

The Idea of Punishment

THE BISHOP OF EXETER

The Idea of Punishment by Lord Longford, is a most readable little book, though somewhat rambling and disjointed. Indeed it is very reminiscent of those delightful conversations which develop sometimes in Oxford Common-Rooms after dinner. As I was reading it I almost felt that I was back at Christ Church, sitting at the bottom corner of the table listening to an argument. Lord Longford was presiding, on either side of him sat Lord Russell and Lady Wootton, and there were one or two clergymen present as well. Someone said, "What does a judge think that he is doing when he sentences a man to prison? What I mean is, what is the idea of punishment?" Someone replied that the judge's main purpose, of course, was to deter the offender from committing the offence again, and at the same time to deter other potential offenders. Someone else said, "No, the main idea was to subject the offender to such treatment as would result in his reform." Lord Longford suggested that you cannot really

keep the idea of retribution out for long. "Oh yes you can, and should," said some of the others, and then the argument really got under way.

It soon became clear that however much you might wish to exclude the idea of retribution from the idea of punishment, you could not keep it out of the discussion. At the same time it became clear that retribution in this context does not include any idea of vengeance, or of anger, or of inflicting pain for pain's sake. Yet it seems clear that the idea of retribution is somehow necessary to the very idea of punishment. Because without it the connection of justice with punishment drops out.

At this point Lord Longford again intervened. During the earlier discussion the College butler had been sent across to the library, and had returned with an armful of books—chiefly the works of Pope Pius XII and Archbishop William Temple. Lord Longford pointed out that however much importance you attach to the findings of modern psycholo-

gists about the significant influence on criminal action of what may be called medical or other non-moral factors, it still remains true, in the words of the Pope, that "The average man has not only the moral capacity but also the positive possibility of making autonomous decisions and acting accordingly, thereby assuming obligations and responsibility." Therefore, when Lord Longford speaks of retaining the idea of retribution, he means, "retaining some connection between the supposed heinousness of the offence, the degree of moral failing on the part of the culprit on the one side, and the severity of the punishment on the other." But Lady Wootton would have none of this. She insisted that when punishing an offender the question of his criminal responsibility can be by-passed. The degree of his criminal responsibility involves a verdict on the past, whereas what really matters is the future. What really matters is deterring and reforming an offender. How far the offender is actually to be blamed for his offence and how far it is to be attributed to some mental sickness, are questions which Lady Wootton maintained, cannot be satisfactorily answered. It is therefore better not to ask them. Of course the offender must in some way deserve the treatment of punishment, but the degree to which he deserves it does not seem to her, apparently, to be very

important. To all this Lord Longford retorted with the interesting argument that neither deterrence nor reform will, in fact, work without the introduction of the idea of retribution. He says that a community is never likely to support a sentencing policy which does not maintain some connection with the supposed wickedness of the crime and the severity of the sentence. In fact, therefore, it would be to discredit the law and diminish the sanctions which operate against crime if we tried to remove such a connection altogether. With the help of the clergy, who intervened extensively at this stage, he also showed that the idea of retribution is essential to reform. A prisoner is far more likely to be reformed, he says, if he can recognize the justice of the penalty, than if he cannot. As far as possible the penalty imposed should be one whose appropriateness even the delinquent can be brought to appreciate. A man cannot really be rehabilitated until he recognizes his own sin. Therefore retribution, the penalty adjusted to the heinousness of the offence, is a necessary element in the effective reform of prisoners. The conclusion of this stage of the argument is "retribution, in short, provides a justification for some punishment and sets a limit to the amount of punishment justifiable. But deterrence and reform are the main factors which society should take into account in deciding how

far society should exercise its right of punishment when passing sentence."

At this point Lord Russell showed signs of impatience. As a determinist, he does not believe in the freedom of moral choice nor, therefore, in moral guilt. Therefore all this talk about retribution is to him nonsense. But Lord Longford politely tells Lord Russell to shut-up. This is just as well, because otherwise the argument would have been totally bogged down in the age-old controversy about freedom and determinism, grace and freewill, predestination and so on. Lord Russell being thus silenced, Lady Wootton returned to the scene as a humanist sociologist. She stated her position thus, "I should not attempt to assess the wickedness of different offences or to relate the severity of treatment to this. To do so raises the, to me, unanswerable question whether the offender could or could not have acted otherwise, i.e., the question of responsibility. Within the limits of what the injury to society permits, one should try to choose the treatment which is most likely, whether by deterrence or reformation, to make similar actions unlikely to be repeated in the future This balance between the injury that a man has done, and the degree to which he should be restrained or otherwise interfered with, seems to me to be the essence of the principle of

justice." In other words, punishment is a necessary evil, only justifiable when the nuisance to the community has become intolerable and the benefit to the community by inflicting punishment is greater than the damage done to the offender.

But Lord Longford insisted that it is not only the objective gravity of the offence which has to be taken into account when trying to arrive at a just punishment, but also the subjective culpability of the offender. Though he admitted that the findings of the psychologists make us more and more dubious about our power to arrive at any reliable judgement of the degree of culpability in another. All the same, he insisted that any sentence of punishment must include not only a moral condemnation of the action which is punished, but also a moral judgement of the guilt of the man who has performed the action. "The idea of a minimum level of moral guilt," he says, "involving some assessment at least of the convicted man's mentality, is inseparable from legal punishment."

At this point the argument was interrupted by three short tutorials from Lord Longford on some contemporary moral philosophers on humanism and on Christian Ethics. The argument was later resumed in an interesting and even moving conversation between Lord Longford and the clergy on the

value of accepted suffering, and especially of vicarious suffering, as an act of reparation and a weapon for the defeat of evil. In this respect the Cross of Christ is seen to have a special significance. Christ's acceptance of suffering and death on Calvary is "incomparably the most valuable act of suffering which has ever been performed in the history of the human race." All Christians are called to take their share in redemptive work by attempting both to accept their own sufferings and to offer them to God, and by attempting to share in the sufferings of others. The final words of the conversation are "when one meets a prisoner or ex-prisoner, it is not enough to say to oneself 'there but for the grace of God go I'. One should say rather 'there by the grace of God go I'. With Father Damien we should move to lie down beside him and to wash his feet as those of the Disciples were once washed by the hands of the Master."

I am in entire agreement with Lord Longford that you cannot exclude retribution from the idea of punishment without destroying the idea of punishment altogether. If you seek only to deter or to reform, you can deter by a system of reprisals which takes no account of the responsibility of the individuals who are its victims. But that is not punishment. You can reform by sending to school or to a mental hospital, as the case

may be. But that also is not punishment. This is clearly seen by a comparison between sending a boy to school, sending him to a mental hospital and sending him to an approved school. All three subject him to compulsory treatment. All three seek to improve him. But the third, the approved school, is in addition a punishment. It would be thought monstrous, and even pointless, to send any boy to an approved school, unless he in some way deserved it. Unless it was, in fact, due to him because of his past actions. And this is the idea of retribution, which turns the sending to an approved school into a punishment.

Secondly, all men resent being regarded as an automata. However much we may make excuses for ourselves, they are excuses; that is, reasons why we chose to act as we did. In other words, we claim some degree of responsibility and indignantly deny that we had none. It is because of this consciousness of responsibility that punishment is recognised as being due or just.

Thirdly, a prisoner's reform begins when he agrees to co-operate with the authorities. So long as he regards his imprisonment as some kind of compulsory reformatory treatment—an act of brain-washing—he is apt to resent it and work against it. No man likes to be improved against his will! It is when the imprisonment

is recognised as somehow being due to him, the consequences of his past actions, as being, in fact, a proper and deserved punishment, that he begins to accept it and to be willing to co-operate in his own reform. I entirely agree with Lord Longford that retribution is an important element in reform.

The fundamental idea of punishment is, therefore, that of paying back, of making reparation for wrong-doing. Its chief value lies in its acceptance by the wrong-doer himself; only so is it fully effective. But it also has value as a public social condemnation of evil, as a moral judgement.

I think that Lord Longford perhaps exaggerates the difficulty created by psychology in reaching reliable judgements of the guilt of another. So far as the administration of the criminal law is concerned, the first essential is to establish objective guilt, that is that the prisoner really did commit the offence with which he is charged without a shadow of doubt, and did it freely, that is, that he was not under either outward or inward compulsion. Society estimates the gravity of the offence by the tariff of punishments laid down by the legislature. The judge leans over backwards trying to find extenuating circumstances which reduce, but do not extinguish subjective moral culpability: do not extinguish, because, however extenuating the circumstances may have been, the

prisoner, not being under compulsion, did, in some degree, will the offence. Some punishment is therefore due. What punishment, if any, should be exacted is a practical decision, in which the ideas of deterrence and reform are uppermost. But since the offender did commit the offence with some degree of advertence, any penalty prescribed by the law and proportionate to the objective gravity of the offence and mindful of extenuating circumstances, is just. Just, that is, in a human, approximate sense. Human finite knowledge cannot hope to equal the omniscient justice of God. But it remains a human duty to seek to impose a punishment which is as nearly as possible proportionate to the gravity of the offence, and the culpability of the offender. This is the foundation of the idea of punishment.

**The Idea of Punishment* by Lord Longford is published by Jeffery Chapman (pp 102) at 10/6d.

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"*Capital Punishment and British Politics*" (George Allen & Unwin) includes many references to Prison Officers and their views on this subject. Professor Christoph reveals in detail the workings of British politics and assesses the impact of the clash of ideas and interests on governmental policy.