

Can We Reimagine Criminal Justice?

A Book Review of Incognito: Rethinking Criminal Justice Through Neuroscience



BOOK REVIEWS

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ABSTRACT

A large majority of Americans, 91% in a recent ACLU survey, believe the criminal justice system is seriously flawed and in need of reform, favoring solutions that address root causes rather than relying solely on punishment. Neuroscientist David Eagleman's book, *Incognito*, raises the question of what a fundamentally reimagined system might look like. Eagleman argues for a model emphasizing risk management, rehabilitation, and public safety over retribution.

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A significant majority of Americans believe the criminal justice system is flawed and in need of reform. According to a survey conducted by the American Civil Liberties Union (ACLU), 91% of respondents indicated that the current system has serious problems requiring attention. Many believe the system is ineffective and broken, and they support approaches that prioritize addressing the root causes of crime over purely punitive measures.¹

If we were to fundamentally reimagine the workings of our justice system, what would a better, more effective model look like? In his book *Incognito*, neuroscientist David Eagleman presents a compelling case for a radically different approach to criminal justice – one that incorporates modern understandings of neuroscience and human behavior. Eagleman challenges conventional views on free will, culpability, and punishment, and proposes that the justice system should be oriented not around retribution, but around risk management, rehabilitation, and public safety.

WHO IS DAVID EAGLEMAN?

David Eagleman is a renowned neuroscientist with a background in both literature and science. He studied British and American literature at Rice University before earning a doctorate in neuroscience from Baylor College of Medicine. He later conducted postdoctoral research at the Salk Institute. Eagleman's research spans a wide range of topics, including time perception, synesthesia, and sensory substitution.² He is also the founder and director of the Center for Science and Law, a nonprofit dedicated to aligning the legal system with modern neuroscience. His work has earned him numerous honors, including the Guggenheim Fellowship and the McGovern Award for Excellence in Biomedical Communication.³

THE ILLUSION OF FREE WILL

A central argument in *Incognito* is that the notion of free will, so foundational to our criminal justice system, is largely an illusion. Eagleman asserts that most human actions are not the result of deliberate, rational thought, but rather are driven by unconscious processes. The conscious mind, he argues, functions more as a narrator than a driver, constructing justifications for actions that the brain has already initiated.

This idea is not without historical precedent; debates over free will and determinism trace back to the ancient Greeks.⁴ However, what makes *Incognito* particularly engaging is Eagleman's ability to weave together contemporary neuroscience, compelling anecdotes, and philosophical reflection to illuminate the practical implications for how we think about responsibility and punishment.

Eagleman provides numerous examples to illustrate his point:

- A professional baseball player cannot consciously decide to swing at a 92-mph fastball in time; the action must be initiated subconsciously.

1 ACLU, "91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds," Press Releases, November 16, 2017. https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds?utm_source=chatgpt.com.

2 https://en.wikipedia.org/wiki/David_Eagleman?utm_source=chatgpt.com.

3 https://www.gf.org/fellows/david-m-eagleman/?utm_source=chatgpt.com.

4 Susanne Bobzien, *Determinism and Freedom in Stoic Philosophy* (Oxford University Press, 1998).

- People often drive familiar routes without consciously paying attention, only becoming alert when something unexpected – such as a red light or pothole – occurs.
- Amid background noise at a party, individuals can still detect when someone across the room says their name, a phenomenon known as the “cocktail party effect.”

Such examples illustrate the contention that what we perceive as conscious decision-making is often merely post hoc rationalization. The brain acts first, and the mind follows with explanation.

CONFLICTING MOTIVATIONS AND THE FRAGMENTED SELF

Eagleman also challenges the idea of a singular, unified “self.” Instead, he proposes that the human mind is more accurately described as a “team of rivals”—a collection of competing systems and motivations. These systems often operate at odds with one another, making consistent, rational decision-making difficult.

As a notable example, notable example Eagleman cites actor Mel Gibson, whose antisemitic rant during a 1984 DUI arrest was dismissed by some as a drunken rambling and by others as revealing his “true self”. Eagleman questions whether there is even such a thing as a “true self”, suggesting instead that both versions of Gibson (sober and intoxicated) are real expressions of different brain states.

Additional examples illustrate how we constantly negotiate between conflicting motivations:

- The invention of the “Christmas Club” by banker Merkel Landis allowed depositors to save money they feared they might otherwise spend impulsively. While a poor investment financially, the program acknowledged the psychological difficulty of delaying gratification.
- Living wills anticipate the possibility that individuals may not make rational decisions under emotional duress, indicating a disconnect between our current and future selves.
- Dieters often engage in “Ulysses contracts”⁵ with themselves, promising rewards or punishments to maintain discipline and avoid temptation.

These examples support the argument that behavior is not the result of a consistent internal agent, but rather a byproduct of complex and often contradictory neural systems.

IS THERE ANY ROOM FOR FREE WILL?

Eagleman posits that our actions are largely determined by a combination of genetic predisposition, life history, and current biochemical states. These are factors over which we have little conscious control. The well-documented behavioral changes induced by alcohol or drugs illustrate this clearly, but Eagleman goes further, pointing

5 A “Ulysses Contract” is a type of agreement in which a person voluntarily limits their future actions to avoid being led astray by short-term temptations or irrational behavior. It is named after the Greek hero Ulysses, who ordered his crew to tie him to the mast of his ship and ignore his future pleas so he could safely hear the Sirens’ song without steering the ship toward danger.

to subtle influences, such as the time of day, which can affect decision-making. For example, studies show that parole boards tend to issue more lenient decisions earlier in the day and just after meals.⁶

Given these findings, Eagleman argues that classical notions of free will, where individuals are presumed to be autonomous moral agents, are no longer viable. If our choices are constrained by biology and circumstance, then holding people accountable in the traditional sense becomes ethically and scientifically questionable.

IMPLICATIONS FOR THE CRIMINAL JUSTICE SYSTEM

Eagleman extends these insights to our justice system, calling for a shift from retrospective punishment to prospective risk assessment and rehabilitation. Currently:

- About 1.2 million people are incarcerated in prisons,⁷ with a median sentence of 1.3 years.⁸
- Recidivism rates are high: 44% of released individuals are rearrested within one year; 68% within three years; and 79% within six years.⁹
- Over half of all incarcerated individuals suffer from mental health issues (56% of state prisoners and 64% of jail inmates).¹⁰

Given these realities, Eagleman argues that our current system fails, both in punishing effectively and rehabilitating meaningfully. He does not suggest that individuals should be absolved of responsibility, but rather that sentencing should be informed by modern neuroscience, focusing on what can be done to reduce future harm.

We should not ask, “How do we punish criminals for past actions?” but instead, “What interventions will reduce the likelihood of future offenses?” This forward-looking approach implies a significant investment in rehabilitation services, including therapy, medication, education, and life skills training.

EXISTING AND EMERGING APPROACHES

Although this approach may sound radical, elements of Eagleman’s vision already exist:

- Indefinite sentencing models (still used in a few states) allow for more individualized release decisions.¹¹

6 Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*. Proceedings of the National Academy of Sciences (2011).

7 USAFacts, “How Many People Are in Prisons in the US?,” https://usafacts.org/answers/how-many-people-are-in-prisons-in-the-us/country/united-states/?utm_source=chatgpt.com.

8 Danielle Kaeble, “Time Served in State Prison, 2016,” *NCJ 252205*, November 2018. https://bjs.ojp.gov/document/tssp16.pdf?utm_source=chatgpt.com.

9 Mariel Alper, Matthew R. Durose, and Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014)*, Bureau of Justice Statistics, U.S. Department of Justice, 2018.

10 Mental Health Problems of Prison and Jail Inmates, September 2006. https://bjs.ojp.gov/press-release/mental-health-problems-prison-and-jail-inmates?utm_source=chatgpt.com.

11 Pew Charitable Trusts, *Indeterminate and Determinate Sentencing*, 2016.

- Chemical castration is used in some jurisdictions to manage sexual offenders.¹²
- Medications like Naltrexone and Antabuse are used to treat substance use disorders.¹³
- SSRIs and other psychotropic medications are being used to help manage aggression and impulse control.¹⁴
- Therapeutic interventions are increasingly common in correctional settings.¹⁵

Such measures acknowledge that criminal behavior often has biological and psychological roots. As neuroscience continues to evolve, so too will our capacity to create targeted, effective interventions.

CULTURAL BARRIERS TO IMPLEMENTATION

Despite the scientific merits of Eagleman's proposal, cultural acceptance remains a significant barrier. The 1971 film *A Clockwork Orange* comes to mind, in which the main character, Alex DeLarge, undergoes behavioral modification that ultimately dehumanizes him. The film raises enduring concerns about agency, autonomy, and state overreach.

Eagleman's arguments are persuasive from a scientific and policy perspective, but it remains uncertain whether the public is prepared to embrace a neurological approach to justice. Skepticism, fear, and deeply held beliefs about morality and free will present real challenges to reform.

A WORD OF CAUTION

Two key limitations of *Incognito* warrant attention. First, Eagleman acknowledges that neuroscience is still in its infancy. Thus, the kind of precise, individualized treatment he envisions may be years, or even decades, away.

Second, Eagleman's focus on neurobiology may inadvertently understate the role of socioeconomic factors in criminal behavior. Numerous studies show that economic instability significantly drives recidivism. Nearly 27% of formerly incarcerated individuals are unemployed, a rate far higher than the national average. According to the RAND Corporation¹⁶ and the Vera Institute of Justice,¹⁷ lack of housing, employment, and food security are major contributors to repeat offenses. Estimates from reentry programs suggest that 20–30% of recidivism is driven by economic necessity rather than mental illness or addiction alone. People will do what they must to take care of themselves and their loved ones.

12 Frederick Saul Berlin, "The use of antiandrogen medication to treat sexual offenders", *Journal of Psychiatry & Law* 31, no. 1 (2003): 3–23. Also the California penal code.

13 National Institute on Drug Abuse, "Medications for Opioid Use Disorder," <https://www.drugabuse.gov/publications/research-reports/medications-to-treat-opioid-addiction/overview>.

14 Marie-Thérèse Walsh and Timothy G. Dinan, "Selective serotonin reuptake inhibitors and violence: a review of the available evidence," *Acta Psychiatrica Scandinavica*, (2001): 84–91.

15 Shreekanth Nair Thekkumkara, et al. "Psychosocial Interventions for Prisoners with Mental and Substance Use Disorders: A Systematic Review," *The Indian Journal of Psychological Medicine* 44, nr. 3 (2022): 211–217.

16 The RAND Corporation, "Understanding the Challenges of Prisoner Reentry", 2017.

17 Vera Institute of Justice, *The State of Prisoner Reentry in America*, 2019.

CONCLUSION: RETHINKING CULPABILITY

David Eagleman's *Incognito* compels us to reconsider foundational assumptions about human behavior, free will, and moral responsibility. He suggests that rather than asking whether someone "deserves" punishment, we should ask what can be done to prevent future harm, balancing individual treatment with public safety.

Ultimately, Eagleman calls for a criminal justice system rooted not in retribution, but in science, compassion, and pragmatism. Understanding the brain is not about excusing behavior, it is about creating a more humane, effective, and rational response to crime in our society.

COMPETING INTERESTS

The author has no competing interests to declare.

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