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THE UTILITY OF THE CULPABILITY CONCEPT IN PROMOTING PROPER DRIVING BEHAVIOR*

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In view of the grip which the automobile holds upon our lives,¹ both in terms of personal safety and economic outlay,² personal moral behavior within the roadway system becomes an extremely serious topic. Can people be taught to behave in ways that will reduce tragic and expensive mishaps? Which social institutions and educational techniques influence a driver to behave appropriately? Considering the concerted attack on the personal-fault system of tort liability, shall our society move toward downgrading the concept of personal fault as a behavioral control mechanism?

Having consulted a team of experts on behavioral deviance in an attempt to answer some of these questions, the United States Department of Transportation (DOT) published a monograph prepared by Waller and Klein, who have attacked the belief that "since the driver is responsible for crashes, changing his behavior will reduce the number of crashes."³ Aiming to undermine the concept of personal responsibility,⁴ these experts drew analogies to the status-laden medical sciences, overlooking the inherent differences

* This article is an adaptation from the following works of Dr. Mancuso, completed in cooperation with the Defense Research Institute, Milwaukee, Wisconsin: J. MANCUSO, THE CONCEPT OF CULPABILITY: ITS UTILITY IN PROMOTING PROPER ROADWAY USE, 1971 DRI Special Report No. 8, May, 1971; Mancuso, *Fault—A Basic Requisite of Sound Public Policy*, 38 INS. COUNSEL J. 397 (1971).

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1. In a relatively recent publication, Lewis Mumford called attention to the presence, in modern industrial technology, of the machine's tyranny, threatening our society. The automobile clearly is a symbol of this tyranny. L. MUMFORD II, *THE MYTH OF THE MACHINE* (1970).

2. Underscoring the grip which the automobile holds on our lives, it is interesting to note that a national organization of state highway officials has estimated that the expenditure of \$320 billion will be required during the next fifteen years to meet American highway needs. Wicker, *The Highway Juggernaut*, N.Y. Times, Jan. 10, 1971, § E, at 15.

3. D. KLEIN & J. WALLER, CAUSATION, CULPABILITY AND DETERRENCE IN HIGHWAY CRASHES (1970) [hereinafter cited as D.O.T. MONOGRAPH].

4. Demonstrating this intent, these analysts have written:

Although the moralistic view has largely disappeared in modern medicine and public health, it still prevails in many areas of highway safety. As we shall note in subsequent pages, police, insurance companies, and administrative authorities attribute the vast majority of crashes to "carelessness," "negligence," and other avoidable human behavior despite increasing indications that these concepts are neither meaningful nor useful.

Id. at 12.

between that discipline and the study of behavior. Whereas medicine can justly ignore the causal connections between disease and individual culpability, the science of moral behavior, by its very definition, cannot ignore the concept of personal fault. While these experts have presented one possible set of conclusions concerning norm-violation on the public roadways, they, like all behavioral scientists, had to work within the thin body of theory currently available to explain behavior. Using this very same body of available theory, Lawrence Lawton, a widely-known specialist in the area of traffic-safety research and accident reconstruction, reached an opposite conclusion—that the current system of personal fault, coupled with our system of legal tort procedures, *does* promote proper roadway behavior.

Prefatory to any discussion of moral behavior in the automotive transportation system and the problem of whether the concept of fault should be retained, it is essential that the reader be made aware of the theories which have dominated recent psychological thought concerning moral behavioral development. While rarely used in pure form, three broad theories can, for our purposes, be said to exist—(1) the impulse control theory, (2) the habit-reward theory, and (3) the moral judgment theory—each of which we shall consider in some detail.

I. PRESENTLY EXISTING THEORIES

A. *Impulse Control Theory*

Under the impulse control theory, it is assumed that unacceptable moral behaviors derive from the inborn, primitive response repertory of every human being. Such unacceptable behavior we delineate as "evil." With the development of Freud's psychoanalytic theory, the notions of man as being impelled by evil took on a special biological characteristic. Freud promoted the argument that the impulses which generated anti-social behavior were the human heritage of evolution. Certain biological characteristics of the human organism assured that people would engage in behaviors opposed to sound social order. These behaviors, while anti-social, preserved the person as a biological specimen and as a member of a surviving and successful species. When man engaged in harmful aggression, rampant sexuality, and self-centered greed, behavior analysts—particularly those highly-paid specialists known as psychoanalysts—traced the anti-social behavior to basic impulses. Within this paradigm, man is considered a biological organism

whose existence depends upon his repetitive involvement in behaviors that disrupt sound social functioning.

These disruptive impulses are controlled through socialization processes. The family and other social institutions discipline most persons to harness their impulses and divert their energies into socially favored behaviors. But for these processes, this theory argues, behavior would be dominated completely by biologically driven impulse expression. Social order would break down as each of us pursued our own impulse satisfactions.

Thus, viewing unacceptable behaviors as the expression of impulses, a theorist could regard automobile mishaps, likewise, as expressions of impulses. In its most simple form, this theory is reflected in the advice of safety organizations which counsel us not to drive when we are angry, as the basic impulse of anger could be diverted so that we "unconsciously" drive with the aim of injuring someone—the victim, of course, being a substitute for the person who frustrated our initial impulse.

The impulse expression theory, like other theories of moral behavior, has been the model for study of the behavior of drivers. For example, one study of drivers involved in fatal automobile mishaps revealed a relationship between lack of impulse control and accidents. Of the 96 drivers involved in fatal accidents, nine were found to be suicidal, as compared to one driver being so classified in the control group. Fifteen of the so-called "fatal" drivers were judged to be violent (having engaged in more than one unprovoked physical fight after age eighteen), as compared to nine in the control group so judged.⁵ From these findings, the inference arises that "fatal" drivers do not have proper impulse control.

Another study, undertaken for purposes of explaining the repeatedly higher incidence of automobile mishaps reported among younger drivers, likewise supports the conclusion that auto mismanagement is directly attributable to impulse expression. Approximately sixty percent of the subjects who had a high record of traffic-violation arrests were impulse motivated. Youths who were classified as being high in impulse expression reported that they had driven to "blow off steam" after arguments with family or girl friend, or that they had become angry at obstacles such as red lights, pedestrians, and slow traffic.⁶ This data led the analysts

5. Selzer, *Alcoholism, Medical Illness, and Stress in 96 Drivers Causing Fatal Accidents*, 14 *BEHAVIORAL SCI.* 1 (1969).

6. Schuman, Pelz, Ehrlich & Selzer, *Young Male Drivers*, 200 *J.A.M.A.* 1026 (1967).

conducting the study to conclude that "emotional factors involving use of the automobile as an expressive instrument were important in accidents and, particularly, in moving accidents."⁷

The impulse control theory virtually eliminates the concept of personal culpability from considerations of moral behavior. An individual's unacceptable behavior is attributed to (1) the way in which his "unconscious mind" manipulates his "real self" to allow impulse expression, or (2) poor socialization training by parents. The norm-violator is "mentally ill" and, thus, cannot be held accountable for his behavior.

A study of the literature which discusses mishaps on our public highways reveals that writers who invoke the impulse theory have, at some time, been associated with the medical profession. Freud, who gave this theory its sharpest impetus, sought to explain unusual behaviors by working within a tradition which encouraged classification of "patients" into disease groupings. It is, thus, understandable that investigators in the Freudian tradition have attempted to describe the "type" of person who repeatedly engages in unacceptable driving behavior—that individual more popularly known as the "accident-prone person."⁸ While Klein and Waller, perhaps inadvertently, slip into use of the impulse theory,⁹ they do recognize the need for caution in applying typology notions to

7. *Id.* at 1030.

8. Following the model derived from medicine, one team of investigators described the "accident-prone" driver as a "mild psychopathic" personality and attributed to him a higher incidence of the following characteristics than is present in those in a low-accident group:

- (a) An early life marked by parental disharmony;
- (b) Childhood disrespect for organized authority;
- (c) Difficulty with school authorities and legal agencies;
- (d) Frequent changing of short-lived jobs;
- (e) A non-traffic-connected police record;
- (f) A general disregard for social propriety;
- (g) Professional acquaintance with social service agencies;
- (h) Emphasis on material values and immediate satisfactions;
- (i) Driving marked by aggressiveness, impulsiveness, and inconsideration of others.

Tillman & Hobbs, *The Accident-Prone Automobile Driver*, 106 AM. J. PSYCH. 321, 322 (1949).

9. Evidencing their reliance upon impulse theory, Klein and Waller speak of "an emotional outlet:"

More specifically, the automobile offers him (the young driver) a degree of autonomy and social equality which he cannot enjoy otherwise because of his sub-adult status.

The more severely he is restricted in these respects, the more likely he is to use the automobile as a compensatory mechanism and an emotional outlet.

D.O.T. MONOGRAPH at 86.

vehicle mismanagement.¹⁰ And, wise caution is doubly demanded when using this theory to establish social policy.

Particularly is such caution required in light of the questionable status of the impulse-control theory. Despite its attractiveness, can one readily accept a postulate which defines man as a biological organism impulsively driven to engage in evil behaviors? An even more serious objection to impulse theory, from a scientific point of view, arises from the fact that it defines "impulse" in terms of "unconscious" action. The value of an unconscious process to the behavior analyst originates in its nonobservability—the very quality which precludes a testing of its existence in fact. Further, from an empirical level, impulse theory is unsatisfactory in light of the fact that humans do not necessarily pursue life-preserving gratifications, as the theory dictates. People, seeking to protect others, will endanger their own lives; a young man, responding to challenges to his masculinity, will drive his automobile dangerously.

Thus, we see, the impulse control theory, upon close analysis, does not appear to be most adequate for purposes of assessing our highway problems. Characteristic of their work, Klein and Waller, in their DOT-sponsored work, present no evaluation of the adequacy of the theory which results in one's speaking in terms of "impulse-ridden" persons. They can achieve their goal of downgrading the concept of culpability by the simple device of demonstrating the infeasibility of sorting out and restricting the "accident prone" person from highway use.

B. *The Habit-Reward Theory*

Under the habit-reward theory, it is believed that learners are induced to perform acceptable behaviors and to refrain from performance of those which are unacceptable as a result of the application of a system of rewards and punishments. Deterrent or punitive counter-measures seek to reduce undesirable behaviors by associating them with unpleasant experiences, or punishment. This association supposedly prevents recurrence of the undesirable behavior. On

10. As these analysts concluded:

Carefully designed and executed research has shown that it is possible to identify groups of drivers and pedestrians with differing crash risk. The problem is that in most cases officially collected highway data are not yet sufficiently accurate (and in some cases cannot even theoretically become sufficiently accurate) to permit direct application of the research knowledge without substantial inequities and injustices to individuals.

Id. at 91.

the other hand, reward associationist principles are applied in an attempt to increase acceptable behaviors. This approach, then, assumes a causative relationship between reward or punishment and desirable or undesirable behaviors. For example, educators assume that skill in managing an automobile can be increased through a driving course, with the net effect being that of reducing the incidence of accidents. The practice of "motivating" students to raise their skill level by threats of poor grades follows from the implicit assumption that behavior can be regulated through a judicious dispensation of positively- and negatively-valued "motivators."

Derived from an established "wisdom of the market place," the habit-reward theory, having enjoyed centuries of application, represents a practical approach to behavioral development. Children learn and implicitly believe the principle that one can promote a behavior in another by causing him to feel pleasant when desired behavior is completed. To discourage undesirable behavior, an actor need only be put into an unpleasant state after manifesting that behavior.

Personal responsibility under the habit-reward theory is treated much the same as under the impulse-control theory. Habit-reward theorists, generally taking a position of "hard determinism," consider a person's behavior to be determined by the amount and nature of the reward he has attained.¹¹ The individual has no choice of actions; rather, the actions he takes are determined by his history of rewards and punishments. Because only the person in control or power is allowed to choose when to administer rewards and punishment, the ordinary person cannot be responsible for the behaviors which have been "programmed" into him.

However, we can step back in the process to question the culpability of the programmer. Why did he choose to reward a particular behavior and punish another? How shall we evaluate, for example, the culpability of the auto manufacturer who suggests that driving his over-powered car will put a beautiful blonde into the seat next to the lucky buyer? Furthermore, the whole chain of argument which eliminates personal fault within the habit-reward theory is dependent upon the linking assumption that reward and punishment, in themselves, do affect behavior and that the environment controls all forms of reward. If this assumption is valid, a behavior analyst could use the habit-reward theory as a basis for recom-

11. J. RYCHLAK, *A PHILOSOPHY OF SCIENCE FOR PERSONALITY* (1968).

mending elimination of the fault concept from questions of moral behavior.

Analyzing this theory in their DOT-sponsored work, Klein and Waller imply that the main reason for determining culpability is to administer punishment. Focusing upon the role of punishment as a deterrent to vehicular mishaps, this team determined its effectiveness to be dependent upon:

1. The likelihood of . . . being apprehended for the deviant act.
2. The likelihood of punishment if apprehended.
3. The severity of the punishment.
4. The attractiveness of the deviant behavior.
5. The availability of alternative behavior.
6. The absence of other considerations which are unrelated to the deterrent measure but which act to inhibit the deviant behavior.¹²

Assuming that for a deterrent measure to be effective, "punishment must follow apprehension with reasonable certainty and promptness"¹³ and arguing that this is not present in current regulation, Klein and Waller conclude that these factors cannot be effectively controlled to lower the current rates of automobile mishaps. In their opinion, tort procedures, which they view as a prelude to punishment, do not deter norm-violation.¹⁴

The problem with the Klein-Waller approach is that, having argued (successfully or not) that punishment is ineffectual, they conclude that the establishment of culpability is not an effective deterrent to roadway mishaps. Does this conclusion necessarily follow the argument upon which it is based? Because punishment and the establishment of personal fault are two separate variables, their effect must be analyzed separately.

12. D.O.T. MONOGRAPH at 134-135.

13. *Id.* at 136.

14. In the words of Klein and Waller:

As for the fear of punishment through the tort system, there is neither evidence nor logical reason to support the notion that this constitutes a major deterrent. Insured drivers (by far the majority of all drivers) believe that their insurance premiums buy them substantial protection against this. The uninsured driver has not been carefully studied, but there is some reason to believe that he is as unperceptive about the possibility of a negligence suit as he is about the consequences of many of his other actions. And despite the Lawton review of the literature, . . . there is good reason to believe that the "punishment" most feared by most drivers is the injury they are likely to incur if they precipitate a crash.

D.O.T. MONOGRAPH at 137.

Similar to its handling of the impulse control theory, the Klein-Waller DOT monograph includes no analysis of the habit-reward theory from which these writers derive the factors they assume to be effective in inhibiting unacceptable behavior. For example, we cannot be sure that they would be prepared to conclude that punishment, in itself, is *not* a variable in behavioral control. Although they list punishment variables as factors, Klein and Waller later point out that behavioral scientists no longer maintain rigid faith in the efficacy of punishment as a modifier of behavior. Is this loss of faith an implicit recognition that the habit-reward theory should be supplanted? Or is it a direct recognition that the role of punishment has been misunderstood, even though it still must be considered a primary variable? Either conclusion could follow from Klein and Waller's account.

The habit-reward theory presents a series of inexplicable puzzles. First, people persist in performing certain behaviors despite punishment. This problem is considered by Waller and Klein in their discussion of the "won't-conform" driver—a person undeterred from unlawful, anti-social behavior by "threats that might deter the law-abiding citizen."¹⁵ Espousing the weakly supported proposition that these persons are biologically different than the average citizen, another writer has developed a total theory that certain criminal persons are resistant to the usual habit-reward system of moral behavior training.¹⁶ Rather than seek a theoretical principle to explain the resistance to punishment by the "won't-conform" group, Klein and Waller, referring to another study,¹⁷ propose that family influence has a strong effect upon the moral behavior of drivers. Because they have failed to explain why punishment has proved ineffective with this group or determine whether a study of family influences, rather than punishment principles, would lead to a better understanding of control over roadway use, a student of the problem is left with little basis from which to draw conclusions about the effectiveness of punishment.

A second major criticism of the habit-reward explanation of moral behavior concerns the generalizations involved in training a person to engage in acceptable behaviors and avoid those which violate societal standards. Will the sufficient rewarding of "pro-

15. *Id.* at 132.

16. H. EYSENCK, *CRIME AND PERSONALITY* (1964).

17. Carlson & Klein, *Familial vs. Institutional Socialization of the Young Traffic Offender*, 2 J. OF SAFETY RESEARCH 13 (1970).

per" driving skills in a classroom situation, for example, guarantee that these driving skills will generalize to road and highway vehicle management? Or, to turn attention to the punishment aspects of the theory, will a driver who has been punished for exceeding the speed limit by traveling 50 miles-per-hour in a 30 mile-per-hour zone generalize the punishment to speeding behavior in 65 mile-per-hour zones? This problem becomes more perplexing when we consider whether the rewards for appropriate behavior in one situation (e.g., proceeding very slowly on an icy roadway) generalize to appropriate behaviors in somewhat remote situations (e.g., monitoring mirrors while overtaking and passing other vehicles). When one "proper" behavior is strengthened, are all "proper" behaviors strengthened? We know that it is impossible to develop automobile-management training programs which would both reward every conceivable type of acceptable driving behavior and punish every possible type of unacceptable driving behavior. Because the habit-reward theory does seek to treat a principle of generalization as valid, leaving many questions related to this principle unanswered, its credibility appears somewhat impeached.

C. *The Moral Judgment Theory*

Focusing upon principles which explain how a person adopts a general internalized standard to guide his behavior in events which cut across a wide variety of specific behaviors, the moral judgment theory emphasizes the role of individual thinking processes in personal moral-behavior development. This approach recognizes the need to explain the fact that people behave acceptably even though they have never been instructed to so behave in that particular situation. Reflected in this theory's very title is its basic assumption that a person is able to judge that a moral act is "good" or "bad" by applying internalized values, through a process identical to that used in judging whether something is "near" or "far."

Under this theory, certain features are considered to characterize the child's moral behavior development. First, the child is deemed to progress from a belief that proper moral behaviors are determined by authoritarian constraint toward a belief that propriety is determined by the necessity of social cooperation. For example, a child under seven years of age believes a lie is "bad" because an adult punishes those who lie; only later does he recognize that a lie undermines the trust and reciprocal respect required for satisfactory social relations. Secondly, the child is considered as progressing from a belief that "rules" are immutable, universal,

and indelibly recorded to a recognition that those rules can change to meet the requirements of the social situation. Thirdly, the child is considered to change his views on justice as he progresses in his thinking about moral behaviors. In the earlier phases of his development, a child views justice as a matter of meting out punishment, which must quantitatively balance the crime as an expiation of the "evil" associated with the transgression. The immature child is, thus, a habit-reward theorist, believing that the power to punish is the source of the power to determine propriety. "Fault" to him is a matter of angering authority rather than a matter of violating a mutually agreed-upon ordering of social interaction. When he develops to the point where he recognizes that "good" moral behavior represents an effort to facilitate social interaction, the child tends to view justice as an effort to make the transgressor clearly aware of the nature of his offense.

Application of this theory requires recognition of certain principles, the first being that social groups, rather than "universal forces," establish the "goodness" or "badness" of an act. Whereas the young child cannot conceive of the relativity of moral judgments, as he matures psychologically he acquires the ability to realize that rules emanate from a desire to facilitate social interactions and that social discussion is a necessary condition precedent to the establishment of those rules. The moral judgment theorist, in analyzing the morality of vehicle management, must always recognize this principle. Secondly, he must recognize the psychological incorporation by the individual of the judgment scale, from goodness to badness. Because a child is not born with inherent knowledge as to what constitutes "good" or "bad" acts, he must learn that events can be construed along a judgment scale. Thirdly, the moral judgment theorist must recognize that a person must also learn which acts society deems to be at the "good" end of the scale and which it deems to be at the opposite end.¹⁸ Fourthly, it must be recognized that a child must be cognitively mature before he can

18. In illustrating this third principle, Lawton effectively turned to social psychology, showing how groups influence an individual to perceive events in ways that are considered "good." In his systems-analysis evaluation of the effectiveness of tort procedures as a deterrent to improper roadway behavior, Lawton maintained that an individual's behavior is influenced by group pressure and that the intensity of this influence is a direct function of both the number and degree of contacts between the individual and the group. He has further maintained that this intensity increases when the individual is singled out by the group. L. LAWTON, *PSYCHOLOGICAL ASPECTS OF THE FAULT SYSTEM AS COMPARED WITH THE NO-FAULT SYSTEM OF AUTOMOBILE INSURANCE* 26, 27 (1969).

be taught that "good" moral judgments are those which consider the well-being of others.

Within the moral judgment theory, public determination of personal "fault" is highly important. According to this theory, the mature person recognizes that "proper" moral behavior requires a consideration of other people's perceptions. From mutual consideration of each other's positions, people derive a "social contract" which is violated by an improper act. Consequently, this theory demands the retention of the fault concept. In an ordered society, everyone must learn that goodness is determined in concert with others and that when rules are agreed upon, a breach of the social contract represents a most serious transgression. When he violates the rules, a properly socialized person must feel culpable—that is, he must feel guilt.

During the last decade, more and more psychologists have adopted this explanation of moral behavior development—a condition wherein a child develops his judgment process.¹⁹ A rapidly-growing number of studies attest to the high utility of the judgment paradigm.²⁰ However, little actual use of it has been made. Although modern educators look to its further expansion and use in school programs, this theory has been seldom applied in establishing social policy.²¹ Lawton's work excluded, no systematic study of the moral behavior of automobile drivers has utilized this model. The extended discussion of culpability in roadway mishaps by Klein and Waller contains no references which would reveal an awareness on their part of the utility of applying judgment theory to morality of auto management.

The value of this theory in the area of driver behavior lies in its ability to explain questions left unanswered under the impulse-control and habit-reward theories. Consider the following illustra-

19. See J. PIAGET, *THE MORAL JUDGMENT OF THE CHILD* (1965); Kohlberg, *The Development of Children's Orientations Toward a Moral Order: I. Sequence in the Development of Moral Thought*, 6 *VITA HUMANA* 11 (1963); Kohlberg & Kramer, *Continuities and Discontinuities in Children and Adult Moral Development*, 12 *HUMAN DEVELOPMENT* 93 (1969).

20. See T. LICKONA, *THE ACCELERATION OF CHILDREN'S JUDGMENTS ABOUT RESPONSIBILITY* (1971); Kohlberg & Kramer, *supra* note 19; Pittel and Mendelsohn, *Measurement of Moral Values: A Review and Critique*, 66 *PSYCH. BULL.* 22 (1965); Rest, Turiel & Kohlberg, *Level of Moral Development as a Determinant of Performance and Comprehension of Moral Judgments Made by Others*, 37 *J. OF PERSONALITY* 225 (1969); Stuart, *Decentration in the Development of Children's Concepts of Moral and Causal Judgments*, 111 *J. OF GENETIC PSYCH.* 59 (1967).

21. Kohlberg, *supra* note 19.

tion: A young man, driving on his first extended trip in the north-east, encounters a snow storm. Approaching a winding, down-hill portion of the road, he slows his car, downshifts into second gear, and proceeds. A short distance onward, he approaches a straight-away and shifts into third gear. What accounts for this young man's behavior? Here, in situations wherein he has never previously been punished or rewarded, he behaves in ways which society would judge as "good." Perhaps he has developed a fear of being injured. Both the habit-reward theorist and the impulse-control theorist could speak of self-preservation as the motivating factor. However, taking our example further, this very same man drives his auto in high-speed races, wherein he is very aggressive. Although he has seen other drivers killed or severely injured, he does not, in racing, hesitate to maneuver his car in ways that indicate a willingness to force a competitor into a collision, if necessary, to prevent being overtaken. These examples, showing caution in one dangerous situation and courting danger in another confound the theorist who would say that cautious driving is motivated by fear of punishment (i.e., personal injury). The moral judgment theory, however, has no difficulty explaining these differences. According to him, the driver in our example has developed a standard which forces him to view "good" moral behavior in terms of the viewpoints of others and to consider the well-being of those with whom he interacts. When he is on a public, slippery roadway, he gauges his behavior so that others, as well as himself, are protected. On a raceway, on the other hand, he is aware that other racers anticipate his "dangerous" behavior and that they willingly submit to possible consequences. Knowing the viewpoints of the others and the dangers involved, he drives his automobile to win the race.

The major drawback of the judgment theory stems from the lack of its prior application to vehicle-management behavior. Further, from a scientific standpoint, the perennial issue of the privacy of the psychological process stands as an obstacle to its ready application. How does an investigator establish whether or not a subject understands the social use of the "good-bad" judgment scale? Does a subject accept the moral propriety of considering the well-being of others with whom he interacts? Since his judgments are private, how can we measure where he places an event on his personal "good-bad" scale? However, unlike the impulse theorist, who postulates a "clever other mind" bent on guarding privacy, the moral judgment theorist can devise techniques to bring a subject's processes into public view. Assuming that one judgment is

psychologically similar to any other judgment, the judgment theorist can divert some of his attention to the task of publicizing all judgment processes. Taking this issue of privacy into account, judgment theory seriously attempts to base its principles on public events.²²

II. WHICH THEORY SHOULD WE APPLY?

The policy maker, seeking to understand moral behavior, functions best when he is cautious. When policy is implemented on the basis of a particular theory, its results are best evaluated in terms of that theory. Should desirable occurrences follow the application of a particular set of procedures, we must be certain these events are, indeed, the results of the applied procedures. Likewise, if the established policy is unsuccessful, an investigator must assess, carefully, the factors contributing to the final outcome. Since moral behavior has a short history of careful scientific scrutiny, it would be unwise to jettison ages of practice on the basis of the weakly-founded principles used by psychologists in their scientific activity. The preceding review of theories of moral behavior leads to the conclusion that behavioral scientists must assume humility when they offer advice to policy makers. When theories utilized cannot be fully explained and tend to lead to contradictory conclusions, there is certainly need to be highly cautious about radical revision of existing policy.

Public approaches toward influencing moral behaviors appear to have employed a crude form of the habit-reward theory. Legislative and judicial systems appear to have threatened punishment to those who have acted unacceptably, while promising reward to those who act acceptably. Laws regulating roadway use and vehicle management prescribe fines and other sanctions against violators. Yet, there is little evidence that people are induced to regulate their moral behaviors in terms of rewards and punishments. In fact, one writer has presented data which indicates that unacceptable behaviors actually rise in number when transgressors are sentenced to harsh punishments.²³ As already noted, Klein and Waller effectively argue that punishment has been ineffective in deterring sizeable portions of traffic violations. While proposing necessary cautions about postulating the existence of a "traffic-violator type," Waller

22. READINGS FOR A COGNITIVE THEORY OF PERSONALITY (J. Mancuso ed. 1970).

23. Hartung, *Trends in the Use of Capital Punishment*, 284 ANNALS 8 (1952).

and Klein nevertheless advocate the recognition of a "won't-conform" group of auto drivers, who apparently are "punishment resistant."²⁴ This, certainly, corresponds to the observation that most persons who are incarcerated in prisons have been there before or will return there again. Because it does not appear to be an effective social-control mechanism, punishment, in itself, cannot be advised as a means of encouraging people to manage their automobiles in manners that consider the well-being of other roadway users.

Frequently in published articles there appears the recommendation that roadway safety can be increased by decreasing public exposure to "violator types." This recommendation is based on the faulty assumptions that there are individuals who can be readily identified as "unsafe" drivers and that there exists a practical, constitutional means of eliminating these types from our highways, when, in fact, no suitable criteria for reliably including persons in one or another category has, as yet, been established. Investigators have shown that the use of selection tests to separate the "safe" from the "unsafe" drivers is highly inefficient.²⁵ To eliminate a large portion of "unsafe" drivers, it would be necessary to also eliminate huge percentages of people who would be totally "safe" drivers were they allowed to drive. Further, use of these tests would not eliminate the high percentage of vehicular mishaps caused by one-time transgressors.

The studies, arguments, and conclusions reviewed to this point accentuate the sense of failure in social policies used to control the behavior of roadway users and the shortcomings of available theories of moral behavior. This sense of failure might invite hasty and radical changes in social policy without careful analysis of those parts of the policy that have failed. We must be certain that we are not judging the failure of the policy in terms of a theory that is simply inapplicable. We must be alert to the possibility that a policy change may encourage less mature forms of moral behavior.

A prime example of such change is represented by "no-fault" insurance plans which would eliminate tort procedures for liability cases arising out of vehicular mishaps. The recommendation of Klein and Waller that the concept of culpability be de-emphasized can be viewed as the result of their application of an ineffective

24. D.O.T. MONOGRAPH at 132-34.

25. Uhlauer & Drucker, *Selection Tests—A Dubious Aid in Driver Licensing*, HIGHWAY RESEARCH RECORD, Pub. No. 84 (1965).

theory to analyze moral behavior within the transportation system. While Klein and Waller turn their professional scorn on Lawton, suggesting a fallacy in his interpretation of scientific studies, they simultaneously reflect a narrow approach to theories of moral behavior. To illustrate, they persist in using the habit-reward theory, referring to tort procedures as "punishment." Then, believing they have demonstrated the ineffectiveness of punishment as a deterrent, they suggest that tort procedures do not function as a positive influence on the moral behavior of drivers. A wider view of moral behavior theory allows the conclusion that tort procedures have a pronounced effect upon moral behavior in auto management, particularly upon application of the judgment theory. As we previously noted, under this theory one must learn that he is expected to consider the well-being of those with whom he interacts. While it is possible to view court action against a traffic violator as "punishment," it can also be perceived as a justice process, whereby a social group determines the reasons why the accused norm-violator should be informed of his personal culpability. One need not perceive a court proceeding within the confines of the crude habit-reward theory. Rather, one can view society, acting through its legal institutions, as a teacher of the premise that moral judgments must consider the well-being of others.

We cannot ignore the fact that a tort procedure represents a unique legal device, wherein individuals face each other as they seek to determine culpability. Reflecting a more mature stage of moral development, the person involved in this process becomes aware of the premise that mutual facilitation of social interaction is the source of the soundest social rules. Here the aggrieved party, rather than a dominating authority, questions the propriety of a possible offender's acts. In light of these factors, would it not be theoretically justifiable to extend, rather than limit, the use of tort procedures? While a social planner could concur in Klein and Waller's assertions regarding the role of vehicular and highway defects in accident causation, would it not be advisable to encourage the institution of court procedures designed to establish the culpability of automobile manufacturers and highway engineers? Indeed, as the development of products liability law indicates, people have begun to realize that inasmuch as they pay for a safe vehicle when they purchase a car, someone should be charged with the responsibility of providing that safety.

Klein and Waller have expressed confidence in the effectiveness

of public educational forums as a teacher of reckless behavior.²⁶ Why, then, should they not be just as willing to concede that society, likewise, teaches positive attitudes, leading to crash-avoiding behavior, through institutions, such as courts, which promote public discussion of culpability? Why not believe that it is such instruction, rather than punishment or fear thereof, which induces millions of people to respect the well-being of others while using the highways?

Unlike any other theory of moral behavior, the judgment theory recognizes the role of the courts as instructor of proper actions. Likewise, judgment theory alone can explain certain types of behavior. For example, unlike any other major theory, it can account for the alcoholic driver other than in terms of impulse. The person who uses alcohol in excessive amounts is merely recognized as one who cannot maintain social relationships in which people consider each other's well-being. Having learned that the use of alcohol interferes with social interactions, the alcoholic's inability to limit his drinking indicates a lack of commitment to the rule of social reciprocity. A behavior analyst can predict, therefore, that such a person would not consider the well-being of others in *any* of his moral judgments, whether they involve driving an automobile, providing money for the support of his children, or controlling aggression. In addition, judgment theory can account for data showing that familial influence strongly affects the moral behavior of driving, just as it affects moral behavior in general.²⁷ For example, middle class families are recognized as inducing better driving practices in their children because they encourage them to think of moral behavior in terms of facilitating social interaction.²⁸ Consequently, middle-class children tend to be more successful in driver education courses—the result of their pre-training in the development of attitudes which direct the making of driving judgments in terms of the well-being of others.²⁹

26. Demonstrating this confidence, these writers, in describing the young driver, have written:

In common with all members of the society, he learns early and often from literature, from films, from history books, from advertising and all the other mass media—that daring, risk taking, excitement, and tension are all desirable and attractive.

D.O.T. MONOGRAPH at 202.

27. MacRae, *A List of Piaget's Theory of Moral Development*, 49 J. OF ABNORM. AND SOC. PSYCH. 14 (1954); Hoffman & Saltzstein, *Parental Discipline and the Child's Moral Development*, 5 J. OF PERSONALITY AND SOC. PSYCH. 45 (1967).

28. Boehm, *The Development of Conscience: A Comparison of American Children of Different Mental and Socioeconomic Levels*, 33 CHILD DEVELOPMENT 575 (1962).

29. F. MCGUIRE & R. KERCH, AN EVALUATION OF DRIVER EDUCATION (1969).

III. CONCLUSION

Considerations emanating from analysis of theories of moral development, in conjunction with the promise that a more refined theory can emerge in the near future, warn policy makers against clinging to any particular behavioral theory at the present time. Within the last decade, behavioral scientists have increasingly turned to judgment theory to explain moral behavioral development. This theory, particularly when coupled with the fund of data and thought which defines the nature of social influence on cognition and judgment, promises to give a broader understanding of the means through which a society can induce its members to give primary attention to the well-being of all participating members of the society. But this theory, too, is years away from final formulation. This state of affairs leads to a strong awareness of the need for cautioning against the implementation of radical changes of well-practiced, tradition-proved social policies. Particularly is such caution needed in the area of insurance law. Adoption of a no-fault system of insurance, wherein individuals would be automatically absolved from charges of culpability, cannot be allowed to occur on the basis of unrefined theory. In light of the emergence of judgment theory, with its emphasis upon the need for tort procedures as a teacher of proper social interaction, should we not, at this stage, refrain from taking politically expedient steps which, in the long run, may prove disastrous in terms of the moral structuring of society?

