

The Economist, the Rabbis, and Crime*

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Gary S. Becker, the Nobel economist known for extending microeconomic analysis to nonmarket behavior, has offered an influential theory of crime. His “economic approach” to crime enlarged the concept of a person within the rational choice model but leads him, regrettably, to overestimate what can be accomplished with police and prisons. The concept of a person within Judaism offers a better basis for understanding crime and for fashioning a meaningful response. All persons possess a dual nature with inclinations for good and evil, because they understand that individuals possess *neshamah*, the breath of God, they rely on the system of restitution provided under Jewish law. Economists are needed in criminology to explore the economic context of restitution.

John J. DiIulio Jr., has invited economists to help criminologists solve public policy dilemmas concerning crime. DiIulio, a professor at the University of Pennsylvania’s Jerry Lee Institute of Criminology, has posted a sign reading: HELP WANTED. He appreciates Gary S. Becker’s “economic approach.” Becker received the 1992 Nobel prize in economic science for extending microeconomic analysis to nonmarket behavior, including crime. DiIulio praises Becker’s work for bringing scientific rigor to the problem of crime. Yet, criminologists need to go “beyond Becker,” DiIulio insists, because the criminals in Becker’s models resemble middle-aged economics professors more than the actual predators who prowl real city streets.¹

Becker became the first economist to study crime, and his work has inspired further economic analyses.² Becker explains criminal conduct within the

framework of microeconomics, that is, with models of individual choice expressed in linear equations. He wants to make scientific claims about criminal conduct, yet his starting point is decidedly metaphysical. His analysis assumes “individuals who maximize welfare *as they perceive it*.”³ A theory acquires a scientific character, not because of its use of mathematics but because it expresses ideas in terms that can be falsified. Becker’s starting point does not express a scientific statement because it cannot be tested empirically.⁴ Assessing Becker’s work does not require a search for refuting empirical evidence but a straightforward look at his concept of a person.

The purpose of this essay is to contrast Becker’s concept of a person with that of Rabbinic Judaism. Becker has tried to enlarge the economic person with an extended discussion of maximizing values and preferences, and social constraints. His effort leads him to overestimate what can be accomplished with public policy and a commitment to current criminal policy. The concept of a person within Judaism yields a better basis for understanding crime and for fashioning meaningful public policy concerning crime. The strategy is to review traditional concepts of a person discussed by the rabbis with particular emphasis on scriptural text.⁵ English, it is said, is the language of international commerce. Mathematics, economists say, is the language of economic theory. The language of crime and justice, the rabbis say, is Hebrew.⁶

The Economist

For more than two centuries, Becker maintains, the mistaken view of crime as a moral issue has hindered scientific understanding of the subject. In his *Journal of Political Economy* article of 1968, “Crime and Punishment: An Economic Approach,” he rebuked economists for failing to see that crime should be understood as an aspect of economic life.⁷ His approach to crime references three aspects of the rationality of human conduct: maximizing calculation, values and preferences, and social constraints.

Becker’s view of human beings, like that of John Stuart Mill, assumes that people are always trying to maximize their general happiness. People try to anticipate the consequences of their actions and take these expectations into account in deciding how to act. Given a choice, a person will choose the option with the highest “expected utility.” Human beings are economically motivated in the sense that all decisions are “forward looking.”⁸ Becker assumes that this maximizing tendency of decision-making influences the way people order all aspects of life: what to buy, where to work, and how much to save *as well as*

whether to discriminate against persons, to marry and raise children, or to pursue a life of crime. People respond to costs and benefits in making market decisions and Becker contends that this same “common-sense idea applies to all human decisions.”⁹

Becker began thinking about crime during the 1960s while teaching at Columbia. When he arrived on campus late for a meeting with a student, he had to decide whether to put his car in the parking lot, or to save time by parking illegally on the street. He calculated the likelihood of getting a ticket, the size of the penalty, and the cost of parking the car in the lot. “I decided that it paid to take the risk and parked on the street.”¹⁰ It occurred to him that other lawbreakers reasoned this same way, as did public officials in deciding an appropriate response.

Becker’s economic approach proposes that criminals are rational actors and that criminal behavior is price elastic.¹¹ Criminals are rational actors who demonstrate the same thought process as noncriminals; they make decisions about crime the same way that economic participants make market decisions. Becker views criminal behavior as a function of the “expected utility principle”: People will make rational decisions based on the extent to which they expect the choice to maximize their benefits (profits) and minimize the costs (losses). The costs include punishment, from probation to fines to imprisonment and, more important, the likelihood of being caught. Criminal behavior is price elastic as criminals react to changes in prices in the same way that consumers and workers do. Some individuals become criminals because the financial and other rewards from crime compare favorably to legal work, considering the likelihood of apprehension and conviction, and the severity of sanction. After more than thirty years, Becker has not retreated from his basic premise. “The essence of the economic approach to crime is amazingly simple,” Becker stated in 1995, “It says that people decide whether to commit crime by comparing the benefits and costs.”¹²

In discussing his economic approach to crime, Becker wants to distinguish his economic person from that of the Marxists. Human behavior cannot be explained as a matter of selfishness and material gain. “Along with others,” Becker told his Nobel lecture audience in 1992, “I have tried to pry economists away from narrow assumptions about self-interest. Behavior is driven by a much richer set of *values and preferences*.”¹³ This set of values and preferences includes such diverse motivations as selfishness, altruism, spite, loyalty, and masochism.

The benefits of crime, Becker explains, include monetary gain. For property crimes, the benefits include the stolen car, the money taken, and so on. Forgeries, embezzlements, and fraudulent schemes yield monetary benefits as well, but the benefits of crime also yield, at least for some people, “psychic, even sick, thrills”; assault, rape, and other crimes of violence afford psychological rather than economic benefits. And, at the same time, criminal behavior includes certain “psychic costs.” Many people do not break the law because they believe illegal behavior, whatever the benefit, is ethically wrong. “The decline in the attitude that crime is wrong has been one factor leading to the growth of crime.”¹⁴

Even “irrational activity,” such as addiction, is a rational response given the values and preferences of addicts. Becker has applied his concept of rational addiction to illicit drug use: An individual may rationally decide to become addicted. Becker and Kevin M. Murphy defined an addictive good as a good that brings utility, or satisfaction, as a function of previous consumption. The good can be addictive for some but not others and explains a wide range of habitual behaviors, whether alcohol, work, television, or tobacco.¹⁵ Becker, Michael Grossman, and Murphy found that cigarettes are addictive: More than half of a given year’s consumption carries over to the next year’s consumption. They also found that nicotine addicts are rational. They respond to changes in expected prices, knowing that future prices will make their addiction more expensive over time. Individuals become addicted to something because, given their own values and preferences, they judge the total benefits higher than the total costs over time.¹⁶

In recent years, Becker has explored “social economics”: the effort to understand the overlap of economics and sociology.¹⁷ In nonmarket activities, as well as the market, actions are subject to constraints of available information, calculating capacities, limited resources and, the most important, time. Opportunities are constrained by the actions of other individuals and organizations. Becker’s economic approach to crime, more so than any of his other nonmarket activities, yields specific policy directives. Choices are “seriously constrained” because each person’s actions are partly determined by the actions of peers. Each member of a social group may have little freedom to deviate from what the other members are doing, because all the members’ actions are constrained by their “common culture, norms, and traditions.”¹⁸

Social structure does not replace individual choice; it shifts crucial decisions to selection of peer groups, including neighborhood, school, marriage, occupation, and religion. In a note on restaurant pricing, Becker proposes that the demand for some goods depends on the demand of other consumers; peo-

ple prefer busy restaurants because they are popular. The preference for busy restaurants constitutes evidence of “direct social influences on behavior.”¹⁹

This explains the social distribution of crime. Criminal activities are not randomly distributed across individuals because of the constraints associated with particular social groups. It explains why certain groups are more likely to commit crimes than are others. In every society, the poor and less-educated are more likely to commit violent crimes while the affluent and more-educated are more likely to commit embezzlement, fraud, and other “white-collar” crimes. This is so, Becker reasons, because the poor have more to gain from crime because they have less to gain from working a legal job. Teenagers commit more crime than adults for the same reason—legal work affords lower earnings and fewer opportunities for them than it does for adults. Teenage crime is also high because the first offense is “tax free,” that is, there is essentially no punishment for the juvenile upon first offense.²⁰

How morality affects crime rates is about the only thing that Becker has trouble explaining. On the one hand, he recognizes that “many people [are] constrained by moral and ethical considerations” and do not break the law even when lawbreaking activities are profitable and the likelihood of apprehension is low.²¹ “It is a sad commentary on modern morality ... that so many people must be jailed to bring crime down to more tolerable levels,” Becker comments. On the other hand, he denies that rising and falling crime rates have anything to do with morality. Crime rates declined during the 1980s despite widening income inequality, further breakdown of families, and with “no obvious recovery of morality.” Becker attributes the decrease in property crime during the 1980s and 1990s, as shown by National Crime Victimization Survey data, to an increase in courts’ willingness to convict and imprison lawbreakers. The prison and jail population grew to about 1.7 million by 1999, or about one percent of the United States population. He advises lawmakers not to wait until “improvements in ... morality bring down crime rates,” but to enhance the efficiency of criminal justice machinery.²²

Becker’s dilemma has to do with explaining why people respond to moral ideas while denying the human capacity for moral thought. Generally, Becker pursues a naturalistic concept of a person consistent with his aim of providing a “scientific” explanation for criminal conduct. Naturalists believe—or at least for purposes of doing science—believe, that matter in motion is all that exists and that the mind is a special configuration of that matter. This idea found expression in ancient Greece before reappearing as the scientific concept of a person. In *De Anima*, Aristotle proposed that the human soul or psyche is an artifact of nature, an animating quality that humans possess in common with

all living things. Becker alludes to the Freudian concept of a conscience as internalized social constraints. Freud taught that the conscience originated in social life and became internalized through a process of psychosocial development.²³ Becker draws specifically on sociobiology, the search for the biological basis of behavior. In a 1973 article with Robert T. Michael, Becker noted that the common preference function “has evolved over time . . . as that preference function best adopted to human society.”²⁴ In another article, published three years later, Becker pursues the overlap of “the individual rationality of the economist” and the “group rationality of the sociobiologist.”²⁵

This idea has recently become known as “evolutionary psychology,” advanced by James Q. Wilson and others.²⁶ Evolutionary psychology holds that the law of evolution shaped not only the human body but the mind as well. Things exist because they were selected for in life’s struggle. Mind is matter, so people must think what they think because it serves some purpose of adaptation to the environment. Becker surmised that altruism and other stable preferences “may be largely explained by the selection over time of traits having greater genetic fitness and survival value.”²⁷ Maximizing calculation, values and preferences, social constraints—rationality itself—exist as artifacts of the natural world. Or, in other words, human conduct can be understood as the behavior of domesticated animals.

The Rabbis

Rabbinic Judaism offers a different view of crime derived from a very different concept of a person. The Hebrew word *rabe*, or “rabbi,” means “master” or “teacher.” The rabbis made their first appearance in Jewish history during the Second Temple period. Their leadership did not derive from a line of succession, as was the case with the priestly line of Aaron, but with expertise in religious law based on a body of supplemental traditions that they called the “oral Torah.” With the destruction of the Temple in 70 C.E., the Jerusalem-based priesthood evaporated, leaving room for a popular religious leadership throughout the Diaspora. The advocates of oral Torah, who had become known as rabbis, began the founding of modern Judaism with their interpretation of Scripture.²⁸

The rabbis regard the Torah as a divine text deserving of careful study. It is unclear what language Abraham spoke, but the Torah itself was given in Hebrew. Hebrew is the language of Adonai, and so, every word, every letter, is important. Because the majority of words in Hebrew can be distilled to three-consonant root words that provide the essential meaning, a substantial

amount of rabbinical interpretation is derived from the relation between root words.²⁹

In some areas of Jewish life, such as dietary laws, the rabbis have maintained a continuous tradition of decision-making made necessary by changes in social life, advances in technology, and other claims of modernity. In the case of criminal law, no such tradition can be found because of the absence of a Jewish State.³⁰ The Jewish people have had to look to non-Jewish governments for justice, and even the law of modern Israel relies on principles established during the British Mandate.³¹ Therefore, one cannot simply cite the relevant Torah portions and presume that they may be straightforwardly applied to the situation at hand. One can, however, look to rabbinic scholarship for key insight into violent conflict, which, after all, is as old as the first people.³² Understanding the origins of crime and the appropriate response to crime, begins with grasping the Judaic concept of a person.

In the Torah, Moses writes: “God created man in his image.”³³ This reference does not refer to a physical likeness, because God does not have a body. The RamBam, Maimonides, taught that because God transcends all earthly categories, one can only speak negatively about him. That is to say, about what God is not, rather than about what he is. The word *tzelem* or “image” refers to the nature or essence of God. God and human beings do not share a similar visible form but, rather, a common nature or attributes. People, unlike animals, have the ability to think, reason, and understand. The intellect allows human beings to perceive things without the use of physical senses, an ability that makes people like God, who knows without recourse to physical senses.³⁴

Rational thought is not an artifact of the body but, rather, reflects the special place God gave to human beings within creation. The Torah says *adam*, “man,” is *adamah*, a created being taken from the “dust” of the ground. The text continues: “He blew into his nostrils the breath of life, and man became a living being.”³⁵ God animated the beings he shaped with his own *neshamah*, or “breath.” The *neshamah* has been referred to as the soul or spirit, but unlike the Greek concept of a *psyche*—a “spirit” or “soul” within the body—the rabbis’ concept of a person emphasizes a single entity or integrated being.

The sage Ben Azzai referred to this principle as the most comprehensive in the Torah, the fountainhead of morality. As created beings, humans are dependent on the Creator. As the bearers of God’s own essence, persons retain a dignity attached to no other aspect of creation. *The image of God can be found nowhere else in the natural world except in the human self.* Or, to be more precise, *in the heart.* The concept of a conscience, so important to contemporary understanding of moral choice, does not appear in the Tanakh. The

English word “conscience” derives from the Greek *syneidesis* and the Latin *conscientia*, a concept developed by medieval Christian writers, particularly Thomas Aquinas. The word means “knowledge,” or to know that something is not right. In Judaic thought, the *lev* or “heart” is the center of moral consciousness. The rabbis of the Talmud speak of the “duties of the heart.” The calls of the heart, the “beating” or “palpitating” heart, is the voice of God. The phrase *nega levavo* means “heart pains”; the heart stings or hurts when a person is not honest before God.³⁶ Modern Hebrew has coined the word *matspan*, from a word meaning “conceal”; the voice of God is concealed within each person. The Sh’ma, the essential statement of Judaism, speaks of loving God “with all your heart” and of placing the *mitzvot*, or commandments, “upon your heart.”³⁷

The dual nature of human beings emerged as part of rabbinical understanding by the end of the first century. In the Torah, Moses writes that the “the Lord God formed man.”³⁸ The rabbis explained that in the Hebrew, the word “formed” has a curious spelling, *vayyitzer*, with two *yuds*. They interpreted the double *yud* to mean that God created human beings with two inclinations, the *yetzer hatov*, or inclination for good, and the *yetzer har’a*, or inclination for evil. When describing the creation of animals, only one *yud* appears, *vayitzer*, leading to the conclusion that animals possess neither an inclination for good nor an inclination for evil.³⁹ The word *yetzer* appears in the *Kethuvim*, or Writings, of the Tanakh as well. King David, in a conversation with his son Solomon, says that God is aware of what is present in every heart and understands every *yetzer* or “intent” of the thoughts.⁴⁰ The *yetzer* then, as Torah-scholar Louis Goldberg explains, is understood as the motivator of human actions, for good and evil, and the body an instrument. The tradition adds that the good inclination controls the righteous while the evil impulse controls the wicked, and both inclinations are present in the average person.⁴¹

The *yetzer har’a* can be interpreted as the inclination or “imagination” that leads a person to rebel against God, but the *yetzer har’a* does not necessarily lead to evil because freedom of choice is paramount. In rabbinical teaching ascribed to Akiva, “All is foreseen, but freedom of choice is given (to man); and the world is judged by grace, yet all is according to the excess of works [that it be good or evil].”⁴² The *yetzer har’a* serves a purpose. The Midrash teaches that God created the *yetzer har’a* to give people the desire to satisfy personal needs; without it, a man would not build a house, marry, parent, and/or labor to provide for children. There is nothing evil about sexual desire, but it can lead to rape, adultery, incest, and sexual perversion when not subject to the *yetzer hatov*. The rabbis warn that the *yetzer har’a* has subtle ways. The

evil yetzer appears as a modest traveler, who becomes a welcome guest and, finally, the cruel taskmaster of the heart. In another description, the yetzer har'a appears first as a thin strand, a spider's web, but then becomes a strong rope, making it impossible to break free.⁴³

Although the evil yetzer cannot be eradicated it must be subdued.⁴⁴ The very presence of the yetzer har'a reminds a person to make right choices, and through it, to not only resist evil but also to contain the yetzer har'a. The best possibility is to bring one's life in line with the *halakah*, the "path" or "road" for living described in the Torah. The Midrash tells of Solomon, who in his great wisdom, supposed that he understood the purpose behind the commandment: "And he shall not have many wives lest his heart go astray."⁴⁵ When copying the text, he deleted the letter *yud*, the tiniest letter of the Hebrew alphabet, from the word *yarbeh*, "multiply." This changed the tense of the verb, shifting the meaning from the imperative to a declarative. Solomon reasoned that, because he understood why God had prohibited multiple wives, he was free to disregard the practice of the law. "Yet what is written of Solomon?" the Midrash continues, "In his old age, his wives turned away Solomon's heart after other gods."⁴⁶ The person who decides that because he knows the reason behind a particular mitzvah so there is no need to actually adhere to it, becomes vulnerable to being overcome by the evil yetzer.⁴⁷

Crime cannot be understood apart from the fundamental urges God placed within human beings. The first act of violent conflict in society occurred when Cain murdered Abel. The rabbis speculated about what "Cain said to his brother Abel,"⁴⁸ leading up to the murder and concluded that it resulted from the denial of the divine source of wealth. "They said, 'Come let us divide up the world.' One took land and the other took movable property. The one said, 'The land upon which you stand is mine,' and the other said, 'What you are wearing is mine.'"⁴⁹ Even with half the world at their disposal, it was not enough. The striving for wealth does not express the pursuit of human needs because people have the capacity to value possessions more than their own bodies. *The kind of possessiveness that results in denying the value of other human beings comes from a basic denial of God's ownership of the universe.* "Ultimately, then," David Novak observes, "violence arises out of the terror we experience when God is absent."⁵⁰

Rabbi Daniel Lapin offers a contemporary Judaic view of crime.⁵¹ Most of the conflicts that bring people to courthouses every day fall into two categories: dissolution-of-relationships or desire-for-money. The first includes all sorts of family troubles (divorce, child custody), civil matters including wrongful dismissal, breach of contract, and the like. The second includes property crimes

of theft, robbery, and white-collar crimes of fraud, embezzlement, and forgery. In some crimes, such as domestic homicide, these are superimposed. The Torah regards sexual union as a much more significant thing. Moses writes that a husband and wife become “one flesh.”⁵² The Hebrew word here, *echad*, means unity or oneness; it is the same word used to refer to God in the Sh’ma. The greater the depth of the relationship, then, the greater the destructive force released when splitting apart. Break-up following an intimate sexual relationship produces nothing less than a “deep existential despair” over the loss of potential. It releases an explosive force analogous to violating the totality of an atom.⁵³

The desire-for-money does not express the motivations of the economic person but of the moral person. Business transactions, in this sense, are all spiritual rather than physical, because “economic exchange takes place only after two thinking human beings will it.” The accumulation of money does not merely buy comfort, but something much more spiritual. God is infinite, and because each human being contains the breath of God, there is a yearning for the infinite. People are deeply frustrated by the reality of death and pursue means to deny it. People desire to approach God on human terms. Money provides the illusion of being unrestricted by limitations of time and space, the sense of transcending mortality itself. This is why the more money that one has, the more money that one desires.⁵⁴

For this reason, halakah requires that people limit their appetite for material goods. It is important to maintain *tzniyut* or “modesty” even in the most mundane aspects of life, such as eating, clothing, and personal belongings. People are required to limit their appetite for material goods because of the potential to be overwhelmed.⁵⁵ The rabbis understand that the legal response cannot respond to deep spiritual yearnings that lead to conflict. Responding to human beings, who carry within them the breath of the Divine, as if they are nothing more than reasoning animals, leads to greater strife. It is a point completely lost to Becker who attempts to fashion meaningful public policy without recognizing the inherent dignity of human beings.

Crime

Becker and the rabbis differ in their policy prescriptions concerning crime. Becker’s assumption that crime occurs within the economic life of individuals leads him to the conclusion that crime can be controlled by means of public policy. Becker goes so far as to say that crime can be eliminated with his eco-

conomic approach to public policy concerning crime. "I believe that crime is not inevitable" Becker told his Federal Reserve Bank of Richmond Economic Lecture Series audience in 1995, "It's not like death and taxes, which will always be with us."⁵⁶

Becker advises lawmakers to forget about moral influence on crime and to focus, instead, on improving apprehension and conviction. "It is not necessary to suffer through a long wait until improvements in education and morality bring down crime rates," Becker concludes, "They can be quickly cut by increasing the apprehension of criminals and by sentencing those convicted of serious crimes to significant prison terms."⁵⁷ He suggests that sound economic policies will increase opportunity and make illegal activities less attractive. His policy prescriptions distill down to a willingness to incarcerate people but emphasizes that "Persons behind bars cannot commit crimes against the public, and many people have been deterred from a life of crime by the increased prospect of spending a considerable time locked up." Becker regrets that "so many people must be jailed to bring crime down to more tolerable levels," and particularly "black men [who] are eight times more likely to be imprisoned than white men," but maintains that poor African-Americans and inner city residents have benefited the most from imprisonment.⁵⁸

Becker's analysis of rational addiction leads him to endorse legalization as a strategy for responding to illicit drugs. The price of various drugs would fall, following legalization; drugs are expensive because their prices reflect a sizeable allowance for assuming the risk of apprehension and bribing public officials. High prices for drugs force many heavy users to finance expensive habits with theft, robbery, and drug trafficking. Lower prices would weaken the connection between drug use and criminal activity currently associated with drug use. Becker acknowledges that the fall in prices would lead to increased demand for drugs but insists that the effect is limited to the short-term. The fall in prices following legalization leads not to greater addiction, because drugs are less addictive in the biological sense than is believed. Addiction, or rather, rational addiction, has to do with "peer pressure, unhappiness, and stress," rather than a pharmacological drive. This means that imposing a social tax on illicit drugs, as is currently done with alcohol, cigarettes, and other substances, "would have some dampening effect on drug sales without making addicts financially desperate."⁵⁹ Billionaire financier-speculator George Soros follows a similar analysis to this same conclusion; he established his Center on Crime, Communities and Culture in 1996 to promote the legalization strategy.⁶⁰

The rabbis have offered a different understanding of public policy, leading to a more down-to-earth view about what can be accomplished. Conflict is an inevitable part of human affairs, otherwise why would the Torah devote so much attention to procedures for resolving conflict?⁶¹ At the same time, Judaism teaches the importance of giving to others. The Psalm that begins, “The Lord is my shepherd,” traditionally read at Jewish funerals, includes the phrase, “He leads me in right paths.” The Hebrew word translated “right” is the root word for *tzedakah*, meaning “good deeds” or charity. Giving to the poor, helping those in need, and supporting worthy causes is a requirement in Judaism, not an option.⁶² To refuse to do *tzedakah* would mean straying from the right path. It would be a *khet* or sin. The Hebrew word translated “sin” literally means to “miss” or “go astray.” The prophet Micah expressed the principal tenets of Judaism when he declared that God requires: “Only to do justice, and to love goodness, and to walk modestly with your God.”⁶³

The principle of *dina d'malkhuta dina* means “the law of the kingdom is the law.” This principle teaches that the law of a non-Jewish government is the law for Jewish people. Jews in exile are citizens, and not strangers, in the lands where they reside. The prophet Jeremiah, writing to the Judeans exiled to Babylonia, instructed them to “seek the welfare of the city to which I have exiled you and pray to the Lord in its behalf; for in its prosperity you shall prosper.”⁶⁴ In the Mishnah, Rabbi Chanina offered another rationale for this instruction: “Pray for the welfare of non-Jewish governments, since were it not for the fear of it, men would swallow each other alive.”⁶⁵ Public policy is important. The right kind of policy can improve the prospects for peace; the wrong kind can diminish the opportunity to live in peace. But the law of the land cannot by itself bring about peace. Both crime and peace are matters of the heart.

Becker’s policy prescriptions reflect his limited concept of a person. His law-and-order approach tempered with social policy represents an attempt to redirect individual choices by rearranging the social environment. From the Judaic perspective, this represents a formula for the impossible. David Novak explains that violent conflict results when the personal quest for individual, family, or political security claims priority over the needs of others. Human justice represents participation in divine justice.⁶⁶ Or, in the words of Amos, quoted so memorably by Dr. Martin Luther King Jr.: “But let justice well up like water, righteousness as an unfailing stream.”⁶⁷

This is illustrated, Novak observes, in the placement of the cities of refuge.⁶⁸ Moses and, later, Joshua, established what became three cities on each side of the Jordan despite the uneven distribution of the population. Nine-

and-a-half of the twelve tribes occupied the west side and two-and-a-half on the east side: Reuben, Gad, and Manasseh. The east side, Gilead, required three cities because bloodshed was at least three times as high there. The prophet Hosea wrote that Gilead was “covered with bloody footprints.” Why? The rabbis recall that Gad and Reuben had asked Moses for the privilege, saying: “We will build sheep pens for our possessions here and cities for our children.” When Moses replied, he answered in reverse order, telling them to “build for yourselves cities for your children and pens for your flock.”⁶⁹ The residents of Gilead made the primary concern (their children) a marginal one and the secondary concern (their wealth) of primary importance. In other words, secondary things (prosperity, freedom, health) come about only by pursuing first things (justice, mercy, right-living).⁷⁰

Economics has a great deal to do with criminology, but not in the way that Becker supposes. Becker views the criminal in economic terms, and the Torah views the victim in economic terms. Imprisonment is not a sanction authorized by the Torah. A careful reading of the Scriptures reveals that although prisons appear, they are not described as a means of sanction for the people.⁷¹ Rather, the Torah outlines a system of restitution designed to restore the victim’s economic status. Jewish law made virtually all crime, with the exception of murder, a civil wrong rather than a criminal wrong. Thieves are required to repay what had been stolen plus additional charges based on the loss of income.⁷² In this way, the victim received reparation, the wrongdoer had the opportunity to make amends, and the community gained a contributing member. Criminal policy should be more concerned with restoration of the victim’s economic well-being than with inflicting punishment on the criminal.⁷³

Restitution is the operative principle of justice within Jewish law. The Mishnah understood that the wrongdoer should compensate the victim. Nonfatal injuries had to be repaid in terms of lost wages (due to incapacitation), the cost of medication or therapy, as well as the intrinsic value of the injury (measured in lost future earning power). The requirement also extended to compensation for pain and embarrassment. The wrongdoer who could not pay became an *eved* to the victim. The Mishnah clarifies that the Jewish person who steals and is unable to repay the loss is given to the victim as a servant. Unlike slavery, servanthood was not permanent; the servant was freed during the seventh year. The *eved* also retained important rights and would be freed if intentionally injured by the victim. In practice, then, as Rabbi Morris Kertzer explains, the phrase “an eye for an eye,” *ayen tachat ayen*, has been understood to mean “the *cost* of an eye for the *cost* of an eye.”⁷⁴

Although the advocates of “restorative justice” do not derive their principles from Judaism *per se*, the concept of restoration does express many elements of the Jewish law.⁷⁵ Restorative justice views crime as a conflict between people, rather than as an offense against the government, and makes restoring the victim and the community at the center of the process, instead of the infliction of punishment. In victim-offender mediation, the victim meets the offender face-to-face in the presence of a trained mediator, usually a community volunteer, to work out restitution.⁷⁶

As David Lerman, a prosecuting attorney with experience in victim-offender mediation observes, restorative justice brings an essential spiritual dimension to the legal process. The process allows the wrongdoer to make *t’shuvah*, or repentance. T’shuvah requires the admission of wrongdoing, acceptance of personal responsibility, and a determination not to reoffend. At the same time, the process recognizes that over and above the moral effect on the individuals concerned, wrongdoing detracts from *shalom*, the “peace” or “welfare” of the community. This Hebrew word derives from the same root as *shalem*, “completeness” or “wholeness;” the word *shilem*, meaning “payment,” share the same three-letter root as well. The community moves closer to peace when reconciliation occurs.⁷⁷

The difference between these two approaches to criminal policy is the difference between passive and active. Becker’s naturalistic concept of a person leads to a passive understanding of response: deprivation of liberty by means of prison and probation. The rabbis’ spiritual view presupposes an active response: making restitution through labor—the initiation of purposive activity rather than the cessation of activity.

Conclusion

The economist and the rabbis offer two very different approaches to crime, derived from their different concepts of a person. The economist Gary S. Becker views crime within the rationality of individual choice. He attributes this rationality to the animal nature of human beings. Because people are reasoning animals, they can be corralled effectively with legal sanctions. Specifically, he recommends a combination of prison and social taxes. The rabbis view crime within the divine justice expressed in the Torah. They understand criminal conduct as an expression of the evil urge within the heart. Because they understand that each person possesses the breath of God, they defer to the system of restitution provided for under Jewish law.

The different concepts of a person might be expressed as the difference between the human being of the Torah and the golem of Jewish folklore.⁷⁸ Human beings contain the breath of Adonai; each person possesses a will or spirit capable of cursing and praising. The golem of the medieval legends are soulless beings, effigies animated by magic. They are animated by writing sacred words, or the name of God, on a slip of paper and placing the paper in the golem's mouth. They are perfect servants, with no faults except for the literal fulfillment of the master's orders. Becker's rational decision makers are like this; they are soulless beings programmed by nature to make rational decisions. If only the instructions on the paper can be formulated correctly, the golem will behave perfectly. When the ultimate instructions are written, criminologists will have achieved knowledge so impersonal that people themselves disappear from the explanation.

Economists are needed in criminology to help criminologists understand the economic context of restitution. Becker's economic approach fails in this regard. He cannot enter into the internal view; he can only applaud the masses that do as this reduces the number of police, courts, and prisons necessary for civil society. Dilulio's HELP WANTED sign remains.

Notes

- * Originally presented at Pruit Memorial Symposium: Integrating Faith and Learning in Economic Scholarship Conference (Waco, Tex.: Baylor University, November 7–9, 2002). My thanks to Seth Klayman and Rabbi Michael Cain for comments on earlier drafts.
1. John J. DiIulio Jr., "Help Wanted: Economists, Crime and Public Policy," *Journal of Economic Perspectives* 10 (1996): 3–24.
 2. Walter Oi, "Gary Becker: Expanding the Scope of Economics," *Economic Inquiry* 36 (1998): 444.
 3. Gary S. Becker, "Nobel Lecture: The Economic Way of Looking at Behavior," *Journal of Political Economy* 99 (1993): 386.
 4. Karl Popper, *The Logic of Scientific Discovery* (London: Hutchinson, 1972).
 5. It is impossible to describe *the view* of the rabbis concerning crime and justice because of the fact that not all rabbis agree. The story is told of the sole survivor of a shipwreck. When found on a deserted island, the survivor, a Jewish man, had built two synagogues. When the rescuers asked why, the man explained: "This one, I attend every Shabbat. And that one I never have anything to do with."

6. Daniel Lapin, *Buried Treasure: Secrets for Living from the Lord's Language* (Sisters, Oreg.: Multnomah, 2001).
7. Gary S. Becker, 1968, 170.
8. Ibid., "Nobel Lecture," 386.
9. Gary S. Becker and Guity Nashat Becker, *The Economics of Life* (New York: McGraw Hill, 1997), 308.
10. Becker, "Nobel Lecture," 389–91.
11. Ramón Febrero and Pedro Schwartz, "The Essence of Becker: An Introduction," in *The Essence of Becker*, ed. Ramón Febrero and Pedro Schwartz (Stanford: Hoover Institution).
12. Gary S. Becker, "The Economics of Crime," *Cross Sections* (Federal Reserve Bank of Richmond, 1995), 12.
13. Becker, "Nobel Lecture," 385–86.
14. Becker, "The Economics of Crime," 15.
15. Gary S. Becker and Kevin M. Murphy, "A Rational Theory of Addiction," *Journal of Political Economy* 96 (1988): 675–700.
16. Gary S. Becker, Michael Grossman, and Kevin M. Murphy, "An Empirical Analysis of Cigarette Addiction," *American Economic Review* 84 (1994): 390–418.
17. Gary S. Becker and Kevin M. Murphy, *Social Economics: Market Behavior in a Social Environment* (Cambridge: Harvard).
18. Becker and Murphy, *Social Economics*, 22.
19. Gary S. Becker, "A Note on Restaurant Pricing and Other Examples of Social Influence on Price," *Journal of Political Economy* 99 (1991): 1116.
20. Becker, "The Economics of Crime," 13.
21. Gary S. Becker, "Book 'Em," *Hoover Digest* 2 (1999): 1–3.
22. Ibid.
23. Gary S. Becker, "Altruism, Egoism, and Genetic Fitness: Economics and Sociobiology," *Journal of Economic Literature* 14 (1976): 818.
24. Robert T. Michael and Gary S. Becker, "On the New Theory of Consumer Behavior," *Swedish Journal of Economics* 75 (1973): 392.
25. Becker, "Altruism, Egoism," 818.
26. James Q. Wilson, *The Moral Sense* (New York: Free Press, 1993), xv.

27. Becker, "Atruism, Egoism," 825.
28. Raymond P. Scheindlin, *A Short History of the Jewish People* (New York: Macmillan, 1998).
29. Jewish mysticism makes much of the Bible's account of creation. God created the world through speech. God spoke and the world came into being. The *Sefer Yesirah* or "Book of Creation," is a group of texts dated from the early centuries of this era. It contains a text dealing with the Creation of the world out of all possible permutations of the letters of the Hebrew alphabet.
30. David Novak, *Jewish Social Ethics* (New York: Oxford, 1992), 156.
31. Gad Bensinger, *Justice in Israel* (Chicago: Loyola University, 1989).
32. Novak, *Jewish Social Ethics*, 156–58.
33. Genesis 1:27. All Scripture quotations are from *Tanakh: The Holy Scriptures* (New York: Jewish Publication Society, 1985).
34. David Novak, "The Mind of Maimonides," *First Things* 90 (1990): 27–33.
35. Genesis 2:7.
36. Milton R. Konvitz, "Conscience and Civil Disobedience in Jewish, Christian, and Greek and Roman Thought," *Hastings Law Journal* 29 (1978): 1628–29.
37. Deuteronomy 6:4–6.
38. Genesis 2:7.
39. Louis Goldberg, "The Sin Nature and the Yetzer Har'a: Are They the Same or Different?" *Mishkan* (Jerusalem: Caspari Center for Biblical and Jewish Studies, 2000), 32, 53.
40. 1 Chronicles 28:9.
41. Goldberg, "The Sin Nature," 53.
42. *Ibid.*, 54.
43. *Ibid.*, 55–56.
44. The Talmud (Yoma 69b) relates the story of how, after the return from Babylonian exile, the leaders prayed, with a mind toward preventing another national disaster, that God would remove the yetzer har'a. After three days of fervent prayer, the evil yetzer raced out of the mishkan like a lion. When they subdued the beast, it cried so loudly that the struggle could be heard for a thousand miles. The prophet Zechariah advised the leaders to confine the beast to a lead jar rather than destroy it, or else the entire world would be destroyed along with it. For three days, they contained it, and sexual desire disappeared from the world. Even the chickens stopped laying eggs. When there was not an egg left in the land of Israel to sustain

a sick person, the leaders were forced to lift the lid and return the yetzer har'a to the earth.

45. Deuteronomy 17:17.
46. 1 Kings 11:4.
47. D. Thomas Lancaster, "The Rule of Law," *Bikurei Tziyon* (Littleton, Co.: First Fruits of Zion, 2001), 70, 14–17, 25. The yetzer har'a may be resisted, following the example of the patriarchs, with an oath in God's name. It may also be resisted with acts of kindness and through prayer. The human struggle with the yetzer har'a will end finally, according to the Talmud, on the day of Messiah, "When the Holy One, blessed be he, will bring the evil yetzer and kill him in the presence both of the righteous and the wicked." Goldberg, "The Sin Nature," 2000.
48. Genesis 4:8.
49. Novak, *Jewish Social Ethics*, 162.
50. *Ibid.*, 163.
51. Daniel Lapin, "The Spirituality of Conflict," *Religion and Liberty* (Grand Rapids, Mich.: Acton Institute, 1993), 3, 1–4.
52. Genesis 2:24.
53. Lapin, "The Spirituality of Conflict," 2–3.
54. *Ibid.*
55. Meir Tamari, "*With All Your Possessions*": *Jewish Ethics and Economic Life* (New York: Free Press, 1987), 56–59.
56. Becker, "The Economics of Crime."
57. Becker, "Book 'Em," 2–3.
58. Becker, "The Economics of Crime."
59. Becker and Nashat Becker, *The Economics of Life*, 200.
60. George Soros, *Soros on Soros* (New York: John Wiley, 1995), 200.
61. Lapin, *Buried Treasure*, 100.
62. Tamari, "*With All Your Possessions*," 53–56, 253–61.
63. Micah 6:8.
64. Jeremiah 29:7.
65. Aaron Rakefet-Rothekoff, "Dina D'Malkuta Dina—The Law of the Land in Halachic Perspective," *Journal of Halacha and American Law* (Surfside, Fla.: Aleph Institute, 1998), 1, 9–10.

66. Novak, *Jewish Social Ethics*, 164.
67. Amos 5:24.
68. Moses, and later Joshua, established these cities to provide “protective custody.” Those convicted of unpremeditated murder could voluntarily reside in one of the six cities to avoid the lawful revenge of their victim’s family. Sholom Lipskar, “A Torah Perspective on Incarceration As a Modality of Punishment and Rehabilitation” (Surfside, Fla.: Aleph Institute, 1996), 2.
69. Numbers 32:16, 24.
70. Novak, *Jewish Social Ethics*, 173.
71. Lipskar, “A Torah Perspective.”
72. Seth Klayman and Elliot Klayman, “Punitive Damages: Toward Torah-Based Tort Reform,” *Cardozo Law Review* 23 (2001): 221–51.
73. Novak, *Jewish Social Ethics*, 173.
74. Morris N. Kertzer, *What Is a Jew?* (New York: Macmillan, 1978), 18–19.
75. David Lerman, “Restorative Justice and Jewish Law,” *VOMA Quarterly* (Victim Offender Mediation Association, 1998), 9, 1–2.
76. Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, Pa.: Herald Press, 1990).
77. Lerman describes a case that took place involving Temple B’nai Jeshurun in Des Moines, Iowa. Two young people desecrated the synagogue with swastikas and Nazi slogans. They were arrested and pled guilty to felony crimes. Neither had prior records. A local prosecuting attorney approached the rabbi about meeting with the pair to explain the damage and possibly work out a sentence. The congregation agreed and sent several representatives, two Holocaust survivors and a former Israeli military officer among them. They encountered a thin young man with a hearing disability. The boy had found a place to stay among members of a hate group, after his running away from home. It was his first “public action.” His girlfriend had gone along for “something to do” without much thought about what it meant. Several members of the congregation demanded that the prosecutor “throw the book at them,” but others feared that jail time would only embitter the pair and crystallize their ideology.

After much discussion, the congregation offered a sentence that the court accepted: The vandals received one hundred hours of community service to the synagogue, supervised by the custodian, and one hundred hours of study in Judaism with the rabbi. The sentence further specified that the young man remove the Nazi tattoos from his arms, referred him to a hearing specialist, and provided that both pursue completion of high school requirements. The young man completed

his sentence as did the young woman. They decided to marry and invited both the custodian and the rabbi to their wedding. Lerman, “Restorative Justice,” 1–2.

78. The rabbis of the Talmud speculate about the word *golem*, which appears in the Tanakh at Psalm 139:16. The word refers to a “wrapped” substance of “imperfect form”; in modern Hebrew, the word refers to a raw material. The most well-known legend comes from the golem created by Rabbi Judah Löw in sixteenth-century Prague. When the rabbi placed the Hebrew letters *aleph*, *mem*, *tav*, or *emet*, the Hebrew word for “truth,” the golem came to life. When the rabbi removed the *aleph*, changing the word to *met*, or “death,” the golem became lifeless again.