

**THE SPIRIT  
of  
PUNISHMENT**

By

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# The Spirit of Punishment

## WHAT IS THE OBJECT OF PUNISHMENT?

In the matter of our administration of justice there is a very simple question to be asked by every man of his own conscience: What do I believe is the object of punishment? Until this question has been asked and coherently answered by the community it is obviously as mad to apply punishment as for a man to set out to dine with a friend of whose address he has no knowledge. But by how many people has this question been asked; by how many has it been coherently answered?

The whole administration of our justice at present treads the quicksands of ambiguity as to the object of punishment. The vast majority of us have never put to ourselves the question at all, being quite satisfied that the object of punishment is to "serve people right"; and out of the small minority who have asked the question the far greater number have given themselves no coherent answer. And yet it is only from a coherent and wise answer, graven in letters of stone on our law courts and prisons, in letters of feeling in our hearts, that hope of diminution in crime, and in the suffering which arises from it, both to the community and to the offender, can come.

Now, whatever sentimental relation there is to be between punishment and our deep instincts of equity.

## THE OBJECT OF PUNISHMENT IS THE PROTECTION OF SOCIETY AND THE REFORMATION OF THE OFFENDER

That is the only safe rule *in practice*; and everything in our administration of justice which conflicts with it is falsely conceived. But it is the commonest thing in the world for people to accept that definition without considering in the least what it means; for experts, after thoroughly agreeing with it, to suddenly remark that for such and such a crime they, personally, would have no mercy; for sentences to be passed in which the judge has obviously fitted the punishment to his private views of the heinousness of the crime, without real regard for the protection of society, or for the reformation of the person sentenced. All which is extremely natural, and desperately bad.

The confusion arises from not keeping the idea of the protection of society closely enough coupled with the idea of the reformation of the offender; from dwelling too much on the past, and not looking enough to the future; from the continued existence of the old theory, "an eye for an eye," condemned to death over nineteen hundred years ago, but still dying very hard in this Christian country.

It is necessary so to adjust punishment as not to leave on the mind of the injured person a crude sense of injury unhealed by retribution. It is necessary to preserve in punishment a due element of deterrence. But, bearing these principles in mind, the State and those who administer its functions have obviously no business with anything but the scientific application of the best means to protect society and reform the offender.

Yet in the glibest way that golden rule "protection of society and reformation of the offender" is cited to cover all the flaws in our administration of justice. In its name men are prosecuted, when with better comprehension they should be warned or helped.

In its name first offenders are imprisoned, when with better comprehension *the imprisonment of first offenders*, of whatever age, for whatever offence, should be unknown; since an infinitely greater danger to society arises, and infinitely less chance of reforming the delinquent exists, when that delinquent has once been committed to prison. Place him on probation, or send him to a reformatory institution such as Borstal, for whatever fixed period may seem necessary - but to prison, as prisons now are, never! To send him there is fatal, hopeless, uneconomic, unscientific.

## CLOSED-CELL CONFINEMENT

In its name, the continuance of closed-cell confinement is defended; and we endeavour to reform men by consigning them to the operation of what, in the words of its staunch supporter (the late Sir Edmund Du Cane), is, “an artificial state of existence, absolutely opposed to that which Nature points out as the condition of mental, moral, and physical health.” We try in fact to protect society by a method that does not reform. How many have not raised their voices against this strange practice since evidence, given before the Select Committee on Prison Discipline, 1850, described closed-cell confinement as dangerous to health, and unjust to the prisoner “because it throws him back into society with diminished physical ability to encounter the variableness of climate, the severity of labour, and the pinchings of want, to which as a labourer in the market of competition he must ever be liable”. . . ! Yet in the name of the golden rule it lingers on, a whited sepulchre, helping to rot men and women.

In the course of the last year it was my privilege to interview sixty convicts undergoing this process of reformation (closed-cell confinement), to talk with each privately in his cell on this very subject for several minutes. Apart from all question of suffering, I came to the deliberate conclusion that these men were neither being reformed, nor deterred.

In the name of this golden rule, prisoners working in association are, in our prisons, forced into an unnatural silence, for ever furtively evaded. Some silence may be good, but perpetual silence is too unnatural not to defeat itself. Classification is the preventive of contamination, not complete separation, nor *perpetual* silence.

In its name the handicap of the ticket-of-leave is placed on those who are desperately handicapped already.

The idea behind these and other practices of the administration of our justice is that deterrent suffering is needful for the protection of society and the reformation of the offender. But those who know human nature know that, except in rare cases, human beings cannot be *reformed* by suffering inflicted on them against their will; and it is no use having a system of punishment beneficial to the few and harmful to the majority. The late Lord Coleridge once made these remarks:-

There are few things more frequently borne in on a judge’s mind than the little good he can do the criminal by the sentences he imposes. These sentences often do nothing but unmixed harm, though I am sure that throughout the country the greatest pains are taken to make our prisons as useful as possible in the way of being reformatories. But, *as a matter of fact, they are not so.*

Greater pains are now taken than when those words were spoken, but a man cannot go over prisons (I do not speak of the Borstal institutions) without seeing that they are not, *cannot be*, reformatory.

## REFORMATION

Reformation does not come from beating on the prisoner’s fibre with the dull mallet of suffering. To reform one must inspire. There is a spark of good in every man’s breast; the only chance lies in fanning that spark. But if we are not reforming men in our prisons, how can we be said to be protecting society, by sending them there? We are surely endangering society; and nurturing the spirit of crime.

The fact of the matter is this: Revenge is still at the back of our minds. Let a man argue on the subject with whomsoever he will, ten minutes will not have passed before he makes that discovery. The State still feels that because a man has hurt it, it must hurt him. And this feeling destroys all the economy and science of our laws. When a crime is committed, all we should be concerned with, *in our own interests*, is the application of the best possible means to minimise the results of that crime, to ensure that society shall run the least possible risk of repetition of the crime, and the offender the least possible risk of remaining a criminal.

In doing this we cannot, in very many cases, avoid the detention of our criminals; but we can, and should, avoid inflicting suffering on those whom we detain, *beyond the already great suffering and deprivation* inseparable from disciplinary detention, and all that disciplinary detention implies; for by disciplinary super-adding such sufferings as solitude, or perpetual unrelieved silence, we do not to any appreciable degree deter others from committing offences, and we do foster in those whom we imprison the disposition to commit fresh offences when they are released.

That diminution of crime depends, *not* on deterrent punishment, but on wide and impalpable influences – growth of social feeling, spread of education, betterment of manners, decrease of intemperance, improvement in housing, a hundred other causes – is plain from the official statement

lately issued. "The members of the predatory classes are appreciably fewer than in 1857, in spite of the fact that in the interim population has almost doubled." And this in the face of admittedly milder penal measures! For further evidence that mere severity of treatment does not deter we need only look at the comparative success of the Elmira Reformatory in the United States, and the Borstal institutions here. Under these systems, which allow the offender some kind of natural life, the percentage of those who return to crime is most notably smaller.

Crime is disease – if not in the medical, in the moral sense of the word. It is either the disease of weakness or the disease of inherited taint. We have fought against this conclusion because we still harbour the spirit of revenge; but as knowledge advances we shall, we must, accept it. And the sooner we do accept it the less money we shall waste, the less harmful and unnecessary suffering shall we inflict.

The difficulties of judicial and prison administration are enormous, the force of prejudice encountered by reforming administrators terrific – all the more terrific because these prejudices, in the main conscientious, are wholly reinforced by the fact that change means trouble and expense, by fears of making things worse, by all the accumulated momentum of "things as they are." For a man with any sympathy in his composition it is impossible not to feel for those who, administering justice, earnestly desire to do their best, and are often, I am sure, sick at heart from the feeling that what they are doing is not the best.

### THE REMEDY

It rests with public opinion in this country to reanimate our attitude towards crime; to shake itself free of our muddled conceptions of the object of punishment; to scotch once for all the spirit of revenge; to rise to a higher, more scientific, and incidentally more economic, conception of our duty towards criminals. Let us get rid of the idea that we are protecting society and reforming offenders by inflicting suffering that we falsely call deterrent. Let us change our prisons into Borstal Institutions, and let us do it as soon as is humanly possible. Loss of liberty is, next to loss of life, the most dreaded of all fates; it has, in and by itself, almost all the deterrent force that is needful. There may be here and there men who prefer to be detained under strict discipline to being at liberty; but if there be, it can only be said that the conditions of their lives outside prison must constitute a disgrace to our civilisation, and our penal system cannot safely or justly be allowed to rest on any acquiescence in that disgrace. In the last annual report the Borstal Association occur the following words: - "It is not a namby pamby method. . . . The panic-monger who prophesies that the ambitious youth of the working classes will still clamour for admission through the gateway of crime to the advantages of Borstal, would be regarded as a humourist by those who have been there and 'have had enough and learnt sense.' "

Let us, then, take discipline and loss of liberty as our sole deterrents, and on those whom we deprive of liberty let us use all the resources of a common-sense that shall refuse to apply to criminals methods which would be scouted in the reform of human beings outside prisons.

All evidence shows that mere, so-called deterrent, severity is useless. Let us no longer fly in the face of evidence. Let us conform to facts. If we seriously desire to reduce crime to its irreducible minimum we must go to work like doctors.

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## **AIMS AND OBJECTS OF THE HUMANITARIAN LEAGUE**

The Humanitarian League has been established to enforce the principle that it is iniquitous to inflict avoidable suffering on any sentient being. This principle the League will apply and emphasise in those cases where it appears to be most flagrantly overlooked, and will protest not only against the cruelties inflicted by men on men, in the name of law, authority, and conventional usage but also, in accordance with the same sentiment of humanity against the wanton ill-treatment of the lower animals.

Among the reforms advocated by the Humanitarian League the following are prominent, and are dealt with by two special sub-committees:-

A thorough revision and more humane administration of the Criminal Law and Prison system, with a view to the discontinuance of the death penalty and corporal punishment, and an acceptance of the principle of reclamation instead of revenge in the treatment of offenders.

A more vigorous application of the existing laws for the prevention of cruelty to animals, and an extension of these laws for the protection of wild animals as well as domestic, with especial reference to blood-sports, vivisection, the slaughter of animals for food, and the cruelties inflicted, at the dictates of fashion, in the name of fur and feather trade.

Recognition of the urgent need of humaner education, to impress on the young the duty of thoughtfulness and fellow feeling for all sentient beings.

In brief, the distinctive purpose of the Humanitarian League is to consolidate and give consistent expression to the principle of humaneness, and to show that Humanitarianism is not merely a kindly sentiment, a product of the heart rather than of the brain, but an essential portion of any intelligible system of ethics or social science.

*N.B. – The condition of Membership is the accepting of the general principle (not necessarily of the complete programme) set forth above. The minimum annual subscription is half-a-crown.*

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