

27. The Punishment Game

Every game demands a losert.

In a regular card game, the dealer deals the cards to the players and each player gets an equal number of cards. The dealer, depending on the game, mostly places the remaining cards in the middle from which each player according to rules, draws a card and or deposits a card. Generally, in any game that requires a dealer, the role of dealer is rotated to each player in turn, to neutralize any advantage that the dealer might have.

One could say that a card game represents the ideal of the distribution of benefits and losses for each player. It is a game of chance, though there are some card games that mix together chance and manipulation, such as poker, or bridge. But even in these games, the attempts to overcome chance by cunning are considerably challenging, depending on the skill of the player, especially the ability to calculate the possibilities of how the cards will fall, whether these are guessing how an opponent will play their card, or calculating (usually card counting) what cards they hold.

In an effort to counteract the intrusion of chance into a game, there are, of course, rules. It is the rules that maketh the game, someone said (maybe not). And it is the ability of each player or team of players to overcome the oppression of these rules that makes for a winner. However, in the wider field of life, the “game of life” one might say, we should understand one very important truism: that rules are made to be broken. The logic of this frustratingly true statement is unassailable. There would be no point having a rule if there were not the expectation of it being broken. There are two ways to think about this conundrum. People do things that others do not like, say for example, defecating in public. “There ought to be a law against that,” exclaims an outraged citizen. And so a rule is made that prescribes a punishment for that act. Note here that the act

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preceded the punishment. But there is another way of looking at it. I am a lawmaker (member of parliament, city council, senator etc.). We have decided that in order to prevent the spread of a pandemic there will be a curfew that forbids anyone in the streets after 9.00 pm, anyone who does to be fined \$10,000 plus six months jail time. This is a case where the rule precedes the crime. It is enacted in order to punish. Traffic laws are a prime example of this.

In any game though, whether football, cricket, basketball, cards or a board game, losing is equated with punishment. Consider how we routinely deal with little toddlers who love to play games. Until they get older, we “let them win,” knowing full well that losing will result in tears, often very loud. The losing response is built in. People hate to lose. And top athletes unabashedly say, when interviewed and asked what motivates them to become the best, they universally reply: “I hate to lose.”

Those who lose in the game of life are, without any compassion or hesitancy, referred to as “losers.” The hidden assumption is that they are losers because it is their fault, when it is quite obvious that this is a great example of Freud’s notion of projection. We project on to others that which we deny in ourselves. Few can stand losing, though because of life’s vicissitudes, we lose in one way or another, every day. Those who die, of course, are the ultimate losers, in spite of the considerable human ingenuity to deny this awful fact.

Society’s iconic losers are of course its criminals, especially repeat offenders, who are ingested through the turnstile of the criminal justice system, found guilty and punished. This story is about one such person, one of many, one, though, who is always not far away from the “law abiding.” In fact we are all a hair’s breadth away from criminality as this story, based on true events (aren’t they all?) shows.

Before we begin the story there is one more complication that hinges on the manipulation of the rules by those who are subjected to them. Here, the best example is in the very competitive game basketball, though it applies to probably all sports, especially contact sports. There are so many refined rules

in basketball that some players have become adept at rule following and rule breaking by “drawing a foul.” Or, in criminal justice terminology, victim-precipitated homicide (or whatever else). This story reveals a complicated web of precipitation, intrigue, trickery, moral superiority, a winning hand, and of course, the loser.

John Jones was a law professor at Temple University, Philadelphia. He commuted each day from his home in center city at 12th and Pine. His two kids, Peter 12, and Mary 10 attended the local school on 5th street, where his wife Laura taught school. Each morning they would all walk to the school together, then John would say his good-byes and take the bus to Temple. On this day, it was spring break, so there was not a lot of pressing work to do, no classes at least, so John went straight to his office and closed the door intending to catch up on a lot of old correspondence, especially email, that he had put aside during the busy teaching of the past several weeks. He opened up his email and skimmed through the list. There were a few from friends and colleagues to which he quickly replied, then one email that he was about to delete, but then, on a whim opened it. The email subject heading was simply, “please help me.”

Now, he knew all about phishing and what not. But every now and again, curiosity or whatever else, caused him to open an email or click on a link that he knew he should not. The email said:

“Dear Professor. I am a teenager and lost my way. Can you help me please? I don’t know what to do.”

John immediately thought it may be a possible suicide and clicked on the reply button.

“How old are you and what kind of help do you need?”

The answer came. “My name is Caroline. I am 15. Home from school because they bully me.”

“I could arrange for you to get help. There’s a suicide hot line.”

“I don’t think I need that. I just need someone to talk to. I’m all alone. My dad left, and my mom, well she's an addict.”

“You are on your own, then?”

We need not go into the series of emails that occurred over the next few hours. Eventually, it ended up with John agreeing to go to her house to help her, though she had made it fairly clear that the kind of help she had in mind was not life threatening. In fact she sent him a series of photos of her, each one successively revealing more bare skin. She was very beautiful, looked much older than 15. John, still convincing himself that he was doing good, agreed to come to her house, and see what he could do. He had thought of calling the police and reporting the problem, but knowing the police in North Philadelphia as he did, he doubted that they were the answer. Besides he did not know the address. He then thought of notifying the social welfare department, so emailed the girl asking for her address. The email came back immediately with an address not far from Temple. In fact, when he looked it up, it was only a couple of blocks down Broad Street.

Another email showed up. "Are you coming soon? I don't think I can stand this much longer."

John called up the social welfare department of Philadelphia. It had a branch in North Philadelphia, he thought. Unfortunately, he got a recorded message saying that because of COVID, they were overloaded with cases. He left details and Caroline's address. Then tried to get back to work. But it was no use. He could not concentrate. He tried not opening up his email. But in the end, gave in. It was just ten minutes since her last email with the address asking what time he was coming.

Finally, he gave in and said he would be there in fifteen minutes.

It was a bright and sunny spring day, A strong cool wind blew right down busy Broad street. The buses left clouds of blue smoke as they accelerated between stops and cars competed with each other to overtake them. John walked the two blocks, then stopped at the lights at the corner of Montgomery Avenue, crossed Broad and walked two blocks to Sydenham street. The corner house, she had said.

He rang the bell, no answer. Knocked loudly on the door. No answer. He turned to leave, then suddenly the door opened. A man dressed in an old crumpled suit answered.

"What you want?"

“I’m here for Caroline. She said she was in some kind of trouble.”

“Who are you?”

“John Smith, I’m a professor at Temple University Law School. Is she OK?”

“Come right in. You were expected. This the girl you came to see?”

The man showed him one of the photographs showing a lot of bare skin. In fact she was naked.

“That’s her. But why are you here? She said she had no father. May I see her, please?”

“OK. That’s it,” called the man raising his voice.

Suddenly police in uniform appeared from the adjoining room, one quickly darted forward and stood behind him.

“I am detective Swanson. You are under arrest for soliciting sex with a minor. Cuff him officer!”

John was dumbfounded. He looked around as the officer roughly grabbed his arms and handcuffed him. Another patted him down and removed his cell phone and wallet. “But, but, I came here to help her...”

“Yair, that’s what they all say,” sneered the detective.

“But it’s true! Please! I am a lawyer. You can’t do this! Ask the girl, I had no intentions to do anything with her.”

“I asked the girl and she said you did.”

“Where is she? Bring her out! She’ll tell you,” cried John, now so weak at the knees he was on the verge of collapse.

“I am that girl,” said detective Swanson, grinning proudly.

“You, you...” John managed to hold back the expletives that sat on his tongue ready to be spat out. “It’s a trap!”

“That’s right, and you helped us spring it.”

They marched John out of the house, down the steps to Sydenham street, then to West Montgomery Avenue where the police wagon stood waiting. And from there, a quick trip to the local holding center of Police Headquarters. The officials finger printed him, booked him, photographed him, signed for his personal items, one of them his phone which he managed to use to send a quick text to his colleague and friend, a trial lawyer. He was led to a holding cell, there to wait. He looked down the row

of cells. The depressing look of the place was already unbearable. What would prison be like? He looked around the cell. At least there were no others. Though, he was not sure whether right now his own company was good company. He sat on the bench his head in his hands and asked himself. Was he guilty? Had the thought entered his mind? The naked picture. Was he not like the former President Carter who famously admitted a feeling of lust from time to time? Did this make him innocent? Or guilty?

John's trial lawyer promised him an excellent, though standard entrapment defense, but warned that the jury would probably not buy it, even though it had a lot going for it. It was the police who had invented this crime and invented the victim, in fact there was no victim. If it was a crime it was they who committed it, not John, and so on. He knew the statistics. Over ninety percent of entrapment defenses failed in court, especially if the prosecution had video, which they did. They had video of John entering the building, seeming to thirst for the nude teenager, or at least that was how the prosecutor would make it look. It would not matter how many character witnesses he brought on, juries were tough on sex offenders. They loved to find them guilty. His lawyer therefore urged John to take a plea. It was like a game of poker, he explained to John, except that he had a pretty poor hand. You try to plea down to maybe a misdemeanor, though with sex offenses it was very hard to do. On the other hand, if found guilty of the major charge against him, attempted rape of a minor, he guessed it would be, then he could get many years in prison if found guilty.

"But I didn't do anything!" John pleaded over and over again. The more he pleaded, the more he appeared guilty.

The reasons for pleading guilty to a minor offense were overwhelming. Not only might he avoid prison time, his wife and children would be saved the embarrassment of publicity that follows a trial in open court. And it would save the humiliation of his wife having to get up in court and testify as to his upright and moral character. And if he could plead down to a misdemeanor, then he might be able to keep his law license.

John sat in jail all this time. Bail was refused, as it often is

for sex offenses, especially with a minor. How could he face his children? What would happen to them at school, once it got out that they had a sex offender for a father? And everyone would know because even for the most minor of sex offenses, he would be placed on the sex offender registry, available for all to peruse on the registry web site.

After many, many sleepless nights, John, his legal mind running through all the logical parameters of his guilt and or innocence, the possible ramifications after conviction and punishment, he came to the conclusion that the logical solution that caused least humiliation to those he loved was to confine the punishment to himself, to him alone. He had imagined all the humiliations and bullying his kids would get, but also thought of the opportunities that might arise for his loving wife to start anew, not having to be reminded of her sex offender husband who sat in jail or whatever. Certainly, even if he pleaded to a minor offense, his university would without doubt fire him. So she would have to become the main breadwinner for the family, though he had managed to put away a reasonable amount into a retirement account. It would be a struggle, but manageable.

She could continue living with the kids without too many hardships, without him.

Moral: Guilty or innocent, the losers are always punished.

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