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### The Twilight of Welfare Criminology: A Final Word


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# THE TWILIGHT OF WELFARE CRIMINOLOGY: A FINAL WORD

STEPHEN J. MORSE

The editors of the *Southern California Law Review* have kindly allowed me a final word in my exchange with Judge Bazelon. I shall comment on only two of the many interesting points raised in his rejoinder.<sup>1</sup>

Judge Bazelon reasserts in his rejoinder that the purpose of his test is to broaden inquiry into criminal responsibility.<sup>2</sup> But many of the Judge's remarks concerning "unfree" actors lead this writer to feel that Judge Bazelon believes that his test also should morally lead to the acquittal of many defendants. The Judge claims, however, that he does not hope for large numbers of acquittals to result from the implementation of his test.<sup>3</sup> This seems odd because a failure to realize an increase in acquittals after broadening the inquiry into criminal responsibility would be inconsistent with the goal of Judge Bazelon's test. Even if great amounts of evidence on social conditions were admitted at trials, cases leading to conviction would probably not force *society at large* to face its complicity in causing criminal behavior. Such cases would be "lost" in the system. Also, it is doubtful that the adversary trial is the best forum for developing and disseminating the inordinately complex data and philosophical considerations that would be reasonably necessary to justify and promote a major change in societal attitudes towards criminal responsibility.<sup>4</sup> Conversely, acquittals of many seemingly dangerous defendants would concern society and would probably compel it to examine these attitudes. Acquittals are more likely to achieve the

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1. Bazelon, *The Morality of the Criminal Law: A Rejoinder to Professor Morse*, 49 S. CAL. L. REV. 1269 (1976).

2. *Id.* at 1270.

3. *Id.* at 1271.

4. See Wolf, *Social Science and the Courts: The Detroit Schools Case*, 42 PUB. INTEREST 102 (1976).

ultimate goal the Judge desires, forcing society to “uncover [the] bullets society has always refused to bite.”<sup>5</sup>

Contrary to another of Judge Bazelon’s assertions,<sup>6</sup> I am not claiming that all social welfare programs are incompatible with a libertarian and capitalist society. Particular programs aimed at reducing poverty and promoting equal opportunity are morally necessary and are not necessarily inconsistent with our present social and political values. I am suggesting that if it is true that poverty causes crime, then the degree of social engineering apparently necessary to cure crime would be inconsistent with our system. Equal opportunity and guaranteed incomes will help alleviate actual poverty and inequality, but they will not substantially reduce *relative* poverty and inequality. Those on the bottom will still feel poor and deprived and crime will not abate. If relative poverty and inequality cause crime, then only their abolition will cure crime. To reach this utopian solution would require a massive redistribution of wealth, a result that probably could be achieved only by means inconsistent with a capitalist and libertarian society.

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5. Bazelon, *The Morality of the Criminal Law: A Rejoinder to Professor Morse*, 49 S. CAL. L. REV. 1269, 1271 (1976), quoting Bazelon, *The Morality of the Criminal Law*, 49 S. CAL. L. REV. 385, 396 (1976).

Further, Judge Bazelon still has not indicated how to solve the enormous moral and practical problems that would be presented by the acquittal of dangerous defendants during the period when society is reexamining its policies.

6. *Id.* at 1272.