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THE LIMITS OF DETERRENCE*

HANS VON HENTIG†

I.

The whole animal kingdom may be divided into terrorizers and terrorized specimen. Every living being flees harm. With tense senses an animal watches approaching or imminent danger. This tension emerges in consciousness as fear or fright, or however we may label the various features of behavior in risk-situations.

Fear is a danger signal. It is the psychic companion of certain physiological reactions which tend to three different shifts: seeking for help, flight or fight.

Fear does not in every case mean that the frightened animal will desist from its initial aims. Fear can produce, and often produces a mere change of direction, a clever detour, or an aggressive protective reaction. Many animals have developed peculiar performances to give fear: by inflation of the body, by raising their quills, showing their teeth and so on.¹ In all these mechanisms appliances of deterrence are performed. Their end—as far as we can speak of ends in natural history—is to avoid a real fight, by displaying symptoms of superior strength.

A later development shows deterrence no longer coupled with the production of fear-causing movements, sounds and odors; instead a reduction takes place: the mere appearance or remembrance of such a peril-bearer suffices to arouse associations of fear, flight and desistance. The agent of harm or damage need not confront the animal. Experience, the retention of past pains, a kind of mental elaboration lead to the anticipation of future harm and corresponding precautions.

The process of deterrence has now become a complicated mental performance. It is no more a simple affair of the sense-life, of a directly working, unmistakable optical or acoustical stimulus.

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¹ See Charles Darwin, the expression of the emotions in man and animals, New York, 1924, pp. 104, 94, 116.

The path from the deterrent starting-point to the poor brain is now a long, indirect one and studded with hindrances.

When one animal opposes another, it aims but at frightening this single specimen. In the highest animals, apes and men, herds or societies are formed, and here deterrence assumes a double-edged function. Besides the deterred individual other members of the multitude receive an impression of warning and deterrence.

Human life is full of acts and mechanisms of deterrence. In education we punish children; by giving this punishment a certain publicity—as for example in school life—we expect this bad experience to influence other children and restrain them from similar deeds. Sometimes punishment does not seem necessary, or even useful, but we punish nevertheless, because we believe that impunity might loosen the ties of discipline and obedience.

In politics deterrence is considered an indispensable instrument in the intercourse of civilized and less civilized nations. Armaments, being very material threats, are believed to promote or assure peace. Politics are in reality a continuous interplay of deterrent measures, undertaken today by this, tomorrow by that people.

Even the religious life and doctrine cannot do without deterrent images. Hell is the prototype of such a fright-giving device to control and govern "homo sapiens."

The usual methods of deterrence proceed from the assumption that

1. Men know in every case what is harmful to them;
2. Men are in every case frightened by danger;
3. Men realize in every case the correct steps to avoid peril.

All these suppositions assume the behavior of the average man under average conditions of life. In many cases they do not come true. The exceptions to the rule may be classified into physiological or normal stages of non-deterribility, and pathological stages of fearlessness. Let us glance at the first group.

Fright is a biological help in securing the life of the individual. But all animals and men are combinations of two powerful trends. The one group of tendencies provides for the existence of the single specimen. The second looks far into the future and minds for the continuity of the species. It utterly disregards the interests of the insignificant individual in order to erect on its ruins coming life and development.

When these mighty instincts enter into play the ordinary mechanisms of self-protection break down. If we should meet a man, at the same time prudent and in ardent love, we should regard him as a poor and degenerate specimen. We would laugh at him and despise him.

The wrong inference of a criminal code which is based mainly on deterrence overlooks the fact that sexual tension is a frequent and repeated fact in the life of men and that these states of indifference to projections of fear coincide with the age of the greatest physical ability and the time of strongest desires.

During the period of the most powerful anti-social tendencies deterrence is thus a weakened protective means.

It is utterly wrong to regard this fearlessness solely from the angle of legal infraction. The aggressiveness and the super-activity of the—*sit venia verbo*—ardor is of tremendous social value. The State exploits it for war and other dangerous enterprises. Behind the screen of millions of love-suits millions of grand constructive efforts are going on: to pass an examination, to get a job, to obtain a promotion, to make an invention, to write a book. Briefly: to overcome by assault the greatest barriers and to build up a nesting place.

You need but turn your attention to the vocabulary of love to recognize that it consists mainly in emancipation from the fear, fear of binding authorities and constraining forces: family, moral and other social forces. Later on we shall meet further anti-fright poisons, but love is their greatest proxy.

The rearing instincts are the next group of human impulses not affable to suggestions of fear. Even the weakest animal-mother attacks the aggressor who threatens her young. The bio-chemical changes, produced by motherhood, seem to make functionally in-operative the brain-regions where fear is located.

The stages of love and motherhood demonstrate a strange fact. Fear can be switched off, and it is under special circumstances actually switched off. The human brain gets color-blind to danger and menace; or can be made so. No psychologist or psychiatrist has ever investigated those strange forms of passing madness, which we call desperation. It seems to be a sudden and stormy nervous outbreak, coupled with absolute fearlessness.

It is the last resort of many trapped animals. Sometimes we may observe it in men, for instance in prison-riots. It would be

quite an interesting chapter to discuss, entitled: Fearlessness by fear, or insensibility to deterrent means by an excess of deterrence around the living being . . . but we must hurry on.

It is a well known fact that the higher ideas, such as religious, social, national concepts tend to take root deeply. They take in many men possession of the whole personality, supplant the strongest vital impulses and fill the vacuum thus created with their dictatorial control.

Society and State know this experience and exploit it. The whole military drill is intended to build up a combination of automatisms and powerful ideas that are able to overcome the material forms of deterrence, spit forth by a firing battery. The State is mostly successful in this task, although a modern cannon is a far greater danger than the death-threat of a criminal code.

Religious ideas have proved to be a perfect anti-fear drug. The great religious systems depreciate this world and all that could happen in it by establishing a future and compensating life. Deterrence is re-formed into an attractive power.

No great revolution would ever have occurred without the chloroforming effect of some social reform ideas. The revolutionary extravagance, its fearlessness and suicidal vehemence are just the forces that strike dumb the representatives of peace and order. The honest citizen is apt to be frightened and deterred; the born rebel acts under a helpful narcosis and deters his opponents by being untouched by any kinds of deterrence.

III.

Some forms of immunity from fear are left. I mention them but briefly. There is the large sphere of mass-emotions where fearlessness (at least passingly) is frequently met. The reasons have not yet been examined, but the individual is altered when he enters a mass, or is carried away by its turbulent movements. Suggestible minds are intoxicated by the feeling of power and irresponsibility, produced and spread by a mass. Cowards get fearless, as soon as thousands of cowards are assembled. The tired, the exhausted, the undernourished is less easily frightened than the satiated, the man who is rested and of good health. In private life as well as in international politics the source of the greater initiative and boldness of the "have-nots" lies in their empty stomachs.

A last strange phenomenon is the diminished or rather different intimidability of the child and the woman. Children are more afraid of darkness, animals, dream-figures and imaginary creatures than of actual harm and really dangerous situations, and so are women.² Sentence a woman to three mice, and it will be a greater penalty to her than three months.

I cannot forget the episode of how Anne Boleyn, one of the wives of Henry VIII, died. Knighton, the Constable of the Tower, writing to Cromwell, narrates:

"I told her," he says in telling how she demeaned the day before," it should be no payne, it was so suttel, and then she said: 'I have heard the executioner was very good, and I have a lyttel necke, and put her hand about it lawying (laughing) hartely.' I have seen many men and also women executed; and to my knowl-edge thys lady hasse much joy and pelsur to dethe."³

To understand this willingness to die, we must remember that Anne Boleyn had been previously married to a man like Henry VIII.

IV.

We discussed the dauntlessness of the desperate man. We may well consider this state as a transition to pathological conditions of impassability to menace and danger.

Leaving aside the insanes who are partly non-responsive to danger-situations, there remains the large group of feeble-minded. They may be frightened by concrete and immediate events, but they exhibit no fear of an anticipatory nature. As long as no agent of harm is confronting them, no alarm is shown. The criminal law, as a long-distance danger, does not affect them. The criminal seems to be in part a human specimen, whose appetites and desires are irresistibly attracted by a *near* object.

"The profit," it has been said, "of a crime is the force which urges a man to delinquency. The pain of the punishment is the force, employed to restrain him from it. We must then see to it that the second of these forces is the greater, otherwise the crime will be committed."

² See Arthur T. Jersild and Frances B. Holmes, *Children Fears*, New York, 1935, p. 62.

³ W. W. Hutchings, *London Town, Past and Present*, London, 1909, vol. I, p. 242.

These words of Bentham⁴ appear to be unreal and simple-minded, when we think of the enormous multiformity and complication of life. Remember the great fearless-making poison, the alcohol or other intoxicants such as cocaine or marihuana; think finally of all the people with a sickly sense of self-preservation, to whom punishment is not "pain" according to the common formula, but something they long for.

When hundreds of thousands kill themselves yearly and thus apply to themselves the severest of all penalties, when equal numbers attempt suicide and many more wish for courage to do so, you will realize, that the principle of deterrence has its limits, because human nature is not under all circumstances and at all events responsive to the menace of punishment.

IV.

Besides the inborn or acquired indifference to danger-situations there exist other complications.

I indicate them as short as possible.

First, we observe that a certain penalty, such as the torment of hell, does not restrain religious minded people from criminal acts. All the more we should not expect that the state-punishment can possibly frighten the experienced criminal. What we do know is that the detection rate of the serious crimes is rather low. Crime pays, as far as the theory of probabilities is concerned, and no movie-propaganda can alter the true picture. The criminal is much better acquainted with the inefficiency of our detection-machinery than professors of criminology or social statistics. Undetected crimes do not add to the deterrence of severe laws.

The retreating, secondly, the avoiding, dodging, shrinking of the frightened individual represents only *one* of many reactions of the threatened individual. There are other shifts: seeking for help or protection, for example. The criminal does not cry for help of mother, like the child when it is scared, but he relies on the formation of gangs or on "fixing" cases. He does not retreat, he improves his technique and gets away with it.

A third form of behavior when menaced is protective aggression. A new criminality is created by excessive deterrence, and superimposed on the primary criminal reactions. The girl is raped

⁴ Quoted from Charles Milner Atkinson, Jeremy Bentham. His Life and His Work. London, 1905, p. 142.

and strangled. The robbed man is shot. Arrest is resisted by force, and even in prisons criminal deeds are perpetrated such as riots, breaks, assaults, killings.

A last effect must not be overlooked. Deterrent laws, deterrent court practices and deterrent police methods, the convenient and poor philosophy of shooting⁵ breed brutal criminals and spread indifference to human life into the veins of the masses. If history has *one* lesson to teach us, it is this: the brutalized multitude will sooner or later hit back at its teacher and model, and rest assured it will be an adaptive pupil.

Deterrence is thus a principle that should be handled with utmost prudence. The human mind is living matter, and it responds to continuous pressure with callosity and callousness. The man can be made unridable as a mule by wrong treatment. Make him touchy and you govern him like a sensitive horse with gentle and easily reinforced expedients.

By such mild expedients I have tried—successfully I hope—to deter you from deterrence.

⁵ About these methods see George W. Walling, *Recollections of a New York Chief of Police*, Denver, 1890, p. 331, and the *Professional Thief*, edited by Sutherland, Chicago, 1937, p. 134.