Banished from the City

The relation between morality and law is (or ought to be) complex and subtle: the two are neither identical nor entirely separate. Once upon a time everyone seemed to understand this, as if by instinct; but the instinct, if it ever existed, has been lost. When someone says, by way of excuse for his bad behavior, that "There's no law against it," he implies that what is not legally forbidden is permissible in every other sense.

No one, incidentally, ever explained his good behavior by reference to this legal/illegal boundary. The misunderstanding is a motivated one.

A misunderstanding of the morality of punishment and its justification in law will not always be grounded in self-interest, however. We can see this from a brief column recently published in the *Guardian* by the philosopher Nigel Warburton. Warburton considered the case of a man called John Paul Burrows, a multimillionaire who worked in the City of London as the director of a very large investment company.

Burrows found a way not to pay his full commuter-train fare and travelled about a thousand times without paying. Eventually, he was caught, and paid the train company approximately $70,000 (twice as much as he would have had to pay to travel legally) in return for a decision not to prosecute. He resigned from his position, and the authorities in charge of regulating the the financial sector (a.k.a. "the City," the British version of America's "Wall Street") banned him from working in that sector for the rest of his life.

He was by far the largest train-fare-dodger in British history, at least as far as is known. The columnist/philosopher, though, wondered whether the authorities were right to prohibit him from ever working in

finance again.

Warburton lays out fairly the considerations that must have gone into the levying of this punishment. The authorities could hardly overlook the personal dishonesty of a man ultimately responsible for the investment of billions of other people's money, even if it was confined to cheating on his railway tickets. Burrows didn't have the mitigating circumstances that other fare-dodgers might have had—for example, a desperate financial situation not of his own making. Nor could he claim to have acted impulsively, or to have had a momentary lapse such as we all have had. His fraud was deliberate and long-lasting, and it is difficult not to believe (though there is no proof of this) that his motive was to prove himself much cleverer than the stupid railway company.

Or perhaps he merely wanted to render commuting, which after all is a dull business, more exciting. I know this motive well: on a long car journey I deliberately let my fuel run low in order to run a race between fast-declining fuel and the next filling station. Once, to my great satisfaction, I judged it just right: I glided the last few yards up to the pump while on empty.

The philosopher expresses his qualms about the lifetime ban. First, it does not leave the man any room to redeem himself. "You don't have to be a Christian," Warburton writes, "to think that some opportunity for redemption should remain."

There are two objections to this. The first is that, even if the redemption of the punished were the object of punishment, this would be false. There is always more than one route to earthly redemption and to being useful to other people. It cannot possibly be that a return to finance is the only way Burrows could prove he had turned over a new leaf. Indeed, a return to the City, at least at a level that he would find attractive or commensurate with his knowledge and experience,

would resemble impunity more than an opportunity for redemption.

But at any rate redemption is not the purpose of punishment, for if it were there would be no crimes beyond its reach, no crimes so terrible that they could not be forgiven. Far from being generous, this kind of reasoning seems to me callous—lacking in imagination about just how terrible crimes can be, an almost wilful disregard of the history of the 20th century. And if a Christian were to object that no crime is beyond the Savior's forgiveness, it should be recalled that His kingdom was not of this world. As for us, we are men, not saviors.

The second, and "more worrying" reservation in Warburton's mind is that the punishment will be applauded by a populace already angry with, and envious of, financiers. Thus it would "deflect attention from greater inequalities that some in the square mile ["the City"] perpetuate." Burrows "may be a scapegoat," he writes.

This seems a destructive argument. It is true, of course, that there are far greater crimes than the one under discussion here. But just as there can be only one richest man in the world, so there can be only one worst criminal (or a few equal worst criminals) in the world—at least if the badness of crime can be measured on an analogue scale, which I very much doubt. It is no excuse for one man that another man has done something even worse. I cannot argue in my defense, when caught for speeding, that I know someone who drove twice as fast and got away with it, rendering any fine imposed on me an act of scapegoating.

In the end, the philosopher (whose touchstones in this piece are John Rawls and Thomas Piketty) comes down on the side of banning the bloody one-percenter. Still, it is worth noting that his two hesitations before lowering the boom—they are not his alone, I suspect—are based upon misunderstandings, first

that the purpose of punishment is redemption of the punished, and second, that no one can be rightfully punished until justice is perfect (a state of things in which no one gets away with anything).

The practical ramifications of the latter, of course, would be that everyone could get away with everything.

Let me add, in case any of this sounds too punitive, that I recognize that we all have a sneaking antinomian sympathy for roguishness. We enjoy, every now and again, those who cock a snook at authority, as Burrows did with his extended period of fare-dodging. It is just that society cannot be organized on a foundation of such a feeling.

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