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CRIMINOLOGY: THE TREATMENT-PUNISHMENT CONTROVERSY

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The key issue in modern criminology may be summarized in one brief question: is punishment or treatment of criminals the wiser social policy. A grasp of the essentials involved in this particular question provides a general understanding of the field of criminology as a whole.

It is not that criminologists are equally divided on the question but, rather, that our legal system has traditionally accepted punishment as a social necessity, while the dominant voice of the field of criminology substantially rejects the punishment of criminals in favor of treatment and rehabilitation. Certain professional criminologists, of course, do accept punishment as a harsh but inevitable social fact, and, indeed, have argued for its absolute necessity in the conduct of human affairs. But within the criminological discipline such sentiments are expressed by a distinct minority. By far the dominant voice emphasizes both the desirability and the need for rehabilitation of the criminal element. Thus, the punishment-treatment issue is most clearly seen as one in which the prevailing legal view which favors punitive means of control (traditionally accepted by the population as a whole and supported by an academic minority) clashes with the treatment orientation characteristic of modern criminological thought.

The following two statements adequately demonstrate the extremes of the divergence. First, the sentiments of Mr. J. Edgar Hoover:

> I warn you to stay unswerving to your task—that of standing by the man on the firing line—the practical, hard-headed, experienced honest policemen who have shown by their efforts that they, and they alone, know the answer to the crime problem. That answer can be summed up in one sentence—adequate detection, swift apprehension,

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> and certain, unrelenting punishment. That is what the criminal fears. That is what he understands, and nothing else, and that fear is the only thing which will force him into the ranks of the law-abiding. There is no royal road to law enforcement. If we wait upon the medical quacks, the parole panderers, and the misguided sympathizers with habitual criminals to protect our lives and property from the criminal horde, then we must also resign ourselves to increasing violence, robbery, and sudden death.[1]

Mr. Hoover's language is not that of the academician. But, as was indicated, the issue is not solely academic, and there is little question that Mr. Hoover represents a fairly important arm of our legal system.

The orientation of psychiatrist Benjamin Karpman is considerably different.

> Imprisonment and punishment do not present themselves as the proper methods of dealing with criminals. We have to treat them as psychically sick people, which in every respect they are. It is no more reasonable to punish these individuals for behavior over which they have no control than it is to punish an individual for breathing through his mouth because of enlarged adenoids when a simple operation will remove the cause . . . . In the future, it is the hope of the more progressive elements in psychopathology and criminology that the guard and jailer will be replaced by the nurse, and the judge by the psychiatrist, whose sole attempt will be to treat and cure the individual instead of merely to punish him. Then and only then can we hope to lessen, even if not entirely to abolish, crime, the most costly burden that society has today.[2]

To say that a difference of opinion exists between Mr. Hoover and Mr. Karpman would appear as a considerable

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[1] Hoover, *Patriotism and the War Against Crime,* an address given to the Daughters of the American Revolution, annual convention, Washington, D. C. Apr. 23, 1936.

[2] Karpman, *Criminality, Insanity, and the Law,* 39 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 605 (1949).

understatement. The fact is that the foregoing statements express what may be regarded as the polar opposites of the punishment-treatment controversy. But, lest it be thought that the consideration of extremes has little value, it should be noted that it is only an awareness of extremes which enables one to comprehend the full range of sentiment which an issue embraces and to contemplate the possibility (or impossibility) of compromise. Calmer and more representative statements are easily found, as the following attest:

> Punishment has evident values, but they are limited and are offset by unanticipated consequences. Punitive methods of dealing with criminals, then, seem relatively inefficient.[3]

In rebuttal, it is indicated that

> . . . to justify punishment it is not necessary to prove that it *always* prevents crime by its deterrent quality. It is enough to indicate that there would be more crime if all punishment were abolished.[4]

Hence, whether the tone is moderate or extreme, it remains that the pertinent question concerns the grounds on which this existing divergence of opinion can be explained.

Initially, it can be stated that the divergence reflects a difference in concern. The treatment-oriented typically emphasize the plight of the individual criminal and are concerned with his rehabilitation, while those who accept, and advocate, punishment are primarily concerned with the need for social order. Hence, the writings of the former generally stress the need for understanding the nature of the criminal as a person with an aim toward his ultimate rehabilitation, while those of the latter emphasize the deterrent value of punishment which serves to keep all of us, both criminal and non-criminal alike, mindful of our social responsibilities. It should be added that the argument of the latter typically centers on the necessity of the threat of punishment rather than the punishment itself. The point being, that for the threat to be real

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[3] SUTHERLAND AND CRESSEY, PRINCIPLES OF CRIMINOLOGY 326 (1960).

[4] COHEN, REASON AND LAW 59 (1961).

for potential criminals (i. e. the population as a whole) actual punishment of flagrant violators must be duly and consistently administered.

Thus, the basis of the punishment-treatment divergence comes to this. If one focuses his attention on the individual criminal or prisoner, rehabilitation of that human being appears as the most civilized, humane and sensible procedure. If, on the other hand, it seems reasonable that the threat of punishment is one rather potent factor which makes all of us somewhat more responsible than would be the case in its absence, then, a large-scale rehabilitation program for criminals becomes inappropriate. For it is difficult to provide the congenial atmosphere required for individual rehabilitation and, simultaneously, to have this atmosphere serve as a threat to keep potential murderers, forgers, or con-men from engaging in their anti-social activities.[5]

A comprehension of the main issue within the field of criminology and the reasons for its existence, then, is easily achieved. However, more specific arguments which prevail within this general context must be examined, else the pervasiveness of the issue cannot be fully appreciated. For while the specific arguments remain quite opposed, it is of particular significance that two basic frames of reference are mutually shared. In the conduct of this general debate both parties generally accept the deterministic position of modern science and both ultimately appeal to humanitarian values.

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[5] It should be noted, that while certain scientific studies may be cited by both parties in this controversy, logical analysis and judgments of value at the present time represent the ultimate appeal. There are those who indicate, for example, that when a certain state or nation has abolished capital punishment and the murder rate either has remained the same or declined, this proves that capital punishment is of no consequence in the control of crime. It, of course, proves no such thing. Numerous other factors, many of which are as yet scientifically unmeasurable, may well influence the murder rate, and other states or nations may be cited to "prove" that when capital punishment is abolished the murder rate in fact goes up.

The point is that in the absence of a comprehensive survey on the matter, one is in the position of speculating as to the future effect on human action which the threat of punishment, or the absence of it, will or will not have. Hence, since it has not been scientifically proved as of this date whether punishment is of social value or not, one is left with a consideration, in terms of logic, as to whether or not it seems likely that crime would increase, decrease, or remain the same if all punishment were abolished.

The main propositions offered in each case may be briefly delineated.

The deterministic stance of the treatment-oriented stresses the fact that the behavior of the criminal (as that of all human beings) is determined by the interplay of heredity and environment. Since one clearly has no control over the former and, particularly in the early most formative years, equally little over the latter, it is hardly reasonable in this view to hold an individual responsible for what he becomes and does. If the structure of society molds an individual in terms of its social norms and values, then that society is responsible for the behavior of its individual members. Thus, in terms of cause and effect, it is the structure of society and not the individual that is singled out as the element which must be changed. Certainly it makes little sense to punish a person for behavior for which he personally is not responsible and over which he has no control. To rephrase Dr. Karpman, if you would punish the criminal, punish the person with adenoids.

But those who favor punishment are not fully persuaded. Since theological doctrines which assume a degree of human free will are singularly inappropriate in a scientific age, the punishment-oriented typically accept the deterministic posture and simply point out that the threat of punishment is one element in the environmental milieu which, among others, serves to determine one's behavior. Furthermore, it is often added, that since the threat of punishment is utilized in some form by every social group—excommunication by the Catholic church, dismissal for malperformance by academic institutions, the firing of undesirable employees by business enterprise—on what grounds should the criminal element be granted special dispensation? As Arnold Green has remarked:

> A society is an organized population, and if society is responsible for crime while those members of it who flagrantly and consistently break its laws are not responsible, then those members of society who are relatively law-abiding are responsible for crime—a somewhat dubious proposition.[6]

[6] GREEN, SOCIOLOGY 551 (1960).

When the deterministic grounds of modern science are deserted, humanitarian values quickly intrude. Those favoring treatment indicate their deep concern for those unfortunate human beings whose existence is stifled within a cage of iron bars—a situation seen as inappropriate to civilized society. Consequently, those who would defend the existing prison system in any substantial degree are viewed as more reactionary than conservative, callous to the sufferings of those who, admittedly, have been somewhat errant in their ways, but who are, nevertheless, human beings. This concern is countered by the opposition by an expression of at least equal concern for the innocent and relatively law-abiding citizen who has been, or may be, injured by the violent, dangerous, perhaps even cunning, criminal element. The question with which one is left is which view is the more humanitarian. A weighing of values is centrally involved and, despite certain beliefs to the contrary, objective social science on this particular matter offers little help.

Furthermore, when the humanitarian concern of those interested in rehabilitation includes a recommendation that the traditional role of judge be shared in large measure with the psychiatrist, defenders of the traditional legal system point out the totalitarian threat. And, interestingly enough, the defenders of the punitive legal system, on this point, express their concern for the welfare of the criminal and potential criminals. For while those favoring criminal rehabilitation feel that psychiatric treatment will secure more positive results than have judge and jailer, their program characteristically includes the indeterminate sentence as an integral part. This innovation, their critics argue, places a citizen in the position of not knowing the penalty to be exacted should he commit a crime or, if he does, the length of time, if convicted, for which he will be confined. The treatment-oriented assume, however, that psychiatrists are by-and-large men of good will whose judgment on such matters is reasonably sound. They further add that the psychiatrist personally has little to gain by an undue extension of the period of confinement beyond that which is absolutely essential for rehabilitation. Defenders of the traditional legal system, however, place considerably less faith in the ability and judgment of the psychiatrist, and simply indicate that the recommended

alteration from judge and legal system to psychiatrist and rehabilitation clinic must of necessity entail a shift in degree from rule by law to rule by men—psychiatrists, to be sure, but men, nevertheless. Hence, while it is conceded that the modern psychiatrist is one of considerable ability sincerely concerned with the salvation of his charges, so it is indicated, were thei nquisitors of 13th century Toulouse.

Thus the main lines of the specific arguments within the criminological discipline are presented. And the broad issue, seen as one in which the treatment-oriented focus their attention on the individual criminal's rehabilitation while the advocates of some measure of punitive social action emphasize the necessity for social order, is in no way altered.

A hypothetical solution to end the conflict is easily conceived. For if a society should publicly announce severe punishment at the time of a criminal's conviction and, at the same time, rehabilitate the criminal under a cover of absolute secrecy, the issue is resolved. For a society devoted to democratic institutions, however, this solution must remain hypothetical, since freedom of the press concerning this procedure could not be allowed, and both the criminal and the psychiatric staff would necessarily have to be permanently isolated from the parent society. If one were serious about this matter, secret rehabilitation centers could be located perhaps in the far reaches of Alaska, as could rather pleasant communities for the fully rehabilitated. Additional practical measures could be further conceived. But this is not essential. The point is that, whatever the steps taken, the proposed solution requires that the subterfuge never be publicly disclosed—a condition singularly inappropriate to a democratic society. Nevertheless, while the totalitarian procedures required to make this hypothetical solution a reality are not worth the price, heuristically, it serves well to demonstrate the reality of the criminological dilemma. Furthermore, for those who might regard this imaginative flight as simply another instance of academic unreality, it should be noted that an approximation of this solution is an actuality in our present legal system. It is not fictitious that one sentenced to life imprisonment is often released in 10 or 15 years: A fact which explains those sentences which indicate, in a seeming

defiance of all rules of logic and human mortality tables, that a man of forty-five shall serve life plus 99 years.

To conclude on a more realistic note, on the basis of the foregoing, what can be expected in the realm of penology in the coming years? Since legal systems in the absence of revolution typically change slowly, great innovation in the direction of rehabilitation, despite its many advocates, is unlikely to occur. Furthermore, even if instituted, to believe with Benjamin Karpman, that a full-scale rehabilitation program could eliminate criminal behavior in its entirety is an absurdity. Sigmund Freud's observation that some tension between individual desires and the requirements of the social order is eternal cannot be disregarded.[7] None of us is ever completely socialized, and a certain degree of deviation from social norms, therefore, is to be expected. Furthermore, such deviation is not only desirable but essential. As Durkheim reminded us long ago, since every society must allow a degree of individual freedom to insure continued social development, it is inevitable that a portion of the population is bound to take advantage of this freedom to engage in criminal activities.[8] It follows, therefore, that the measures required to eliminate crime completely would necessarily eliminate the freedom essential to the creative activities of entrepreneurs, artists, writers and the intellectual community as a whole.

In addition, one of the main practical problems which a program of criminal rehabilitation faces is that the criminal himself must envision the proposed normal way of life as superior to that which he has known. It is not always immediately obvious to an expert forger, moonshiner, or con-man that he should trade his often lucrative occupation for a more secure but more routine membership in the lower middle class. The problem of criminal rehabilitation is not, as is often assumed, a purely psychiatric one. The economic and social opportunities presented to a psychologically fully re-

[7] See FREUD, CIVILIZATION AND ITS DISCONTENTS (New York: Doubleday Anchor Books, Paperback reprint of 1930 original edition) for full documentation of Freud's position.

[8] DURKHEIM, THE DIVISION OF LABOR (New York: The Macmillan Co., 1933 translation). This point is particularly emphasized in Durkheim's discussion of societies characterized by "organic solidarity."

habilitated criminal need only be briefly considered for the magnitude of the problem to be appreciated. The options for a normal member of American society possessing a few years of high school education in a technological age are not overabundant. Add to this a record of past criminal activity and the opportunities become even more limited. Consequently, for one whose talents are often welcomed and whose associations are already established in the criminal world, the legitimate prospect of driving a delivery truck at the rate of $65 per week may appear as something less than a fair exchange.

Thus, since legal systems change slowly and, since a full-scale program of rehabilitation entails both logical and practical problems, it is to be expected that rather than abrupt innovation, the latitude currently provided the judge within the framework of the existing legal system will continue to serve as the main fulcrum of change. Since it is already recognized that all criminals, even those who commit similar crimes are not identical, a greater differentiation among classes of criminals by the court and a consequent greater specialization of institution, ranging from maximum-security-penal to wholly rehabilitory, seems the most likely general development.

The treatment-punishment issue, however, will not be resolved. For while it will continue to be agreed that some criminals are more deserving and saveable than others (the confirmed member of Murder Incorporated does differ in important respects from the murderer of a heartless blackmailer), nevertheless, a reasonably objective system of laws and penalties for violation must prevail for a sense of social justice to be preserved.