

T H U G O L O G Y 101
- And -
Why the Hell Be Good?

This is the text of a speech given 9-14-11 in Moraga, CA, by Jay B Gaskill

Back in the day when I was a newly minted lawyer with the Alameda County Public Defender's office, I was oriented by my first boss, John Nunes, a tough, pipe-smoking trial lawyer with a biting wit. He introduced us newbies to the world of crime (some of whom still thought that defending crooks was a form of social work), with a warning: "***This job,***" John said, "***is like touring a sewer in a glass bottomed boat.***"

Over the next two decades I was immersed in a world dominated by criminal thinking...and it wasn't Washington, DC.

Nobody issued us scuba gear. But as a result of my immersion, and a habit of paying attention to the human condition, I gained some insights into crime worth sharing.

Now you would think that a study of thuggish behavior would be taught somewhere in the academy on a regular basis. A working understanding of the thug mindset and behavior is basic to the study of history, important for the conduct of American foreign policy, and a key to local police staffing issues. The crooks of Alameda County taught me something worth sharing.

After serving a couple of decades in the trenches as a trial lawyer for the county public defender's office, I went back to jail one afternoon in Pleasanton at the invitation of Sheriff Charlie Plummer. Here I am, the chief Public Defender for Alameda County, standing in the Command Center of the modern Jail complex, the replacement for the infamous old Santa Rita Jail, about to give a commencement address to the graduating class of the Sheriff's 102nd Police Academy.

Sheriff Plummer introduced me as "the best public defender in the country." He added, "When I see him on the elevator, I tell him 'Have a bad day.'" Charlie Plummer is a good man and a loyal friend.

Some of the lessons I shared with these newly minted deputies and police officers are important enough to share with you today. But first I need to tell you about another "teaching moment". After I left my life of crime, my wife and I were visiting her son

in mid-Manhattan. We were in his apartment on September 11, 2001, within smelling distance of Ground Zero. We spent the following days moving among the stunned, the worried and the grief stricken. I saw more love for the American flag than I ever had witnessed before. And I learned a new lesson. Very few criminals are truly evil.

When you actually encounter authentic, full-on evil, as we did that day, it is absolutely unmistakable, and qualitatively different from the merely bad and despicable. I looked around the city and saw the rest of us, the cab drivers with turbans, the shopkeepers, the tourists, the ordinary crooks, the beautiful people and the broken ones, and I realized two things with a terrible, unforgettable clarity: Evil is a very narrow category, terrible and dangerous, and in its presence we are privileged to see all the rest of us, however imperfect, as versions of the good.

Truth be told, I still enjoy the old fashioned criminals. They are much like us – but burdened by their bad choices, their rap sheets and arrests; they are flawed screw-ups with a residual conscience, men and women who hold, deep down, a hope for better days.

Back to my speech to the POST academy graduates and their families gathered in Pleasanton: I described a time when my colleagues and I were allowed to mingle with the prisoners in the old Santa Rita. Often not a deputy was in sight as we moved among the jail population. They were a lot like the prisoners in the film, the Shaw Shank Redemption. We were hassled, cajoled, complemented, bullshitted, begged, amused, and aggravated by our clients. Some were appealing characters, caught up in the web of their own bad decisions, now being processed by the impersonal justice machine. Others were the classic assholes for whom flunking the attitude test was just the first in a series of life's lessons ignored.

We really had no sense of danger as we stood in the open by wooden barracks, waiting to interview our new clients. The wind ruffled our files and papers; the crooks lined up in orderly queues. If anyone got out of line, the other inmates would make sure we were okay.

I looked out at the academy graduates and said: “Those days are gone”. There were knowing looks from senior deputies. We had seen it in certain prisoners’ hard, wary eyes, and their coiled-spring body language. There are reasons for this human deterioration, for the necessary bulletproof windows between lawyer and client, for the difficulties getting approval for a “contact” interview – meaning a real face-to-

talk - and for all the other security precautions. The prison and jail population is more dangerous.

Why this change? I see two main factors at work: The drug culture – it is a character poison. And the virtual drop out of the moral foundations of society, formerly supplied by religion. As a result, ever so gradually an entire male criminal sub-population was brutalized.

Within the larger group of crooks over the years, I began to notice more dead eyes, more cold-hearted thugs, more than ever before - teenagers in juvenile hall for whom the act of killing someone had all the moral and psychological significance of turning off a bad television program to go to the bathroom. I call these soul-damaged ones the “Cold New Breed”. More on them later...

One day, I was walking back from the North County Jail in downtown Oakland where I had just seen one of my murder clients. Behind me on the sidewalk I noticed a woman in her twenties and her child, a girl about nine or ten. The pair had obviously just visited a prisoner charged with felony assault. “See,” the mother was saying to her girl, “if you cut somebody, you can end up in there.”

Now I need you to stop and think about that exchange, as I did. It spoke volumes to me. The tone of the mother’s remark was flat and conversational. There was no sense at all that the woman was communicating an event of moral significance. It was as if she had said, “See those weeds, if you don’t cut the grass, that’s what your lawn will look like.” Her tone was coolly practical, without moral judgment.

Put yourself in that conversation.

You are talking to your own child, perhaps a niece, nephew or student. Someone the child knows is in jail for stabbing somebody. Imagine what you would say. Consider your tone. You would feel a gut reaction to the event, a sense perhaps captured in the “My God, how could he have done that?” Every part of you would tend to communicate to the child that the act of assault itself was wrong. Whatever your words, you would be speaking in a context in which the given was - ***We don’t do that.*** I think that was what most disturbed me about her remark: the context it revealed, a world in which basic morality was simply absent, just as if you were talking about color to a blind person.

This was not an isolated sample from an atypical population. It was like finding dry rot and a termite in your kitchen floor, then finding telltale powder along the

bedroom walls. There is never just one termite. Outside this room, there is a world where the moral compass is broken, where people don't know north from south because their compasses point only in one direction -- immediate, predatory self advantage.

This didn't just happen. The first famous philosopher who claimed that morality is just an invention set in motion a chain of events that has now put us all at risk. That one idea – morality as made up - has eaten its way through the social fabric with the same effect as a computer virus corrupting an irreplaceable data base.

By the time these notions get down to the street level, their carriers are like the drunken sailors who build a bonfire in the hold of a wooden boat far from shore. Here are some examples of bonfire building:

- Everybody does it.
- She had it coming.
- Nobody's going to find out.
- Money can buy anything.
- Only an idiot would tell the truth about that.
- I had no choice.

Once upon a time there was a great cultural transmission belt that carried the essence of the Moral Law from one generation to the next.

But not far from here, that belt is broken.

Most of the crooks I talked to (and there were several thousand over two and half decades) were more than three generations away from anyone who ever set foot in a church or had otherwise received any formal moral instruction.

Now, ordinary criminals are not hopeless cases. You've heard about "honor among thieves"? It is true. Any functioning criminal enterprise requires minimal social cooperation within the criminal cohort. Cooperation demands a set of basic rules in order for the caper to be pulled off and the spoils to be distributed. Crooks mimic primitive tribal behavior where outsiders are prey, but not the inner circle...at least not until after the spoils are distributed. Minimal trust and fidelity are needed in even the criminal gang: Do not steal from or cheat your fellow crook.

Here is a true story about two thugs and a prostitute, a gang of three. The woman's job was to signal the thugs when she thought her John was worth robbing. But one

day she failed to account for the Thugs' share and Thug one went into a tantrum. He pulled a gun on "that Hoe" (as he put it) and shot her. But the round went clean through, exiting her back. Unfortunately for Thug two, he was standing behind the "hoe", and took a mortal chest shot. His dying words were, "You dumb sh**". The prostitute lived to testify against Thug one. Under the law, his murderous intent to kill the prostitute was transferred to his crime partner. The jury convicted him of murder, agreeing that he was, in fact, a dumb sh**.

Stupidity and the failure to maintain trust relationships is why most crooks get caught. Keeping order among crooks for more than a few hours requires more than a calculation of advantage. As soon as conditions change, somebody gets stabbed or shot. This is why thugs tend to get caught. The baseline trust thing requires something thugs lack: **It's called character.**

Ordinary crooks are severely foresight challenged. Their capacity for advance planning is negligible and their impulse control is weak at best. For the common crooks I dealt with, it was almost impossible to plan ahead. A colleague of mine - now a judge - tells the story about when he was a public defender and attempted to persuade a young thug to take a fifteen year deal in order to avoid a life sentence. "Doing fifteen years isn't so bad," Al - a well preserved man in mid-life- said. "After all, when you are paroled, you'll only be my age." One look at my friend Al, and it was no sale. The trial and life sentence followed. Crooks tend not to anticipate ever getting to middle age.

Most of our practice was spent attempting to persuade a subpopulation of crooks to act in their rational self interest when to most of them it was a novel idea, never before tried. Two cautions here: Both three strikes and the death penalty work in spite of this short term thinking.

But there is a dividing line between ordinary crooks and thugs. Not every lawbreaker is a crook and not every crook is a thug. For that matter, not every thug is a lawbreaker.

Thugs have a casual readiness to do violence, and the complete absence of shame. Thugs live in a world where life decisions are motivated by greed, and settled by intimidation. And for thugs, intimidation means nothing short of a credible threat of violence - meaning I'll get you soon, not someday. Cooperation is a temporary alliance, a transition state between betrayals. Lying and deception are art forms to be admired and imitated.

Alpha crooks, including the Alpha thugs, are a different breed of cat. For one thing they are smarter and better organized. In fact, they share a number of traits with some of our political leaders.

I must say that, in spite of all the evil, sin, bullshit and depravity in the world, redemption is real. But it is, of necessity, a singular, individual epiphany, the occurrence of which is only as real as one is realistic about what it entails. Redemption requires recognition that you have committed a wrong, a commitment to turn away from that, and an actual new path in the better direction. I like the Hebrew term *teshuvah*. It means turning away from wrong and a turning toward the Author of all good. When we lack the moral framework to recognize that we have done something wrong, redemption is not happening.

George Orwell is credited with saying, **“We sleep safe in our beds because rough men stand ready in the night to visit violence on those who would do us harm.”**

The possibility that redemption will strike your local burglar like a lightning bolt does not make you safe in your bed at night. For that we need crime control. And crime control starts with thug control. Think of thugs as predators, operating within a territory. Graffiti is important because it is a territory marker.

The good news is that most thugs are controllable by a robust police presence. The cop on the street suppresses impulse crime – by far the most common variety. Beyond the blue uniform deterrence effect, crime control requires four equally essential elements: [1] robust, effective police work; [2] visible control of the territory by the good people; [3] swift, tough criminal justice; [4] the integration of these elements with the Moral Law.

The time honored “Rule-consequences” model actually works. It is as basic to the human condition as Newton’s Laws are to mechanics. The model works because people do respond to incentives and disincentives. But the authority of law itself begins to unravel when the legal rules are not supported by belief in the Moral Law; worse still when the rules and their application don’t line up with the Moral Law. ... Because the Moral Law applies to rulers and the ruled...equally. Without a sense of ultimate morality to which the justice and law enforcement professionals and the rest of us are subordinate, the center cannot hold. Exceptions to the reach of justice delegitimize all authority, especially when exceptions become exemptions based on power, privilege, politics and/or victim status.

The Moral Law is indispensable, but not sufficient. In 12th century Europe, a single priest could face an angry sword wielding man, stopping the would-be killer in his tracks with a single phrase: “Put down the sword or I will deny absolution.” Just try using that threat against a 21st century thug.

I once naively assumed that the K-12 educational curriculum included the essential moral injunctions of the bible, the torah and the Gospels. But the doctrine of separation of church and state has become the doctrine of the separation of moral law from all state ceremonies and institutions. This is as self defeating as refusing to teach Newton’s laws of mechanics because Isaac Newton believed he was uncovering evidence of the mind of God; or refusing to teach the Golden Rule as if it were just Christian doctrine; or refusing to celebrate the American Revolution because its architects taught that human freedom is a gift from the Creator.

Worse, the latest politically correct fad is to substitute *medical* terms for *moral* categories. It’s almost as if we are being asked to worship a secular savior - the Great Therapist. A few of my clients had a version of this, referring to some pervert as a sick fu**. The attempt to medicalize anti-moral behavior will someday be recognized as one of the worst mistakes of the last two centuries.

Religions are equipped by tradition to provide an answer to the “Why the hell be good?” question. But just answering the question is not enough for the thuggish mind because *thugs represent the subset of humanity who grew up without caring why other people are foolish enough to be good.* Though indispensable, the Moral Law is not sufficient because the 21st century thug kills the priest.

In church or synagogue or academia, we may hear “love conquers all” without being reminded that protecting the weak requires somebody to step up to the protection task carrying a big stick. Love, without robust action to protect the innocent, is an invitation to a visit from predatory thugs.

So we need to unite on the basics to get our thugs in order. The pursuit of high virtue is admirable, but the prideful pursuit of purity is a distraction. The basics mean giving primary attention to the moral boundaries that hold back the thugs. These boundaries are weakened when we are distracted and confused by too many petty rules and too much petty purity. Prohibition is an example of misplaced priorities.

Cultural and moral relativism are shams. Living by the core moral principles is not rocket science. Respect for the property, privacy and persons of others, as in not robbing, cheating, tricking, assaulting, raping or killing them, and respect for family

obligations are at the heart of every healthy society's moral order. Each is protected in the Decalogue and the English Common law. There is one overall design behind these core elements: **Protect human dignity from the predators**. All the rest is small change.

It turns out that thugs can actually thrive in a robust moral environment, provided it's run on a strict, rational, impartial rules-consequences basis. This is the secret of the remarkably effective drug court "rehabilitation-with-teeth" programs that have sprung up all around the USA, starting in a single courtroom in Oakland in 1991.

A study of thugs teaches us that we need a more robust and realistic understanding of love, the kind that trumps gesture and is aimed at the practical outcomes, the kind of love that requires us do what actually works, the tough love that denies an addict the degrading oblivion of the needle, the harder course that is the right course.

Okay- those are Thugology Essentials. If this was year 1800, we'd be through. But it is the 21st century and I promised to talk about the Cold New Breed.

Evil is real. This is a separate topic, but here is a short hand definition. Badness and wickedness are part of the human tendency to fall away from the good, often for narrowly selfish reasons. Evil is a complete motivational turnaround, the active, motivated pursuit of the bad as a value in its own right, as difficult as that notion is for most of us to accept.

As I said, morality is not a medical category, but if an evil mindset is an infection, it is a *moral* infection. A moral breakdown begins with *nihilism*, the world view that, in its naked form, represents the affirmative rejection of morality. Drawing room elites have toyed with the theory that morality is personal preference, like one's lipstick choice or brand of beer. For these intellectuals, such ideas are a harmless parlor game. No, these elites do not rape and pillage their neighborhoods; but that's a small consolation. They are the Typhoid Maries of the culture. The Cold New Breed of thugs is their progeny.

Nihilism grants a license to do evil. In one brutal murder that I followed closely, the convicted killer, a young male was deep into the Goth scene. He made a picture depicting a human figure with an animal head holding two severed human heads, one in each hand. The female murder victim was stabbed and mutilated; a symbol was carved in her back resembling drawings and a CD album cover in convicted killer's personal effects. This young man lived in an anti-moral universe, seething with death images and malevolent ideas that had conferred psychological and moral

permission to do dreadful things. Based on his dark musical tastes, I discovered a connection to the “industrial noise” musician Boyd Rice.

Mr. Rice, who was made a High Priest in the Church of Satan founded by the nut case Anton LaVey, wears a version of the two armed cross. Rice is a stone cold misanthrope. His “think tank”, the Abraxas, has proclaimed the following ethos: “The strong rule the weak, and the clever rule the strong”. This might be an accurate description of the social climate in the nation’s capital, but it is not a moral sentiment.

This is the nihilist’s creed.

The information-swamp carries all sorts of bizarre, malevolent ideation, death fantasies and dark power-ideologies. They are floating through our culture, just below the radar of most adults. They mainlined into this kid’s mind.

These ideas and images act like an odorless and colorless toxic gas that attacks the morally vulnerable. As I followed that case, I coined a term for these toxic, pathogenic, anti-moral images: They are “*malogens*”. This new term is now in use – having been cited by a political scientist with attribution. Malogens are malevolent and pathogenic cultural influences, in effect the seductive forms of anti-life nihilism, promoted in entertainment.

The convicted killer’s New Age mother was apparently clueless about the danger, and oblivious to her son’s vulnerability. The jury did not hear the words I’m about to read to you, but they are representative of the material that assaulted this young man’s mind through his ear-buds:

“...feel the machines implanted in your thoughts/ mangled nervs twist and turn /form new paths in your brain/ pull out all the wires and push them into your heart/ yeah push it into your heart/ yeah push it into your heart...so shoot it out/ your sick life has come to me/ your life ends/ you'll never cry or breathe again.”

I’ll spare you the rest - there was much more of this toxic material. Clearly, the intergenerational moral transmission belt failed in this situation.

A disclaimer: Having closely followed that trial, I have attracted e-mails from a group that is persuaded of this man’s innocence. New issues are being raised on review, but my own assessment of the evidence presented at trial, including some damning blood evidence, leaves little room for doubt about the integrity of the jury’s

decision. Even a new trial, if one is ordered, will be very unlikely to result in his exoneration, in my opinion. And the larger lesson remains:

We ignore **malogens** at our peril. Because we live in an information saturated age, we will never shut off all the malogenic input. We need a firewall. Fortunately, the firewall technology already exists. It is moral character... eight thousand year old technology.

But character is inspired, not installed like a computer program. Character is forged by trial, not played like a video game. Character is sustained by faith. Yes, faith. All trust relationships are founded in faith. No institution, whether religious or secular, owns the patent. Faith is open source software. It was issued along with the human capacity for moral intelligence by the Author of the Moral Law.

You and I could be the last link in that great intergenerational transmission belt, possibly the last, best vital connection to the Moral Law. ...Because too many of the later generations are not all that sure of the moral ground. And you can't fake moral confidence. Children can sense an adult's moral ambivalence like a dog can smell fear. Character is our firewall against 21st century malogens. And the rest is up to you and me.

Some question topics follow:

THREE STRIKES

Three strikes laws are designed to set up a system of increasing mandatory incarceration periods for repeat, dangerous felons. Thugs are actually aware of this and most keep track of their "strikes". The crime reduction effects are threefold. One— many, but not all thugs are deterred...they may not do the math, but they do understand that more is more and a lot more is even worse. Two – more importantly, most felons are serial repeaters. Many burglars do ten to twenty break-ins a month. When even of them gets another ten years, the overall burglary rate drops by the same amount. Three – police allocate resources and time to get the best results, and three strikes givens them an extra incentive to work harder, and the results show it.

DEATH PENALTY

The death penalty is controversial, especially among those who are least familiar with the principles of “Thugology”. Recent studies show a deterrent effect such that, as one scholar pointed out, each execution of a convicted murderer saves six innocent lives of would be murder victims. Not all murders are deterrable and not all thugs are deterred by the prospect of the death penalty. But in my experience, the idea of the death penalty is bright line simple and fits perfectly into the thug mindset. Moreover, the very prospect of being held for years on death row, isolated from one’s prison buddies, with execution dangling as a possibility, is a deterrent in itself. The subset of killings that are most deterrable are the situation where the would-be killer has the victim in his power and must then make a decision to kill or not to kill. Imagine you have been carjacked and placed in the trunk of your car.

You are the only witness who can put this thug away. You may not believe in the death penalty, but you sure as hell will wish in that moment of peril that the thug in the front seat does. Many possible murder victims are spared.

WHAT ABOUT THE DECLINING CRIME?

We are hearing that crime, especially violent crime, is down, in a number of cities – Oakland excepted. But isn’t this a recession? Isn’t crime supposed to go up when times are hard?

Overall violent crime has sunk to its lowest level since 1973. Homicides in New York have dropped 79% during the past two decades. Chicago is down 46%. Los Angeles is down 68%. Among the factors cited by experts to explain this trend: “...the absence of gang-fueled wars over a drug of the moment, such as the turf battles over crack cocaine”. A second factor is the application of real-time computer mapping of crimes, enabling police agencies to deploy limited resources more quickly and efficiently.

Here is the more important revelation: The long standing myth that poverty “causes” criminal behavior is discredited.

A major consideration is missing from the discussion: *Social capital* has improved in the declining crime areas. Why? Because of *terrorism* and the *recession*.

The social scientist, Francis Fukuyama, connected social capital and the crime rate in his 2007 book, *The Great Disruption* and went on to identify periods when social capital was disrupted and correlate them with a breakdown in law and order.

Social capital declines as various social pressures disrupt common values. For example, an area inhabited by a highly mobile, transient population, one where the stable families have moved out, becomes a community of strangers, or more accurately, a collection of strangers. These areas are social capital poor, and high crime follows.

“Mere” ideas can degrade social capital, such as the malign notion that “all morality is just made up.”

Strong social capital was evident in turn-of-century American cities, populated by extended families living in close quarters.

Think of those urban settings where neighbors look after each other and even strangers are alert to predators. Imagine a shopkeeper in a busy commercial district noticing a small girl wandering unattended, while another mother’s eyes follow the child until she reaches safety. In a high social capital community these interactions are multiplied one hundred fold...and the activities of criminals and predators are sharply suppressed.

The recession has returned at least one member of the household to the home-front during the daytime. And the ongoing terrorist threat, particularly in the target cities, has changed the mindset of strangers as they relate to each other and the larger community. Social capital sharply improved as a result of the common threat. And terrorism has also placed law enforcement on edge and increased its visibility and prestige in the community.

The economic stress of unemployment and the ongoing terrorist threats are challenges to be overcome, but all these developments have worked together to remind us that strong social capital depresses the crime rate. Our moment of comparative public safety might melt away unless we choose to remember and honor the basics of crime control:

Robust law enforcement, shared community values and relationships confer a public safety benefit to everyone.

There is a tendency to cut public protection funding, even in prosperous times, when the crime rate falls. “Punishing” law enforcement success is a mistake, even in tough

times. It's hard enough to be poor, but to be poor and forced to live in a crime ridden neighborhood is a nightmare. A robust, visible police presence depresses crime, and the drop out of a regular police presence inevitably increases the boldness and activity of the crime-prone individuals. No community is exempt; crooks and thugs inhabit every city and town in the country, but their criminal behavior rises with public complacency and neglect and falls with community vigilance and police support.

Economic poverty does not cause criminal activity to grow, but poverty in our shared moral foundations and social capital does.

Jay B Gaskill

Served as the Alameda County Public Defender 1989-1999

Some Crime and Criminal Justice Links

Death Penalty Study

<http://jaygaskill.com/AEIBrookingsDeathPenalty.pdf>

History of the Alameda County Public Defender

<http://jaygaskill.com/Basement.htm>

Crime Control

<http://jaygaskill.com/CrimeControlPiece.pdf>

Thugs, Saints and Old Fashioned Criminals

<http://jaygaskill.com/ThugsSaintsOldFashionedCriminals.pdf>

Speech to Sheriff's Academy

<http://jaygaskill.com/sheriff.html.htm>
