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-- T H E S I S --

Should Society punish or reform the Criminal?

-by-

John J. McGuire,
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1893.

Should Society punish or reform the Criminal?

The legal profession is one that to a certain extent controls and shapes the legislation of our country and fixes definitely the scope and meaning of all laws. And for that reason lawyers should before all men understand the philosophy of the mind, the causes of human action, and the science of government.

It has well been said that the three greatest pests of a community are: A priest without charity; a doctor without knowledge; a lawyer without the sense of justice. Many times the victim of the doctor's ignorance has been concealed six foot under ground, and as often, too, the victim of the lawyer's injustice has swung six foot in air, while the minister shall not be judged.

The most complex problems which is thrust upon civ-

ilixed society to-day, and which is least likely to be satisfactory solved, is the manner in which it shall treat that portion of its members which it marks as criminals.

All nations at all times have had supreme confidence in the deterrant power of threatened and inflicted pain. In the earliest account we find the supreme motive is that society must be avenged. "An eye for an eye and a tooth for a tooth" reads the earliest Mosaic account, and thus society claimed its pound of bloody flesh.

Afterward, when evolution had reached another stage, the old idea for wreaking vengeance on the criminal was abandoned, and then society punished for its own protection.

This later idea is at least correct in theory: for at all events it must be admitted that life is impossible save under certain conditions, that it cannot be perfect unless these conditions are maintained unbroken, and that if it is right that we should live, it is right that we should remove any one whoteither breakes these conditions or constrains us to break them. Shuch being the ultimate logical basis of our right to coerce the criminal, then come the question; what is the legitimate extent of this coercion? Can we from this

same origin derive authority for certain demands upon him? To both of these questions there are affirmative answers.

In the first place we find authority for ~~d~~emanding rēstitution or compensation. Conformity to the laws of life being the essence of absolute morality, and the social relations which absolute morality dictates being those which makes this conformity possible, it is a manifest corollary that who ever breakes these regulations, may be justly required to undo, as far as possible, the wrongs he has done. The object being to maintain the conditions to complete life, it clearly follows that, when one of these conditions has been transgressed, the first thing to be required of the transgressor is, that he shall put matters as nearly as may be in the state they previously were. The property stolen shall be restored or an equivalent for it given. Any one injured by assault shall have his surgeon's bill paid, compensation for lost time, and also for the suffering whe has borne. And similarly in all cases of infringed rights.

Now as to the extēnt of this coercion. It is commonly said that the criminal loses all his rights. This perhaps is so according to law, but it is not so according to

justice. Such portion of them only is justly withhold as / cannot be given without danger to the community. Those exercises of faculty and consequent benefits thereof which are possible under the necessary restraint cannot equitably be denied. If any one does not ~~think~~ think it proper that we should be thus regardful of the offender's claims let him consider for a moment the lesson which nature reads for us. We do not find that the laws of life, by which bodily health is maintained, suspended in the person of the prisoner. If he is wounded the healing process goes on with the usual rapidity. If you are careless of your footing and fall, the consequent bruises and possibly some constitutional disturbance ~~entailed~~ entailed by it are all you have to suffer. There is no further gratuitous penalty of a cold or an attack of small pox. The suffering in these and other cases are neither ^{greater} nor less than flow from the natural working of things. It seems therefore clear that we are warranted neither by absolute morality nor by nature's precedents in visiting upon the criminal any pains besides those involved in remedying the evil committed, and if society exceeds this it transgresses against the criminal.

But prosecute this line of reasoning from any stand-

point you will, whether it be logical, equitable or ~~ethically~~, there comes but one conclusion: society has a right to protect itself. And to that end it has the right to resort to extreme measures, if tempered by the hand of justice. The principle that the individual must sacrifice for public benefit is here fully exemplified.

Statistics, also, show that a harsh society must be subjected to harsh remedies. John William Draper points out the fact that those ancient and mediaeval rulers were much more often right than wrong, in resorting to extreme measures for had they done otherwise the state of society which they represented must needs be undermined. Witness the case of one of the Italian States, in which punishment by death having been abolished in conformity with a wish of a dying dutchess, assassination increased so greatly that it became needful to re-establish it.

But nearly all civilized nations have now reached the conclusion that the prisoner should be humanly treated. Bastinado and flagellation can open the way to no man's heart, and as a French workman said can only affect the hide of him while degrading him to the level of a brute. Every

lash instead of benefitting a prisoner increases his bitterness against the authorities of society.

Germany, France, England, Ireland and Australia send statements to the effect that the most successful criminal discipline is a discipline of decreased restraints. They are improving their already excellent penal institutions, and the public functionaries are as ardent in trying to reform the criminals as the preachers are busy in saving souls. They all concur in this one respect however that the criminal should earn what he consumes. Because, if otherwise, instead of restitution he makes further aggression; instead of repairing the breach he has made in the conditions of complete social life he widens this breach.

The outlook, from this more lenient mode of treatment, is at least encouraging. It seems as if the fruits of the labor and sacrifices of John Howard are now, at least in one respect, being reaped.

In 1773, the attentions of this great man were directed toward the penal institutions of Europe. He found them in a chaotic state. These were the days when the pickpocket was hanged; so was the sheep stealer and the forger

of pound notes. The prisons were dens of filth. No beds, no light, and none but the foulest air to breath. The statute books bristled with capitol felonies, and the gibbet was in perpetual recognition. Intolerance appealed to the strong arm of the law and the jail was the antechamber of the scaffold or stake.

This great philanthropist, together with Sir William Gladstone, and one Mr. Eden succeeded in 1778 in obtaining an act for the establishment of penitentiary houses. It was hoped by sobriety, cleanliness, and medical assistance, by a regular system, ^{of work,} and by solitary confinement during intervals of work, and by due religious instructions, to reform the unfortunate offenders. He was followed by one Mrs. Fry, 1817, who succeeded in changing the female prisoners from a disorderly drunken set into at least an orderly one.

The fruits of the labor of these two great reformers have been manifold. They have elevated the prisoner from a degraded brute to a man capable of becoming worthy of a fellowship among men; They have succeeded in changing his place of confinement, from a den not fit for the vilest brute, to an abode where sanitary rules are held supreme; they have

succeeded in teaching him to respect others by respecting him.

But, notwithstanding the numerous and magnificent
that
penal institutions, have grown up all over the civilized world,
and notwithstanding the wonderful achievements that have been
attained in prison discipline, in spite of the comforts so-
ciety is willing to bestow upon the repentant prisoner, there
still are a few thinkers, whether they be harbingers of the
Millenium, or mere day dreamers, reveling in an Utopian fancy
never to be realized, who do not hesitate to pronounce this
whole magnificent institution as bad, utterly bad, in that it
does not and never has accomplished that which it purported:
the reformation of the criminal. The assertion of these men
I think, demand the most careful consideration.

When we come to ask what is the net result of all
this upon the criminals, when we inquire what effect clean,
wholesome well aired prisons, good diet, decent clothes,
mitigation of time of sentence by orderly behavior, books,
gas lights in eells, lectures, holiday dinners, tracts,
sympathetic visits, flowers have upon the prison class itself
we must confess athat the outlay, in money and feeling and
effort is altogether disproportionate to the number of crim-

inals changed from their law-breaking lives. The lot of the prisoner is a great deal easier than it used to be, in some cases they come out of prison no more degraded than when they went in; in rare cases they do reform; but the simple truth is that the criminal class is essentially untouched by all our ameliorations, by all our philanthropy and sentimentality. We do not hold that prison reform has not at all lessened the number of those who return for a second or third or fourth term, for the facts and figures presented at the inter-national prison conference a few years ago are irrefutable, and directly to the contrary. But we do hold that the present system fails to deal with the difficulty in an adequate way; for our prisons are full and enlarging, and the criminal class grows and becomes daily an increasing danger.

It is an unfortunate fact, but nevertheless a fact which we must acknowledge, however unwilling we may be, that the criminal class is increasing. In this connection I present the following statistics gathered in our own country.

In 1850 we had 23,000,000 of people and between 6, and 7,000 prisoners.

In 1860 -- 31,000,000 of people and 19,000 prisoners

In 1870 -- 38,000,000 of people and 32,000 prisoners

In 1880 -- 50,000,000, of people and 58000 prisoners

Now notice the relation between insanity, pauperism and crime:-

In 1850 there were 15,000 insane; In 1860 -- 24,000; In 1870 -- 37,000; In 1880 -- 91,000.

In the light of these statistics we are not succeeding in doing away with crime.

There were in 1880 -- 58,000 of prisoners, and in the same year 57,000 homeless children and 63,000 paupers in almshouses.

Now what is the criminal as we know him in state-prison? We will not consider the exceptional prisoner who has fallen once or whose crime was due to some sudden temptation, to passion, to intoxication, but the heavy mass in our jails who were either born in vice and nurtured in crime inheriting it or acquiring it young, or who from a decent estate, by repeated violation of the law, have become criminals. they are in an abnormal condition physically, mentally and morally. Look at their faces, the shape of their heads; they are heavy, logy in movement, coarse in fiber as a

mule. Crime, the habit of wickedness, is not only stamped upon their face, it is ingrained in the physical man, and the body which was meant to be the temple of a noble spirit is a tenement fit for a degraded soul.

Can it be said that such a loathsome wretch exists from chance or choice? Are we not satisfied that, back of every act and thought and dream there is an efficient cause? Is anything or can anything, be produced that is not necessarily produced? Is it not probable, is it not true that the actions of all men are determined by countless causes over which they have no control?

It is certain that men do not prefer unhappiness to joy. It can hardly be said that a man intends permanently to injure himself and that he does what he does in order that he may live a life of misery. On the other hand we must take it for granted that man endeavors to better his own condition and seeks, although by mistaken ways, his own well being. No sane man wishes to win the contempt and hatred of his fellow men. Every human being prefers liberty to imprisonment.

And again, are the brains of criminals exactly like

the brains of honest men? Have criminals the same ambitions, the same standard of right or wrong? Is there any absolute standard of right or wrong? If a difference exists in the brains, will that in part account for the difference in character? Is there anything in heredity? Are vices as carefully transmitted by nature as virtues? We know that diseases of flesh and blood are transmitted and that the child is heir of physical deformity. Are diseases of the brain -- deformities of the mind -- also transmitted? Is it not possible, is it not probable, is it not true that these seeds of vice were sown long ago in the breast of some savage ancestor and now become manifest in the luckless individual through what Mr Darwin terms reversion?

Think of what man has suffered in the cause of crime. Think of the millions that have been imprisoned, impoverished and degraded because they were thieves, forgers and cheats. When one thinks of the difficulties under which they have pursued their calling is it possible to conceive that they were sane and natural people possessed of good brains? Is it possible to conceive that they did what they did from choice unaffected by heredity and countless circum-

stances that tend to deter the conduct of human beings?

Is there any remedy? Can anything be done for the reformation of the criminal? To these questions we think there are affirmative answers. He should be treated with kindness, Every right should be given him consistent with the safety of society. And we glad to here note that there institutions, of which the Elmira Reformatory is a good illustration, that, while they ^{may} not as yet have attained the acme of human perfection, have at least directed their course towards true reform.

What is the condition of the prisoner in the old institution? A man in a moment of want steals the property of another and he is sent to the penitentiary --first it is claimed for the purpose of deterring others; second for the purpose of reforming him. The circumstances of each individual case are rarely inquired into. Investigation stops when the simple fact of larceny has been ascertained. He is clad in the garments of a convict and designated by a number. At best he is but a slave of the state. He is driven like a beast of burden and robbed of his labor. He is not allowed to speak with his fellow prisoners, and at night he is alone in his cell. He is no longer worthy of associates. The convict is

a pavement on which all hemanity tread. He remains for the time of his sentence and then goes forth a branded man. . He is given money enough to pay his fare back to the place from whence he came.

What is the conditions of this man when he has become liberated? Can he get work? Not if he states who he is or where he has been. The first thing he does is to deny his personality and assume a name. He endeavors by telling falsehoods to lay the foundations for future good conduct. The average man does not like to employ an ex-convict, because the average man has no confidence in the reforming power of the penitentiary. If he changes his name there will be some meddlesome wretch who will betray his secret. He is then discharged. He seeks employment again and he must seek it by telling what is not true. He is again betrayed and discharged. With hunger gnawing at his vitals and starvation staring him in the face, he is finally convinced that he can not live an honest man. He naturally drifts back into the society of those who have had like experience; and the result is that in a little while he again stands in the dock charged with the commission of another crime.. Again he is sent to

the penitentiary and this is the end of him. This man was not a criminal, in fact, until society made him one.

The men in the penitentiary do not work for themselves. Their labor belongs to others. And if we regard them as free moral agents, capable of choosing between right and wrong, and doing what they do from choice their labor should be appropriated to recompense as far as possible the injury they have done. But advance science puts forth other facts which give this question another aspect, and shows a criminal more or less irresponsible for his acts.

When we reflect that every brain does in the course of its development, pass through the same stages as the brain of other vertebrate animals, and that its transitional states resemble the permanent forms of their brains; and when we reflect further, that the stages of its development in the womb may be considered the abstract and brief chronicle of a series of developments that have gone on through countless ages in nature, it does not seem so wonderful, as at the first blush it might do, that it should, when in a condition of arrested development, sometimes display animal instincts. Summing up, as it were, in itself the leading forms of the vertebrate type, there is truly a brute brain within the man's brain; And when the latter stops short of its characteristic

development as human, or when such characteristic development is eclipsed through some cause, and it remains arrested at or reverts to the level of an orang's brain, it may be presumed that it will manifest its most primitive functions.

What other consideration than those just given will offer even a glimpse of an explanation of the origin of these animal traits in man? We need not, however, confine our attention to idiots only. Whence come the savage snarl, the destructive disposition, the obscene, the wild howl, the offensive habits, displayed by some of the insane? Whence come the momentary impulse which so often destroys, from turret to foundation stone, a great and splendid character which it has taken the work of life to build.

Why should be human being deprived of his reason ever become so brutal in character as some do unless he has the brute nature within him? In most large asylums there is one, or more than one, example of a demented person who truly ruminates -- bolting his food rapidly, he retires afterwards to a corner, where at his leisure he quietly brings it up again in his mouth and masticates it as the cow does. Strong arguments in support of Mr. Darwin's views might be drawn from the field of morbid psychology. We may, without must dif-

difficulty trace savagery in civilization, as we can trace animalism in savagery.

In the light of the above facts are we not justified in saying that the criminal is more or less demented? If the criminal is demented is he responsible for acts committed on account of that dementia? If he is not responsible for those acts has society a right to demand that he shall account to it, for those acts by way of recompense?

How grossly unjust, then, the judicial criterion of responsibility which dooms such person to punishment if they knew what they were doing when they committed the act! Why then should the state take without recompense the labor of these men; and why should they after having been in prison for years be turned out without the means of support? True it still holds that society has a right to protect itself against the aggressor whether he be responsible or irresponsible, but the question is has it a right to punish or should it endeavor to reform him.

What is reformation? As far as society's needs or interests are concerned, it is to make an individual hostile to the peace and safety of the community, a being in harmony with the great social work going around him; and how is

this harmoniousness to be expressed otherwise than by industrial co-action. Safety for society, with regard to an individual member lies principally in an satisfied condition of such members, and this is usually procured by suitable industrial occupation. A criminal is generally one who discontented with his lot is willing to satisfy himself by irregular unrecognized means repudiated by the majority. Teach the criminal satisfaction: that is the great reform principle. Gets his physical and mental state in shape so that he may be capable of receiving this lesson. The criminal should be treated as the surgeon treats his patient. The knife of justice should be driven to the hilt if need be for his own good.

This is the principle adopted at the Elmira Reformatory, and it seems to me that institution affords us a philosophical basis to work upon in prison reform.

The Elmira system is in combination a compulsory work shop, school and physical gymnasium. You may expect to get approximately from these the same result that you get for boys and men in shops, schools, gymnasiums outside of prisons.

In order to reform any person addicted to evil living, an adequate mode must be offered. At Elmira the

powerful motive is the desire of gaining liberty. This would seem enough, but it is not always sufficient to arouse the ambition in a sluggish nature especially when the period of incarceration is fixed and short. This motive then has to be supplemented by others. A way must be found to arouse the sluggish body and interest the dormant mind. This interest once aroused can be stimulated by various incitements as slight rewards of promotion, the fear of social degradation; and this path of doing well becomes powerfully attractive when it is seen to be the path and the only one to liberty.

In a life that is required of him at Elmira it is difficult for him to sham. If he does not put himself willingly and honestly into harmony with his position, he is pretty certain to break down and go back into the harder conditions of prison life. These he finds very unwelcome after a taste of something better and he tries again with a new resolution. The pressure is incessant. The incentive of liberty, better apprehended as he gets into a normal state is always inviting to him. Meanwhile habit is doing its work. He can continue longer in a straight course. The Elmira system compells a man to literally to work out his own

salvation. It will take some men a longer, some a shorter time to do it, that is, to acquire such a habit that for a given period they can stand perfect in study, in work, in conduct; but if they are kept at it they begin to feel in their renovated physical and moral nature, not only the desire for liberty, but a longing, however faint, to make men of themselves.

There are under the present rule of determinate sentences many incorrigible cases. Probably there are some natures incapable of being changed to any thing better. But it is difficult to say of any man that he cannot be reached and touched by discipline physical, mental and moral for a long time and continuous; that it is impossible to drill him, in years of effort, into a habit of decent living and a liking for an orderly life. It is impossible psychologically and physiologically, for a person to obey rigid rules of order and decency, to be drilled in mental exercises, to be subject to supervision for intelligent and attentive labor for a considerable length of time, and not form new habits, and not be changed sensibly and radically. It may be in one year it may be in ten but ultimately such habits will be formed.

The criminal himself determines when he is fit to go out of confinement and out of the discipline to which he has been subjected. His record shows it, for his record shows whether he has acquired new habits and is really changed. Of course some tribunals must pass upon this record and upon the whole appearance and tendency of the man, but its work is comparatively easy and liable to few mistakes. After a release, of course something must be done to please this man, who has acquired a habit of and a liking for a correct life, in a position in the community where he has a chance to maintain himself. He cannot be turned loose to all temptation in the face of the contempt of the world. But philanthropy can provide for that as part of the system which has given him, by long discipline the habit of decent living. And it will happen that when the community understands this system, the finding employment for men who have been in states-prison will be easier.

There are however men who pursue crime as a vocation -- a profession -- men who have been convicted again and again, and who still persist in using the intervals to pray upon the rights of others. What shall be done with these men and women?

Sort out these hardened thieves as lopers are sorted out. Put a certain number upon an island. Compell them to produce what they eat and use, and a large majority would be opposed to theft. Those who work would not permit those who did not to steal the result of their labor. Self-preservation would be the dominant idea, and these men would instantly look upon the idlers as the enemies of their society. Keep the sexes absolutely apart. Those who are beyond the power of reformation; who cannot be reached by kindness, by justice -- those who under no circumstances are willing to do their share, should be separated and dying should leave no heirs.

What shall be done with murders? Shall the state take life? It is contended that the death penalty deters others. What is the effect? The tendency is to harden and degrade not only those who inflict and those who witness but the entire community as well.

A few years ago a man was hanged in Virginia. One who witnessed the execution, on that very day, murdered a peddler in the Smithsonian grounds at Washington. He was tried and executed and one who witnessed his hanging, and on the same day murdered his wife.

Ever execution tends to harden the public heart, tends to lessen the sacredness of human life. The death penalty inflicted by the government is a perpetual excuse for mobs.

The greatest danger in a republic is a mob and as long as states inflict the penalty of death mobs will follow the example. As a general rule the men who constitute the mob are among the worst and lowest and most depraved.

Those who are the fiercest to destroy and hang their fellow men for having committed crimes are for the most part, at heart criminals themselves.

A few years ago, in Illinois, a man escaped from jail and in escaping, shot the jailor. He was pursued, overtaken and lynched. The man who put the rope around his neck was then out on bail, having been indicted for an assault to murder. And after the wretch was dead another man climbed the tree from which he dangled and, in derision, put a cigar in the mouth of the dead; and this man was on bail having been indicted for larceny.

The better way is, it seems to me, to weed those murders out from society; keep them separate and distinct from the opposite sex but confine so that they can do no more harm.

The old methods of punishments have been tried in vail. The rack, the dungeon, the gibbet and stake have failed to extenminate the criminal or make him good.

As long as ignorance, filth and poverty are the mis- sionaries of crime. As long as children are raised in tene- ment and gutter the prisons will be full, as long as dishon- orable success outranks honest effort, as long as society bows and cringes before great thieves there will be little ones enough to fill the jails.

All the old penalties and punishments were inflicted under a belief that a man could do right under all circum- stances. All this, it seems to me, is a mistake. We must take into consideration the nature of a man -- the facts of the mind -- the power of temptation -- the limitations of the intellect -- the force of habit, the result of heredity -- the domination of want -- the deseases of the brain, the tyrrany of appetite, the effect of poverty and wealth, of helplessness and power.

Until these subtile things are understood, until we know that man in spite of all, can pursue the highway of right, society should not punish or degrade, should not chain and kill those who, after all may be helpless victims of unknown causes.