines: All choices are made in a particular context, a particular place and time. Who, where, and when you are plays a role in shaping the range of choices open to you and, thus, the choices you make. Both internal issues (such as knowledge of options, understanding social realities, internalized cultural values, unconscious forces, and brain functions) and external issues (such as the rewards and punishments meted out by the social environment) can affect an individual's perception of the available choices and the consequences of one choice versus another. That's the short answer. This chapter is the long answer.

DO THEY MEET THE LEGAL GROUNDS FOR INSANITY?

The killers I have listened to made a choice to kill someone, often for reasons that seem utterly "crazy" to an outsider. However, none of them met the strict legal criteria for an insanity plea. That is, none of them maintained that at the

time they committed their crime they did not appreciate the nature or the wrongfulness of what they were doing. In the strict and narrow terms employed by the legal system, they were not so impaired by a mental illness or “mental defect” that they were totally disconnected from reality (for example, hallucinating). Also, while they often justified what they did in terms of the “war zone mentality” that I mentioned in the introduction and will examine in detail in chapter 3, they were aware that what they were doing was illegal (in the sense that it violated mainstream norms), even while it might be consistent with the rules of engagement in the war zone in which they lived.

Sometimes, and in some jurisdictions in the United States, it is possible to assert that a killer was suffering from a mental condition or mental defect that created an “irresistible impulse” to kill. This generally doesn’t apply to “my” killers but is used in the rare case of an ordinarily “law abiding” citizen who goes crazy because of some extreme situation, like “normal” parents who kill the person who molested their child. This happened in Shiner, Texas, in June 2012, when a father walked into his house during a social event to find his four-year-old daughter being sexually abused by a man who was a casual acquaintance of the father. The father was so enraged that he beat the man to death. In the wake of the incident, every person CNN interviewed in the town—including the sheriff—approved of his action and believed he shouldn’t face any criminal charges. Ultimately the local prosecutor agreed, and no charges were filed. In what is, I think, a related phenomenon, since 1976 Texas has executed more people than any other state—four times as many as its closest rival for this dubious honor. Violent retribution is—in Texas at least—a “good” choice, whether it is made by an individual or by the state, when the grounds for that choice are culturally validated.

An insanity defense seeks to get the defendant acquitted of his crime by saying, in effect, “my client was not operating within a normal moral framework at the time of the killing because he was so crazy he didn’t know what he was doing, or didn’t know it was wrong, or couldn’t help himself from doing something that he wouldn’t ordinarily do and would not do again in the future.” By and large, the killers to whom I have listened don’t meet these criteria for the legal definition of insanity.

This is not surprising, given the rarity of such pleas succeeding in American courts. A study commissioned by the National Institute of Mental Health and reported by PBS found that it is raised in less than 1 percent of all felony trials (about half being for crimes of violence, 15 percent for murder), and successful in only about 25 percent of those instances (thus, one-quarter of

1 percent of all felony trials). Typically, such cases involve plea bargains for defendants who had already been diagnosed with a mental illness, so it is still rarer for an insanity plea to succeed in a trial. For example, as an analysis conducted by Robert Buettner found, according to the New York State Division of Criminal Services, of the 5,910 murder trials completed from 2003 to 2013, in only seven cases was the defendant found not guilty for reason of mental disease or defect (that is, “legally insane”).

NOT LEGALLY INSANE, BUT CRAZY NONETHELESS?

Most of the killers I listen to commit their crimes in states of mind that mimic the conditions that define legal insanity: they believe that *in their world* what they are doing is necessary and therefore right. They are so emotionally damaged that *in their minds* they have lost sight of the relevance of “right and wrong.” They are responding to powerful emotional forces—often unconscious forces—over which they have little if any control, at least *in the moment of their violent action*. It is in this sense that they make “crazy” choices.

The more than fifty murder cases in which I have been involved over the past twenty years have included many different explanations for the violent choices made. When looked at from the outside observer’s point of view, many seem crazy. However, each makes sense when looked at from the inside of their minds (and hearts in some cases). What follows is not a standardized system for classifying these choices, but it does make sense to me as a representation or typology of choices to kill that I hear from men and boys (and some women and girls).

A Typology of Crazy Choices to Kill

Survival. We are programmed to survive. When faced with a threat, we respond to ensure our survival. However, as we will see in chapter 3, some of us learn lessons that predispose us to choose preemptive violence when we feel threatened. When Leonel Rivas saw a rival gang member reach under the dashboard of his car, he thought his opponent was grabbing a gun and would shoot him if he didn’t protect himself. *He chose to shoot first.*

Lust for power. What the philosopher Friedrich Nietzsche called “the will to power” is strong in many of us. In the violent world that some of us

live in, this seeking for power leads us to choose violence as a means to that end. Daniel Wellington* sought to uphold his “image” in the neighborhood and gain power by carrying a gun, behaving recklessly, engaging in numerous “stickups,” and taking a role in drug dealing. *In explaining his choice to shoot a rival drug-gang leader, he says, “If you cut off the head, the body dies.”* He says that these actions were essential to garner resources and protect himself in a “dog eat dog” world.

Monstrous narcissism. Narcissists are dominated by their egotism, pride, vanity, selfishness, and drive for prestige (usually at the expense of others). When it becomes extreme, it can reach the level of a clinically diagnosed personality disorder. Researchers, including Joshua Foster and his colleagues, have observed that narcissism is generally higher, on average, in males than in females and in African Americans than in other ethnic groups in the United States (and generally higher in individualistic cultures like ours). Georgia Calhoun and her colleagues have found that it is prominent among violent juvenile delinquents. While awaiting trial for charges of robbery, burglary, and aggravated assault, twenty-four-year-old Nate Barrington* invaded the house of sixty-five-year-old Melanie Hampton and her seventy-year-old husband, Thomas Hampton, intent on robbing them. *To silence them so that he could get away with his crime, Barrington chose to beat and stab the couple until they died. He then burned their bodies and their home.*

Existential honor. As we will see in chapter 3, the “culture of honor” increases the risk that individuals will choose to respond aggressively when they feel humiliated or disrespected. Even beyond this culture of honor lies the foundation for violence in the feeling that without honor there lies the prospect of “psychic annihilation”—a fear that one will cease to exist as a person, as psychiatrist James Gilligan puts it. Eighteen-year-old Jonny Angleson* shot and killed seventeen-year-old Shawn Berthson on September 15, 2004, after a verbal altercation. Jonny’s sister had been threatened at gunpoint by the victim and his friends a week before the shooting as part of an escalating conflict with neighborhood peers. *Jonny chose to defend his family’s honor by shooting neighborhood rival Shawn.* His sister testified that if he had not done so, she would be dead.

Retaliation for sexual abandonment. Fear of abandonment is a powerful motivator for action. Geraldine Downey and her colleagues have identified “rejection sensitivity” among men as a significant risk factor for domestic violence. When individuals high on rejection sensitivity believe that they are about to be rejected and abandoned, they “choose” to engage in preemptive violence. Simon Dalton* was distraught and enraged at the

thought that his girlfriend had broken off their relationship and started seeing other men. *In response, he chose to kill her, her mother, her grandfather, and a neighbor who tried to intervene on their behalf.*

Panic. Fear is a powerful motivator. Some individuals choose to kill because they are in a state of panic and literally “can’t think of anything else to do.” This may involve killing to avoid being killed oneself, or reacting impulsively when in a state of intense emotional arousal because their brain’s capacity for effective “executive functioning” is suppressed. Ron Richardson was being pursued by a police officer. *Since he was already on parole, Richardson knew that if he was arrested he would be going back to prison for a long time, so he chose to shoot at the officer in an attempt to discourage him from continuing the chase. The officer was hit by one of the bullets and died.*

Criminal practicality. Researchers have long differentiated between acts of violence committed because of strong emotions, with the intent to inflict pain (“hostile” aggression), and acts of violence committed simply to attain a particular concrete goal (“instrumental” aggression). Some killing is done simply as part of the “business” of crime (e.g., drug dealing). Ronald Garner* kills because he sees it as just a normal part of his business managing a large drug-dealing operation. *For him, killing is a practical matter of criminal enterprise. “I kill because it’s good for business,” he says.*

Curiosity or thrill. Some human beings are so disconnected emotionally from the rest of us that they don’t “get it” when it comes to moral decency. Psychologist Robert Hare has called these individuals “psychopaths.” They are prone to kill just for the enjoyment of it or out of a perverse curiosity. *Tim Bankovic wanted to see how it would feel to kill someone, so he chose to lure two sandwich deliverymen to a secluded location and killed them to find out.*

Each of these categories of choice represents a “bad” choice, although in some cases these boys and men (and in a few cases, girls and women) thought that it was not an immoral choice, at least at the time when he (or she) committed the act. Each caused the death of another human being. I recognize the fact that appreciating the norm that murder is ethically unacceptable does not require advanced moral judgment. And I recognize that not all killing is murder: most people believe in killing others, at least under some circumstances (such as in self-defense, in war, or in state-authorized executions, for example). But even murder is not simple most of the time.

THE WORLDVIEW OF KILLERS

Most murderous choices reflect the particular worldview of the perpetrator, and “my” murderers often have special circumstances that affect their worldview. Their tendency to overidentify serious threats to their survival and their justification for preemptive assault reflect their war zone mentality and, thus, an inability to be a part of the moral world that most of us inhabit. Their emotional damage undermines their emotional self-regulation, increasing the risk that rage and fear from unprocessed rejection, humiliation, and abuse in their past will spill over into the present in situations that evoke the original trauma (more on this in chapters 3 and 4).

There are individuals like Tim Bankovic who really do not have any moral sense and are totally disconnected from humanity, either because they have no empathy or because they don’t embrace moral values that demand respect for life. We call these individuals “psychopaths.” Like psychologist and researcher Robert Hare, I prefer this term to the more commonly used “sociopath.” Hare has argued that most individuals whose behavior is not impeded by allegiance to the mainstream moral community and who thus demonstrate a chronic pattern of antisocial behavior are best understood not as psychopaths but as sociopaths. What differentiates them is that psychopaths have human disconnection at their core (whether originating from a congenital inability to connect or from a developmental reaction to brutality in childhood), whereas sociopaths have “simply” developed a bad habit of behaving antisocially. This pattern may result from destructive psychological experiences in childhood and adolescence but not be associated with the emotional disconnection and “lack of conscience” usually attributed to true psychopaths. I will return to this issue in greater depth in chapter 3.

Obviously, people who feel that normal morality is just an impediment to satisfying their wants and needs are a danger to society. This is true whether the individual is a corporate executive who sells contaminated products to consumers because it helps the bottom line or a rapist who preys on vulnerable girls and women, coercing their silence by threatening them and their families with death. As Jon Ronson points out in his book *The Psychopath Test*, it is not surprising that research on the prevalence of psychopathy among CEOs finds a rate four times the national average (4 percent versus 1 percent). It may also be more prevalent among successful politicians, businessmen, and lawyers, jobs in which allegiance to truth is often subordinated to self-interest. What is more, if these psychopaths have good social skills,

high intelligence, and high socioeconomic status, they may be able to avoid detection if they commit crimes or if they exploit people without breaking the law. I have heard more than one cop say that “only the dumb criminals get caught.” It’s an exaggeration that contains a truth.

Most killers are neither psychopaths nor sociopaths, which means they can and do have some general moral appreciation that killing is wrong (or at least *could be wrong* in some situations, but not the one in which they did the killing). But is this the same as the free will implied in “good choices”? I don’t think so.

THE CIRCLE OF CARING

In the mid-1990s, my partner Claire Bedard and I spent many hours interviewing teenage boys incarcerated for crimes of violence (mostly assault of one sort or another, but including some who had killed people, usually other teenagers). At Cornell University, where I taught at the time, we called this the “Making Sense of Senseless Youth Violence Project.” In 1999, when I published *Lost Boys*, the book that grew out of this project, I was often asked the question “These boys, don’t they have any moral standards?” It’s perfectly understandable why people asked this question. Some of the things violently delinquent boys do seem obviously wrong. They steal, shoot, stab, beat, rape, threaten, and cheat other people.

At the time, I responded along these lines: These boys often have moral values, but they don’t apply these values in the ways and in the situations that most people do. In general, their “circle of caring” is smaller than that of most people, so few of their decisions are conventionally moral. Most are logistical and pragmatic. Will this action make me safer? Will this action get me precious resources? Is this person someone I care about, someone for whom I am responsible? Will this action restore justice to my world? Within their small circle of caring, they often do make moral decisions; outside it, as they often put it, they “do what I had to do.”

I think of this often when listening to killers in my role as psychological expert witness. They have a code of behavior, but their life experience has drawn them into small circles of caring, circles in which most of the rest of us don’t count very much. They make choices that reflect that code, as they understand it. In this sense, they are not psychopaths as Hare defines the term, although some of them clearly are sociopaths. Their understanding of right and wrong reflects the moral damage of the war zone mentality and the

emotional damage that has accrued from unprocessed trauma, abandonment, rejection, and abuse. It reflects their alienation from the mainstream community. And it predisposes them to live on the dark side of human experience, where evil flourishes.

GROWING UP ON THE DARK SIDE

Being the victim of sexual abuse (and other forms of maltreatment) in childhood and adolescence is a common theme in the lives of killers. I hear about it often and read about it in the case records still more often. Simon Dalton* exemplifies this. When he was five years old, he was molested by a male relative. When he was seven years old, he was sexually molested by a seventeen-year-old girl. And when he was twelve, he was involved sexually with a nineteen-year-old girl; this constitutes statutory rape because of the age discrepancy between them. It is not surprising that as a sexually abused child he had learned to seek relationship through sex. But she met his emotional needs as well. His records state that “his life revolved around her at the time.”

Although research on the development of boys who are sexually abused by females is very limited, a study by David Lisak testifies to effects that include sexual confusion (and rage) of the sort evidenced by Simon Dalton, as has been noted in reports by clinicians who have seen him over the years. He made many “bad choices” when it came to his relationships with women as an adult.

Given the gross emotional damage he experienced in domains of his life beyond sex, I don't think we should be surprised that he committed acts of “crazy” violence when he felt he was abandoned by his girlfriend in adulthood. Sexual abuse in childhood and adolescence impairs the ability of many victims to make “good decisions” later in life. This is particularly true in adolescence, when aspects of the human brain involved in decision making are still immature.

RATIONAL DECISION MAKING AND THE HUMAN BRAIN

In chapter 5, our attention will turn to the special issues involved in adolescent decision making, with examples from cases, issues that extend beyond age eighteen, the legal line marking adulthood in the criminal justice system.

Here, I will just note that developmental factors can shape the quality of decision making. According to psychologist Larry Steinberg and his colleagues, teenagers typically have special problems because of the immaturity of their brains; their relative lack of experience in making important decisions, particularly when they are impaired by drugs and alcohol; and their susceptibility to peer influences.

But young or old, people don't make even "rational" decisions as rationally as we, and they, might like to think. Unconscious forces can influence powerfully the range of behavior an individual may choose. For example, research on what psychologists call "confirmatory bias" reveals that most people will continue to "choose" to behave consistently with a position toward which they are predisposed even when the empirical evidence before them is inconsistent with that position, or is so mixed that no conclusion could be drawn objectively.

In a study not about killers but relevant to their lives and deaths, Charles Lord and his colleagues found that when proponents and opponents of the death penalty were given brief descriptions comparing murder rates in states with and without the death penalty, they were inclined to shift a bit in the direction of the study's conclusion. However, when the researchers followed up with a more detailed description of the studies, almost all the participants returned to their original belief *regardless of the evidence presented*. How? They focused on details that supported their original belief and disregarded contrary evidence in the data. They discounted the validity of methods and results that ran counter to their original belief and embraced methods and data that supported it. In a similar vein, in a 2005 study published in the journal *Law and Human Behavior*, psychologist Saul Kassin and his colleagues found that police investigators were worse than college students in differentiating between true and false audiotaped or videotaped confessions (by real prison inmates) but that the police investigators were more confident in their (false) judgments.

In the social context in which they actually think, conclude, and decide, people are often not conscious of the fact that they are making such "bad choices." Psychotherapists make their living off this reality. Often, a process of "bringing to consciousness" through cognitive-behavioral or psychodynamic therapy is required before a client can make good choices in a variety of personally and socially significant situations. These forms of psychotherapy are used to correct unconscious biases that predispose individuals to "bad choices" of friends and romantic partners, negative self-assessments that can

result in self-defeating choices, and misperceptions that can lead to aggression toward seemingly hostile people.

ADDICTIONS AND FREE WILL

Addictions can undermine—in some cases even negate—the strength needed to choose to avoid poisons and self-destructive behavior. Like many issues in human behavior and development, the question “Is addiction a choice?” has no simple and universal answer. The conventional wisdom on one side is that addictions are diseases, embedded in the brain, that make a mockery of choice and free will. In this view, the addict may choose to go forward with his addiction, but this “choice” reflects not free will but compulsion. The conventional wisdom on the other side is that addiction is simply a choice, and addicts display some combination of weak character and weak willpower as well as immoral intent.

Not surprisingly, the emerging truth goes beyond both forms of conventional wisdom. Survey data are used to support the point that many, if not most, individuals who exhibit addictive behavior (psychoactive drugs being the main focus of this research) do in fact stop using at some point in their lives. For example, according to psychologist Gene Heyman’s 2010 review of this evidence (in his book *Addiction: A Disorder of Choice*), 60 to 80 percent of drug addicts (people who have at some point met the criteria for lifetime substance dependence) terminate their addiction by the time they complete their thirties. In Heyman’s reading of this evidence and the firsthand accounts of former addicts, the addict stops when the costs are too great in relation to the benefits. This undermines the credibility of the second conventional view, because it indicates that the addicted person “chooses” to stop being a drug addict (or an alcoholic).

But there is evidence to support a modified version of the “disease” model as an alternative to the “weak character” approach. This includes the fact that when drug addicts have mental health problems in addition to their drug problem (comorbidity, as it is called), they are much less likely to be able to manage their drug taking and to quit altogether. As Heyman sees it, this group constitutes most of the classic drug addicts who are the focus of most clinical interest and research. But they comprise only about 15 to 20 percent of the young addicts who eventually become chronic problematic users into their forties and beyond.

Modern neuroscience is documenting differences in the brains of what might be called “hopeless” addicts versus those who can control their drug use—or at least can learn to control it. Some of the former may have special neuropsychological vulnerabilities (whether due to genetic predispositions or to brains that have adapted to drug use) that impair the process of “free choice.” This suggests that some individuals may conform to the view that drug abusers “choose” to use, but that the choice is hardly made freely (that is, without powerful compulsions that are difficult to resist). And as New Zealand psychiatrist Doug Sellman points out in his 2010 review of the evidence, “Addictive behaviour appears to involve processes outside of the sufferer’s personal consciousness by which cues are registered and acted upon by evolutionary primitive regions of the brain before consciousness occurs.” This implies that any “choice” is channeled by unconscious processes in the brain.

Some addicts make profoundly bad choices in life. That much is clear. The origins of these bad choices may be diverse. For some, they reflect the powerful hold of an addiction, a hold so strong that it saps “free will” and creates such an intense craving that any and all forms of rationalization will come into play to make sense of the choices made. For some, bad choices represent a habit that is limited by time and place—for example, drug users who use only on the weekend or binge drinkers who stop after they graduate from college. For others, such choices are tied up in their mental health issues, which can arise from diverse circumstances, including abuse, abandonment, and trauma. For these individuals, drug use may represent a choice to dull their pain, a kind of self-medication that is particularly common among victims of unprocessed trauma. This phenomenon seems to have played a role in the following case.

THE DUKE JIMENEZ CASE

As a teenager, Duke Jimenez* told me, he did not attend school regularly because of his mother’s alcohol use, and he began going to school under the influence of alcohol. Thus, problem drinking is an issue shared by him, his parents, and most of his extended family. It appears that Duke was engaging in self-medication to deal with his trauma-related symptoms (as do many victims of unprocessed and unresolved trauma). He chose to do so, but in the context of the messages sent by his family’s behavior regarding substance

abuse. However the choice was made, his drinking and drug taking, combined with his trauma-related dissociation and other psychological symptoms, reduced his ability to manage his intense emotions and sustain day-to-day social competence in the world of work and community. Duke reported drinking heavily every other day, using marijuana almost daily, using cocaine “ten to twenty times,” and experimenting with other drugs, all in early adolescence. When it came to the night in 2005 when he killed Roberta Teebee while robbing Teebee’s house, Duke was drunk and in no condition to be making critical decisions.

A 2009 review of the effects of heavy drinking in adolescence conducted by L. M. Squeglia and colleagues documents numerous cognitive effects. Most relevant here is the finding that “Deficits in executive functioning, specifically in future planning, abstract reasoning strategies, and generation of new solutions to problems, have also been found.” Brains adapt, for better or for worse. In the case of youths who drink heavily and chronically, the adaptation is mostly for the worse. It certainly was for Duke.

CAN A KILLER LIKE DUKE BE HEALED?

Duke made a colossally bad decision when caught in the act by Teebee, and in his drunken state, the rage that infected him because of his life experiences boiled over. Teebee died as a result. When I met with Duke in prison before his trial, he was sober and lucid. This is what I wrote about him in my report for the court:

I think that the prognosis for Duke would be very good if he receives competent psychotherapy and matures (he is still a very young person). He is very intelligent (scoring in the “high average range” and “excelled in tasks that required the use of abstract thinking”) and quite sensitive. He has a positive relationship with his young son. Although his family and cultural socialization and his self-defensive pattern of dissociation have led him to avoid reflection that brings to consciousness previously suppressed thoughts and issues, he does have the potential for insight and reflection. For example, I believe that the last few minutes of our interview session set him to thinking about things in a somewhat new light. I think he could progress to a point where he is capable of doing very good things with his life, and therefore should be given the opportunity to do so through the court’s sentencing decision.

Duke pled guilty to the murder of Roberta Teebee in a state that does not have the death penalty, and the judge sentenced Duke to seventy years in prison. Before being sentenced, Duke read a five-minute statement before the court in which he apologized for what he did and for the hurt he caused, including to his six-year-old daughter. He said, "If I was in a sober state of mind, all of this could have been averted. Nobody chose to drink but me and now I must be held responsible."

BAD CHARACTER?

Drug addicts, alcoholics, and sex addicts often say they feel powerless to resist the temptations that their cravings generate and make bad choice after bad choice as a result. In the abstract, of course, each incident of taking drugs, drinking, or having sex represents a choice, a decision. But those who have not experienced these addictions may underestimate their power and falsely attribute the addicts' bad choices to "moral weakness" or "lack of character." Of course, some addicts end up making good choices and sticking by them, but it usually involves expert guidance and powerful social support (e.g., by training in self-control practices). Even then, backsliding (i.e., a return to the "bad choices") is common.

Similarly, abused children are at risk if they have developed the cognitions embedded in a negative social map. According to research conducted by Kenneth Dodge and his colleagues, these include being oblivious to positive social cues, being hypersensitive to negative social cues, identifying a narrow range of behavioral responses when emotionally aroused, and believing that aggression is a successful social strategy. If their thinking is characterized by these four features, they are eight times more likely than other abused kids to develop a chronic pattern of aggression, bad behavior, acting out, and violating the rights of others (what is officially diagnosed as "conduct disorder"). Kids with conduct disorder generally make a long series of "bad choices" that abused children who do not develop ("choose"?) such negative social maps do not.

All these issues can come into play in understanding violent criminal behavior and the "choices" made by the individuals. When I think about these choices, I am drawn to an appreciation for how the decisions we make reflect not just our character and our brain's executive function. I am drawn to think about the context in which we are asked to make decisions.

MAKING CHOICES UNDER SOCIAL AND CULTURAL DURESS

In Cambodia in 2010, I visited a World Vision–supported shelter serving girls who were rescued after they’d been subjected to sexual trafficking and forced into prostitution. These girls often choose to return to prostitution unless they receive intensive trauma-informed cognitive behavioral therapy. The “bad choice” to return to the sex trade often occurs because the girls are ashamed and believe that their society considers them “garbage.” In fear and unable to trust adults, even those trying to help, they may believe they can never return to positive relationships with the community and their families of origin. They may feel so damaged that they believe their psychological wounds will never heal. What does this tell us about free will?

In 1995, a cancer prevention program informed me that focus groups of inner-city youths who had been traumatized by community violence revealed that these kids often chose to ignore antismoking messages because they didn’t expect to live to old age and thus didn’t see the need to worry about lung cancer. Their disconnection from the future (“terminal thinking”) put them at risk for bad health choices. What does this tell us about free will?

When I testify in murder cases that involve juveniles or young adults, I am always interested in knowing something about where they live. Why? Research reviewed by criminologists Rolf Loeber and David Farrington in their classic book *Serious and Violent Juvenile Offenders* revealed that in “bad” neighborhoods, 60 percent of ten-year-olds with conduct problems “choose” to become violent delinquents. In “good” neighborhoods, only 15 percent “choose” to do so. Where you live (meaning the habits of heart, mind, and behavior of your neighbors and peers) affects the choices you will make if you are a child with a history of aggression, bad behavior, acting out, and violating the rights of others. What does this geographic effect imply about the process of choosing? It makes the odds of good choices by high-risk kids better if they live in good neighborhoods and worse if they live in bad neighborhoods. What does that say about free will?

In 1985, I traveled to Sudan to visit a female child whom my family and I were supporting through an international aid organization (Plan International). There I was confronted with the reality of choices made by Sudanese women for their children. Almost 90 percent of mothers in Sudan chose to have their daughters genitally mutilated because they themselves had gone through it as children, regarded it as normal, and believed that not

doing it might ultimately be a bar to marriage for their daughters. The overarching goal of this practice is to deprive females of sexual gratification. Given the primitive state of medical care among poor Sudanese, the mutilation often causes infections that can lead to sterility or death. If those women had grown up in the United States, they would never have made the decision to have the clitoris and labia of their daughters cut off. An American mother who approved the genital mutilation of her daughter would be a criminal. Are Sudanese women who subscribe to this practice making criminally “bad choices”? It is, after all, illegal in Sudan, despite its extraordinary prevalence. Are Sudanese mothers exercising free will?

My point here is that the degree to which individuals make choices reflects the social and cultural environment in which they live. And it reflects their personal psychology, not just their “character.”

CHOOSING TO CONFESS

The U.S. Constitution offers protection from self-incrimination under the Fifth Amendment. In 1966, in the case of *Miranda v. Arizona*, the U.S. Supreme Court defined this right in practical terms. Police are required to inform everyone they arrest of their right to consult with an attorney before and during questioning and their right to not make self-incriminating statements. The court further stipulated that the person being arrested must understand these rights and must waive them only voluntarily. The court ruled that incriminating statements can be admitted into evidence in a trial only if they were made within these parameters. This being the case, one is left to wonder why anyone confesses to a crime. Yet many people do. Why do they make that choice?

Among the reasons why guilty people confess are feelings of guilt over the crime they have committed, the expectation that they will be treated more leniently in the criminal justice system if they confess, their desire to protect someone else from prosecution, interrogation techniques that lead them along a path of gradual disclosure, and fear of the interrogating officers. I have watched the videotapes of several murder confessions and seen all of these at work.

But consider the fact that significant numbers of individuals “choose” to confess to crimes they did not commit. FalseConfessions.org is “a public advocacy organization committed to raising awareness of the incidence of

false confessions in criminal prosecutions leading to wrongful convictions.” Their analysis of the data concludes that false confessions are particularly likely to occur in homicide cases and are particularly likely to be made by young men. The rise of DNA evidence analysis has brought this to light: more than two-thirds of the DNA-cleared homicide cases documented by Northwestern University’s Innocence Project involved false confessions that led to wrongful convictions. Some individuals make false confessions out of a demented desire for attention or in a state of delusion in which they really believe they are guilty, but most do so in response to pressure and manipulation generated by police interrogation techniques. As Douglas Starr found when he looked into this matter, common police interrogation techniques inadvertently convince investigating detectives that the interviewee is guilty, and this leads to escalating pressure to confess. After hours of interrogation, afraid and confused detainees often confess out of desperation and exhaustion, usually with the “guidance” of police and the promise of being released.

As I was writing these words, the press was reporting on the 1992 case of two men, Antonio Yarbough (eighteen at the time of the crime) and Sharrif Wilson (fifteen), who had been released after serving twenty-one years for a triple murder they did not commit (when DNA evidence cleared them). The CNN account lays out the bare bones of what happened in 1992:

[Yarbough] opened the door to find his mother, sister and a close family friend lying stabbed and strangled to death. The two girls were partially undressed.

Police came.

“I was asked to come down to the precinct,” he said. Officers said they wanted him to tell them who might have killed his family, he said.

“Before you know it, I had this photograph shoved in my face, and I was being threatened and slapped around, and they wanted me to sign a false confession. And I wouldn’t,” Yarbough said.

Police also took in Wilson and questioned him separately from Yarbough. But he got similar treatment, he said.

“I was scared, afraid; I was lied to, manipulated into believing that I was going to go home, if I do tell . . . what they said happened,” Wilson said.

Faced with a life behind bars, the young boy cooperated for the promise of lighter treatment.

Sometimes individuals confess because unscrupulous police interrogators have threatened or assaulted them physically, sexually, and/or psychologically. I was involved in the case of twenty-year-old Robby Trainor*, who confessed to killing an acquaintance after being beaten with a flashlight for

two hours by detectives acting on the orders of their precinct captain (who subsequently was prosecuted for a pattern of abuse and intimidation). Like a lot of “crazy” things people do out of fear, confessing may well seem like the “right choice” at the time and in the situation.

Many years ago, I tutored New York State Police investigators in “applied psychology.” At the end of one ten-week course, my two best students (who had the highest confession rate of any team in the state police) invited me to visit them at their station and go through a mock interrogation. They hooked me up to a polygraph and proved to me that they could detect any lies I told. It worked. And then they began to use the classic “good cop/bad cop” approach, at which they excelled.

The “bad cop” was a tall, imposing figure with cold gray eyes and an intimidating manner. The “good cop” was short, with twinkling blue eyes and black curly hair. It was all in fun, but I quickly realized how powerful the pressure to cooperate with them would be if it were happening “for real.” Indeed, they told me that after a little time with the “bad cop,” most people were eager to confess to the “good cop.”

Add a little physical intimidation to the emotional pressure, and making the “choice” to confess falsely is not out of the question by any means, particularly for the young, the poor, the poorly educated, and the ethnic minorities who have the most experience with police power and discriminatory treatment. While research by Saul Kassin and his colleagues shows that most jurors find it hard to believe that anyone would confess falsely to a crime, I don’t find it hard to believe at all. After the flood of exonerations due to DNA evidence and for other reasons, no one else should either.

Despite the Constitutional protection offered in the 1966 *Miranda* decision against involuntary self-incrimination, decisions to confess are often made in situations in which the foundation for “free choice” is compromised or lacking completely. Decades of research and the work of ethicists have shown that you can’t really make a “free” choice unless you are in a position to give informed consent.

INFORMED CONSENT REQUIRES FREE WILL

As a general rule, informed consent requires that an individual is both free from coercion and able and motivated to appreciate the consequences of an action. Unless these conditions are met, a person cannot give valid consent,

even if he or she chooses to do so. Thus, for example, children are presumed by law to be unable to give valid consent to sexual activity with adults, even if a particular child seems to do so voluntarily. Once my colleague David Finkelhor explained this, public and professional understanding of child sexual abuse improved greatly. Focusing on the impossibility of informed consent shifted the focus away from assessing the harmful effects on children of having sexual experiences with adults (which are sometimes hard to prove and may even be absent). It shifted the whole process toward the principle that *regardless of consequences*, children cannot, by definition, make good choices when faced with adult sexual overtures. The same is true of prisoners being asked to participate in medical experiments: there is always the specter of coercion, and they have difficulty appreciating the risks, given their life experience and lack of future options.

The larger point is that choices are always made in a context. Violent youths have typically grown up in contexts where trauma—untreated trauma—is typically the rule rather than the exception. This untreated trauma often makes them “dangerous” in the sense that they are driven by unconscious motivations that predispose them to bad choices. From their perspective, the range of options realistically available is often so narrow that there is no “good choice,” at least in the way mainstream society would classify it. The options appear to be especially narrow for males who carry a profound sadness—and accompanying rage—in a culture that teaches boys that “it is better to be mad than to be sad.” Sometimes this leads to horrific choices.

THE MARVIN TOLMAN CASE

Californian Marvin Tolman* killed his whole family—his wife and his three stepchildren. It was horrible. He annihilated them with a semiautomatic weapon and then waited for the SWAT team to come and dislodge him from their home as their shattered bodies lay around him. The forensic evidence was clear. He did it. But Marvin does not remember doing it. I have sat with defendants who denied they were guilty, but this was different. He was not lying. Mental health professionals who assessed Marvin concluded that he really did not remember. It would appear that Marvin experienced dissociative amnesia, an inability to remember brought on by the trauma of the violent acts he committed. These acts were so at variance with his intense

emotional bonds with his wife and stepchildren that killing them was more than his fragile psyche could bear. Such traumatic events are known to produce dissociative amnesia, and Marvin appeared to be an example of this phenomenon, which occurs in highly stressful situations like war and natural disaster.

But why did he murder his family? It appeared that his lifelong, intense emotional neediness was triggered by his wife's expressed intention to leave him. Studies by Jacqueline Campbell have documented that the most dangerous point for a woman in a relationship prone to domestic violence is the three-month period after she communicates to her husband that she intends to leave him (or after the situation in the home is altered significantly in some other way, like a pregnancy or job change). In Marvin's case, this was coupled with his two stepsons making contact with their biological father and his stepdaughter (whom he had raised from infancy) also showing signs of rejecting him. It's not unusual for men with extreme "rejection sensitivity" (an extreme form of normal "separation anxiety" that we will explore in chapter 4) to react with violence when it is triggered, as it was for Marvin. All of this was true, yet the jury voted to sentence him to death for the "choice" that he had made—but, at the time of his conviction, didn't know or believe that he had made.

THE MELVIN GRANDJEAN CASE

Many who live in the worlds from which most killers come are faced with making choices that few of us mainstream adults will ever have to face (and probably could not handle if we were to do so). That was the case with Melvin Grandjean*, who chose to shoot, and killed, Tyrone Banks in 1999, in St. Louis, Missouri. Understanding how he came to make that choice illuminates the dilemmas he faced. Evidence of the social toxicity of the neighborhoods in which Melvin lived is available from published sources. For example, crime data for 1999 indicate that among the city's neighborhoods, Greenbelt, Westside, Downtown, and Mt. Pleasant are above average in the rate of community violence (as defined by the incidents of "crimes against persons" and "crimes against society" according to data compiled by the police department). The reported rates are 0.0213 for Greenbelt, 0.0295 for Westside, 0.0265 for Downtown, and 0.0190 for Mt. Pleasant, versus rates for low-crime areas like 0.0021 for Country Town, 0.0049 for North Park, and

0.0058 for Eastland. The highest rates reported in 1999 were 0.0374 (for Johnson, immediately adjacent to the location of the crime for which Melvin was being tried) and 0.0572 (for Streetsville). Thus, Melvin lived his life in neighborhoods in which the crime rate was four to ten times higher than in some low-crime areas of the city. This documents the relevance of the “war zone” analysis to understanding Melvin’s behavior. This analysis was confirmed by the head of the police department’s gang unit, who described these areas as being consistently “among the highly active” areas for gang activity. The war zone nature of his home area is important in understanding the choices Melvin made. Reports in the city’s newspapers testify to the dynamics of this war zone. One article that appeared just after the murder that Marvin committed was titled “Gang-related deaths increase dramatically.” The killing of Tyrone Banks by Melvin Grandjean was mentioned in that article. An article published a year later reported that “Gang-related homicide rate more than doubles this year.” The incident in which Tyrone was killed appeared to be part of this escalation—perhaps even playing a direct role in the escalation reported for 2000.

The police department’s gang expert confirmed this analysis with respect to the city’s gangs, namely that it is realistic to fear assault as the result of escalating conflict initiated by acts of disrespect and that youths carry guns for protection in this environment (as well as because they have the intent to commit a crime and/or are holding the gun for someone else). The gang expert also confirmed that among gang members in the city, issues of honor and respect are salient. He affirmed that any incident of disrespect involving gang members has the potential to escalate into a homicide. Even among adolescents, acts of disrespect can and do lead to immediate acts of violence, as with the mobilizing of gang allies to offer an aggressive response, including homicide. The critical incident that precipitated the shooting of Tyrone Banks conforms to this pattern.

On their way to a prearranged “girl fight” in “The Ropes” (the Deuce Two gang’s home base), Melvin and his niece, Chantel Wilkins (with her two young children in the car), encountered John Robbins (with whom Melvin had been in conflict for several years, beginning with an incident when Melvin “disrespected” him and thus initiated an ongoing “beef”). Hostile words were exchanged (Chantel reported that Melvin “called him out” and said, “Fuck the Deuce Twos,” and that John responded, “Get them down”),

and an altercation ensued. This conflict with John involved escalating insults and fighting, in which Chantel intervened (saying, “Please don’t do anything here’ cause the kids are in the car”). John reported that Melvin said, “Fuck you, I will catch you next time and I know where your baby’s mama stays.”

Immediately thereafter, Melvin and Chantel drove into an area in which twenty to fifty people were present. Many in the crowd were rival gang members who were called to the scene to participate in the “defensive” confrontation (i.e., to repel the invaders and restore the honor lost by the mishandling of John Robbins at the hands of Melvin Grandjean). John reported shouting to his comrades, “There are those bitches—drop on ’em” (i.e., shoot them). Chantel reported that she heard Tyrone and others in the group say, “Flip them” (shoot them). The police department’s gang expert confirmed that it is common for gang members to use “callouts” (verbal signals) to get the attention and support of their gang allies to provide backup in conflict situations. A witness on the scene reported that he saw Tyrone “reaching in a jacket” (at which point Chantel—who had been fired upon previously in a gang-related incident—said she saw a gun), and then Melvin shot once, striking (and ultimately killing) him. The police department’s gang expert confirmed that “reaching for something” is commonly interpreted as a threatening action in such a context (not just by gang members, but by police officers who observe such actions in an area with high gang activity or by an individual who arouses an officer’s suspicion that he is a gang member). John rendered the action of Melvin in response to Tyrone reaching into his jacket in the typical language of the street gang: “Melvin did what he had to do.” He added that “Melvin acted in self-defense.” From the perspective of the war zone mentality that all the persons involved in this incident shared, he did. Chantel said that “if Melvin wouldn’t have shot Tyrone, Tyrone would have shot him.” One of the police reports in the case quotes a middle school student saying he heard other kids talking about the shooting committed by Melvin: “a Deuce Two was shot and killed by a Northside boy.”

What are we to make of the choice Melvin made that night? The court seemed to have little trouble in making its decision. The jury convicted Melvin of “Extreme Indifference Murder One,” and he was sentenced to life in prison without the possibility of parole. But I think that given his life experience and what Elijah Anderson has called the “code” of the urban war zone, it was “reasonable” for him to interpret Tyrone’s action of reaching into

his jacket as the beginning of a potentially lethal assault against Melvin, his cousin Chantel, and the children in the car with them. That being the case, he chose to fire his weapon first (exactly the kind of “preemptive assault” affirmed by the war zone mentality). The chain reaction of attacks and counterattacks often escalates to shooting, and some of these shootings produce fatalities.

Tyrone’s “best friend” Malcolm was shot and killed a month before Tyrone himself was killed. Melvin’s brother had been shot and killed a year earlier. Melvin’s family home had been fired upon in a gang-related drive-by shooting earlier in 1999. A year after the killing of Tyrone, while Melvin was in custody and awaiting trial, in the early hours of the morning when Melvin’s mother, sisters, and other children were sleeping in the house, a car pulled up and opened fire, hitting the house with 25 bullets.

Since Melvin’s trial, Tyrone’s older brother, Johnny Banks, has been arrested for assaulting Melvin’s younger brother, Montrel. Montrel was in an intensive care unit for several days because of his wounds. He recovered, but his future is unclear. There were Facebook postings from Johnny in which he expressed pride in his assault on Montrel.

There’s one more chapter in this story. The lawyers who defended Melvin at his trial had enlisted Ronald Bobbs as a consultant. Bobbs is a former gang member who had turned over a new leaf and was working to reduce gang violence. A month after the jury pronounced its verdict in Melvin’s case, Bobbs himself was arrested for shooting another gang member “in self-defense.”

. . .

When you live in a war zone, making “good choices” is not easy despite your good intentions, even when you are trying to become a noncombatant. It is extremely difficult to meet the standards of mainstream society when you don’t really live in mainstream society, but rather in a parallel social universe where different rules apply. Recently I was talking with a young man about his experience with community violence. He told me that he witnessed his first shooting when he was six, and his second when he was eight. I asked him this question: “If we asked one hundred eight-year-old children around the country if they had witnessed a shooting, how many do you think would answer ‘yes’?” He thought a moment and then replied, “about fifty.” When I told him the number nationwide was about six, he looked stunned. When

you live in a war zone, your normal decision making can be distorted by the abnormal “facts on the ground” where you live.

MAKING LUCID CHOICES IS DIFFICULT

Beyond the life-and-death choices many killers have to make, there are the economic choices that confront them because of their position at the bottom of the economic ladder in America. How many of us would choose to forgo making \$250 a day by selling drugs when the alternative appeared to be \$8 an hour at McDonald’s, if our families were poor and we had never known anyone who held a “real” job? How many of us would choose to risk being beaten up or even killed if we decided not to join the powerful gang that runs our neighborhood, if there were no one in our life powerful enough to protect us? How many of us would choose to work hard to stay in school if we didn’t know anyone who had graduated, if we had lost hope for a positive future in the mainstream of American life? Honestly.

Starting from the position of being radically “pro-life,” a lucid person sees that killing is wrong. A killer is, in this sense, deluded. I am using the term *lucidity* here as a spiritual teacher might, to mean seeing to the heart of the matter without the delusions of ego and bias. Spend forty days and forty nights in meditative reflection and prayer, and self-interested ego and dehumanizing bias are revealed for what they are, delusions. Listen to French Buddhist monk and scientist Matthieu Ricard’s teachings on “Happiness” (and read his bestselling book of the same title), and these delusions are crystal clear. Then we see the path to lucidity right before us, through the insight gained by daily meditative practice. In this sense, moral decision making hinges on the ability to perceive the world in a lucid rather than delusional way. That kind of lucidity leads to compassion.

At the very least, we should have compassion for the difficulties that these youths and adults come face-to-face with when challenged with making “good choices,” and avoid the temptation to choose to judge them from our lofty, privileged vantage point. The saying is that “people who live in glass houses shouldn’t throw stones.” But people who live in fragile glass houses have a harder time making good choices about throwing rocks than people who live in houses with safety glass, or homes where there aren’t even any rocks around to throw.

The Dalai Lama teaches that compassion requires concern for the well-

being of the “other” despite what the other does. In fact, he teaches that we cannot really learn compassion unless we are confronted with enemies who require us to do the psychological and spiritual hard work necessary to care about the enemy as a person while still opposing his behavior. I think that Pope Francis, a Jesuit, understands this as well.

Of course, even in difficult environments, some kids make good choices. But in very difficult environments, it is not simply a matter of making good choices. In a sense, it is about making *all* the right choices, because in such environments, often *all it takes is one bad choice* to start you down the road that leads to the dark path of delinquency and social “failure.” For many kids, once they start down that path they don’t get much opportunity to engage in what my colleague Fred Bryant calls “the psychology of second chances.” You can hear all that looming in the account of one of my best students as he reflects on the choices he made that led him from one of Chicago’s “worst” neighborhoods to my graduate course on “Risk and Opportunity in Childhood and Adolescence.” He writes:

Two children were born in Chicago to two sisters in the early 1980s. The sisters were both Jamaican immigrants. They came to America with hopes of achieving a better life, a piece of the meritocratic dream that eluded them in their native country, plagued by years of political unrest and poverty. Each sister gave birth to a son during this time. For the eldest sister, her newborn son was the second and last child she would bear; for the younger sister her newborn son was the first of three sons she would bring into this world.

Both children were born into lower-middle-class, Catholic, two-parent families, each having more life goals than financial resources to reach those goals. Moreover, both sisters biologically contributed (or passed down) their intelligence to these boys, these cousins. This was evident in the exceptional marks each boy received on his report cards during the early phase of their academic careers.

Despite the similarities in genetic makeup and environment, the lives of these two baby boys would take markedly different trajectories. The elder of the two cousins began to display troubling signs during elementary school. First, he began “hanging with the wrong crowd.” This peer group introduced him to a few influences that some might call vices: hardcore hip hop, pornography, and marijuana. Soon his grades were slipping. Furthermore, his father—who took a rather permissive parenting approach to all of their children, allowing them to make their own decisions about many things once the children became teens but then punishing them harshly if they made mistakes—responded to his son’s adolescent mischief with physical violence. It wasn’t unusual for him to beat his son, punching him and hitting him with

whatever blunt object he could find. By the time he was well into the teen years, the elder cousin lacked direction and focus with regard to his academics. He finished high school, but took only a few college courses before leaving school. He currently dabbles with fixing computers as a “side gig” and is looking for full-time employment. He has a 4-year-old daughter out of wedlock. Often feeling misunderstood, he has had a history of confiding in his younger cousin.

The younger cousin’s story is a bit more uplifting. Following in the footsteps of his older brother, this young man excelled academically throughout his educational career. He developed well psychologically. He finished at the top of his class in elementary school and went on to graduate as salutatorian of his high school class. Afterward, he went on to a highly ranked university where he earned both a bachelor’s and a master’s degree. Currently, he is furthering his education by pursuing a doctorate. Psychosocially, the younger cousin has a best friend that he has known for over 20 years. In addition, he married a college graduate after earning his master’s degree and has two intelligent, well-adjusted children by his wife (whom he met during his undergraduate training). Finally, this young man has forged a stronger relationship with God. Though he has experienced some trying times—such as being unemployed for stretches—this spiritual component has served as an anchor. The elder cousin is my cousin John. The younger cousin is me.

Making good choices is a matter of life and death when you grow up in environments predisposed to violence, crime, and social failure, environments loaded with risk factors and often barren of developmental resources, where what you and your parents bring to the equation is crucial in an unforgiving way.

As we will see in more detail in the next chapter, the difficult choice the rest of us face is deciding how to approach those who fail the challenge of negative social environments. Can we choose to approach them with compassion? Chapter 2 explores the critical importance of empathy in generating and sustaining the compassion necessary for understanding killing and killers, as well as the society that gives rise to them and must decide what to do with them.