The Danger of Defending the Denny Acquittals

Paul H. Robinson

We are told that the defendants in the beating of Reginald Denny and seven other victims could not be convicted of serious offenses because they did not have the required intent. They were swept up in the unthinking "mob psychology." Normally, a brick full-force at close range to the head of an unconscious victim, followed by a dance of glee at the splattered blood, would leave little question about the thrower's intent to kill. But when done as part of a mob, we are told, no such intention exists. Smashing with the brick also might normally show an intent to permanently disfigure, as aggravated mayhem requires, but not so for rioters.

Riot used to be an offense. Now it's a defense. No other state, or country in the world, past and present, has ever recognized such a defense. The new "riot defense" conceives of a riot as something that takes away a person's normal mental faculties. But everything we know about rioting suggests that it doesn't take away thinking or control, just conscience.

In his study of British soccer hooligans, Bill Buford describes the beginnings of a riot: "There in the streets of Tottenham I watched the faces concentrating, as moment by moment everyone tried to build up the confidence or the intensity or simply the strength of feeling that would allow them to step
over the boundary." Finally, someone, anyone, commits the first crime, probably a minor one, but the boundary has been stepped. "Having crossed this line, they are now outside of the civilization that they left behind." The rampage is on. On their faces, "it is not panic or fear or anger or revenge. It is exhilaration." Like dancing a jig for a skull cracked open. It is not thinking or control that is left behind in a riot; it is rules.

The New York Times Editorial Board thinks the acquittals are defensible, repeating the defense argument that "had Mr. Williams intended to kill Mr. Denny, he could have finished the job; there was no one stopping him." But this assumes that Williams thought more was needed to finish the job. More than one person who saw the tape thought Williams had done enough and was surprised to hear that Denny survived. The Times' conclusion also assumes that killing Denny was the only goal that day. But these were busy men. There were many heads to smash and jigs to dance . . . no lingering over any one victim to be sure the job was done. There were people to rob and genitals to paint.

No country has ever recognized a "riot defense" in part because it could not long survive if it did. The defense is a reverse of the "third man in" rule used in sports. When two men are fighting, that rule provides for automatic ejection from the game of any person who joins the fight. The rule prevents a minor disturbance from escalating into a bench-clearing brawl. The new "riot defense" works in reverse; it makes it harder to convict a person who joins in a riot. It takes away the law's deterrence at the moment it is needed most.
Why, then, are some people working so hard to defend these peculiar acquittals? There is more to the acquittals, some of my friends patiently explain, than a new riot defense for an attacker's intent. "There is the injustice of the King case acquittals; there is the highly charged atmosphere ripe for further violence. These acquittals send a useful message and set things right."

But do we want to live in a world where criminal trials are decided by the political exigencies of the day? That is a mad dog that may bite your enemy today but you tomorrow. If these acquittals avoid a riot now, they plant the seeds for many in the future.

Will tomorrow's juror, unhappy with these acquittals, take the opportunity to "send a message" and "set things right"? If so, will riots follow, now that they are a known effective means to express displeasure and get desired results. Where will it end?

"The acquittals are defensible not just as political expediency," a friend explains. "I disapprove of the violence, of course, but I understand the anger that the defendants must feel about the serious injustice they see in the Rodney King verdicts. Apparently the jury felt the same way."

But this confuses understanding with excusing. If understanding a crime meant excusing it, criminal law would be fading away as the behavioral sciences advance. We may understand the psychological forces that trigger a crime but, because we can identify the triggering causes, it does not follow that we excuse the crime.
This was the confusion of the court in *Durham v. U.S.*, 1954, when it proposed giving an insanity defense whenever the crime was the "product of" mental illness. If the crime would not have occurred but for the mental illness, the court reasoned, then the mental illness, not the person, is responsible for the crime. The flaw in the reasoning soon became apparent: a bad person inclined to break the law could get an insanity defense even if the mental illness was minor and contributed only tangentially to the decision to commit the crime. The reasoning of *Durham* is now rejected by every jurisdiction and serious scholar, and the case was subsequently overruled in *U.S. v. Brawner*.

It is not *being influenced* by mental illness, or the draw of the mob, that excuses. Every choice in life is *influenced* by internal and external conditions, most of which are beyond the actor's control. We excuse only when the extent of the influence is so overwhelming that the person could not reasonably have been expected to avoid committing the offense.

Nothing compelled Williams and Watson to commit their crimes. The proof of that is in their neighbors, the vast majority of whom did not take to the streets or, if they did, did so at risk to their own safety to rescue the hapless victims the rioters selected. Like the soccer hooligans, Williams and Watson were part of a small group that chose to be rioters.

On Kristallnacht, Nazis rampaged against Jews in one of that period's early acts of widespread anti-semitic violence. The Nazis perceived Jews as responsible for the economic chaos in Germany. Of course, the Jews weren't
responsible for Germany's difficulties, any more than Williams' and Watson's victims were responsible for the perceived injustice of the King verdicts. No doubt many "reasonable" Germans said, "I disapprove of the violence, of course, but I understand the anger that the rioters must feel about the serious injustice they see in their country's condition."

We now look back at those Germans and hold them in part accountable for the greater violence that followed. Their failure as a community to be outraged and to publicly express their outrage, we now see to be acquiescence, which made further and greater violence easier.

We could just ignore LA's strange sense of justice. But when the next riot sees a skull cracked with a brick at close range or a stripped victim's genitals spray-painted, or more, will we be judged accountable because we did not as a community express our outrage at these crimes and these offenders?

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