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How we can Transform our Prisons

(Reprinted by kind permission of The Editor, *The Sunday Telegraph*)

WILLIAM D. PILE

Director-General of the Prison Service

talks to Peter Gladstone Smith about his challenging new job

Mr. Pile, 49, was appointed to the £6,300-a-year post of Director-General of the Prison Service created in February as part of a major reorganisation of the top management structure of prisons.

As a civil servant he is not in the role of an independent managing director. He is answerable to the Home Secretary, who is answerable to Parliament, and the Prison Board and Prison Service are in turn answerable to him.

Gladstone Smith: What are the first priorities that you see and the changes that are likely to be made in the next three to five years?

Pile: They are to reorganise our management, get more and better staff, get more and better buildings and make a determined effort to improve the treatment and rehabilitation of prisoners.

We must have both security and rehabilitation. Security is our trade and it would be absurd if we were not able to keep our customers in, but we also have to prepare them to go out.

We have got to be very cautious about the over-simplified and over-sentimentalised view that all prisoners can be diagnosed, their disabilities identified, specific therapy prescribed and a cure guaranteed. There are people who slip too easily into the role of trying to purvey a bottle of sunshine.

We are dealing with the guts of the human problem, with men afflicted by anger, greed, emotional disturbances that lead to violence and mental disorders that lead to loneliness and depression; men afflicted by incompetence in managing their lives, particularly in money and sexual matters, and by social inadequacies of many kinds.

We have all got a mixture of these

bits in us, but most of us only have them in small doses. There is a little bit of a psychopath dormant in each of us. Our customers have got bigger doses and mixed doses, so there are a multiplicity of variables. This makes it difficult for the researcher to penetrate the problem, and we have got to be pretty dedicated in the face of small gains and big disappointments. For we are trying to help people whom their families, teachers, doctors, and friends have been unable to help. It's a pretty big job to load on to the Prison Service.

A prerequisite of any form of rehabilitation is a relaxed and constructive relationship between prisoners and staff. I think we have got this, and that it is probably the biggest single improvement in the post-war years. We therefore have a springboard for treatment, for dealing with the prisoner as an offender, rather than just dealing with him as a man.

Did you mean the opposite, dealing with the prisoner as a man rather than an offender?

No, I mean treating him as an offender, dealing with the seat of his troubles. We feed and clothe him because he is a man. We have to consider his natural instinct to want to talk and keep in contact with the outside world; these are ordinary human liberties which we think prisons ought to grant almost as a matter of course. But treatment is saying: "You came in here because you did this", trying to get to the nature of his offence and to get him to understand this. This is where we don't do enough in prison and where we shall make a deliberate attempt to do more.

NOT GAOLERS: HELPERS

The role of the prison officer has changed. Their association is most anxious that he should not be a turnkey, but should do all he can to help in dealing with a man as an offender. At the same time we have a growing range of specialists including doctors, psychologists, chaplains, welfare workers and tutors.

Lay help is designed to form a relaxed relationship between the prisoner and staff, and incidentally between the prisoner and other prisoners, to help them to recognise their disabilities frankly, to break down their individual isolation and to give them a community of a kind to which they feel they belong.

This sort of language may sound pious and vague, but I chose those words with care because I think this is the way. They have got to realise their disability, that they are not alone and that there are others in the same predicament. This is the gate you have got to get them through. If you can do that you will have done what a lot of other people failed to do.

Medical help, of course, probes deeper. Apart from the stable, fit—often extraordinarily fit—anti-social professional criminal, the types that the medical world deals with are the psychopaths, schizophrenics, depressives and psychotics. There are substantial develop-

ments in the psychiatric services in prisons.

Chemotherapy is used for the treatment of depressives and schizophrenics. A good many of our violent customers can be kept under reasonable control by the judicious use of tranquillisers.

Violent prisoners are being given tranquillisers on quite a large scale?

It is regarded as a proper chemotherapeutical treatment to get them over a phase. I don't mean constantly drugged, but under doctor's orders to get them out of a very bad depression or bad bout of violence.

Every bit of this treatment has to be voluntarily taken by the prisoner, and you can't in prison any more than you can outside, force any treatment upon anybody. There are difficult cases, of course, of men who refuse and we have just got to carry them.

About 15 to 20 per cent of our prisoners get some form of psychiatric treatment during their stay. This is higher for boys, perhaps 20 per cent in borstals, less for adult men—about five per cent—and much higher for women, about 60 per cent.

WOMEN IN CIVVIES

Improvements in food and clothing are part of the totality of treatment and training. I am glad I was associated with the decision to put women into civilian clothing. Nothing has had a greater effect than to walk into Holloway and see prisoners dressed like people you would meet outside; it brings you up with a jolt and makes you think.

The ability of a prisoner to buy newspapers, have his own radio, access to television, the growing number of letters he can write, freer visits and short-term parole to see dying relatives or go for an interview for a job must have some effect on his attitude and development.

There are some fairly effective drug addiction clinics. Indeed borstal boys whom we get off a drug do well: they put on weight and throw behind them a good many of the depressing characteristics of their addiction. Nobody is claiming that the clinics have performed a permanent cure and it is known that there is still a high relapse rate. Nevertheless, while former addicts are in our hands we can get them off the drug in the main, and give them sufficient support to gain health and take part in the life of the prison.

Another experiment on a limited scale at Wormwood Scrubs is in hormone implants for sex offenders. A hormone is implanted surgically and it has an effect on behaviour. It is not regarded as a solution to all sexual cases and a full account of it will be given by the doctors when they are ready, but we are looking at the latest ideas and trying to develop a full range of therapy.

Are the indications that the present prison population will increase?

It reached a peak in 1967, approaching 35,000, and last year

dropped to between 31,000 and 32,000, due partly to parole and partly to the introduction of suspended sentences under the Criminal Justice Act (1967). Suspended sentences might keep the total down permanently, but could have the effect of increasing numbers in the longer term.

It has begun to rise again and is already over 33,000. We are planning on the assumption that it will rise by about 1,000 a year and that we are heading towards a prison population of 40,000.

How much money can be spent on prisons in the next few years? And how much in the next 10 *to* 20 *years?*

In 1969–70 we have a vote of £33 million on current expenditure and £10 million on capital expenditure. I cannot, of course, commit the Government or Parliament to what they will spend in any future year, but the sort of expenditure we think is within the bounds of possibility in five years' time, say in 1973–4, is £40 million on current and £20 million on capital expenditure at present prices. This does not allow for price rises.

So that over the next five years the total expenditure on the Prison Service is likely to run to about £250 million, of which £175 million might be on current and £75 million on capital expenditure.

Staff accounts for about 60 to 70 per cent of current expenditure, and the growth of current expenditure from £33 million to £40 million will enable us to make headway with our second priority of more and better staff.

The second keypoint is that the ratio of capital to current expenditure is tending to shift from 1:3, that is from £10 million to £33 million now, towards 1:2, that is £20 million to £40 million in five years' time perhaps.

ON FROM VICTORIA

We should increasingly be able to make inroads into the backlog of obsolescent buildings. A conservative estimate of the total cost of replacing all our obsolete buildings I would put at about £100 million—that's 25,000 prisoner places at a capital cost of £4,000 each.

Now at the present rate of £10 million a year on capital, rising to £20 million by 1973–4, you might argue that if you have only to spend £100 million to get rid of everything it will only take you seven years or so to rebuild the whole system. But it is one of those infuriating situations that if you start with a backlog of obsolete buildings you have got to go on spending money on patching and mending them, and this delays the day when you can actually replace them.

I have been concerned with education, the Health Service and now with prisons (and the railways are another service), which basically have been living on Victorian capital investment. Vast tracts of our railways are products of that marvellous era, and the greater part of our hospitals were founded

and built then and are still being used. Schools have done more than the others to replace obsolete buildings. The prisons, I think, are the Cinderellas. They have got a bigger backlog, and we have done less to put them right.

You have only got to see the standard prison to pause and realise that it was built as like as not between 1840 and 1860. We can renovate and rehabilitate, but basically we shall only be darning our socks, and what we need are new socks.

In the planning pipeline to start in the next five years we have 15 new establishments for adults, three new remand centres and two new allocation centres for young offenders. Out of this we should hope to gain the closure of Dartmoor and Oxford prisons and the complete replacement of Holloway. This is a real step forward and symbolically ought to end some of the old ogres.

What I think is very encouraging is that in my view the 20-year period 1970–90 could in fact be comparable to the years 1840–60 as the period in which the real estate of the prison system is totally transformed. We can manage this.

What is the prospect of prisoners being able to work a full five-day, 40-hour week, and to earn a full industrial wage instead of generous pocket money for their work? And in this way be able to support their families and compensate their victims?

The average pay of a prisoner is 7s. a week—pocket money really. It costs us £500,000 a year. Ministers have agreed that the ultimate aim is, in fact, to get payment of a full industrial wage.

The first difficulty is the cost. We reckon the wages bill would be about £35 million a year with say 20,000 people at work at £18 a week. The present cost of keeping a prisoner is about £800 a year, and about £900 in borstals and young offenders' establishments. So £18 a week would only just clear their board and lodging, and this before you raise the question of how much should be sent to their families or for reparation to victims. We are in the same position as any other industrial concern that pay levels must depend on productivity and profitability. We can raise these by rationalising prison industries and by incentive schemes.

About 1,000 prisoners are earning £1 a week in such schemes and we are hoping to get that up to 2,000 by the end of the year and then possibly to increase the £1 to £2 if we can. The immediate aim is to turn an overall loss into a sizable profit.

In 1966 prison industries ran at a loss of £750,000 a year. In 1967 this was nearer £500,000 and in 1968 it was less than that. Our aim is to convert the loss into a profit of £750,000 by 1973.

It is quite a high target. The average value of the goods produced by the ordinary operative

in outside industries is £2,500 a year. The value of goods produced by the average prisoner is £420 a year. This is because not all prisoners want to work, not all are able to work and there is a rapid turnover of the labour force: four times a year. Our position is rather like that of a company with 120 branches and a complete staff turnover every three months.

Is it asking too much of a prisoner to expect him to work a 40-hour week for £1 or £2 pocket money if he has the alternative of not working at all?

They do it. After all, money is important in prison in a sense that it buys more of the things they want, such as tobacco.

Surely most of the sum of nearly £18 a week for a prisoner's board and lodging is spent on keeping him in. Is it fair to deduct this from his wages?

Surely some account should be taken of the charge to public funds for keeping a prisoner in before it would be right to pay him a full industrial wage.

Is it not an important point of rehabilitation that he should be encouraged to keep his family, because the one thing prison does is to relieve a man of all his responsibilities, which is the very thing he was incapable of meeting before he went into prison and the thing, perhaps, that he will never be able to meet again when he comes out?

True, but the difficulty is that keeping him at public expense and paying him in addition a full industrial wage really means doubling the cost of the Prison Service overnight. And therefore I think on grounds of cost it is simply not on immediately. But prisoners' earnings are slowly rising.

Will it be possible for very long-term prisoners ever to share accommodation with their wives?

No, the provision of married quarters is not, I think, in prospect.

If a man has to serve something like 20 years it could easily be the end of his married life?

This may, unfortunately, be true, but is it too harsh to say that if a man wants the companionship and support of his wife he should think about this before committing a crime which he must know is punishable with a long prison sentence?

What about conjugal visits?

These do raise very difficult problems of administration. To allow prisoners to have occasional sexual intercourse with their wives is on the face of it a more manageable proposition than shared accommodation. But I think there are two reasons which weighed with the Home Secretary not seeing his way ahead on this. One is that it is likely to be more disturbing than supportive to the prisoner and the other that there are real practical difficulties when you sit down to the cold business of working out how it is to be done. It is difficult to solve the difficulties in a decent and dignified way. So

that is not on for the time being at all.

THREE PROSPECTS

What are the most interesting things that are going to happen in the Prison Service now?

First, we are just at the point when we can redesign our management structure, and have got to do so. We have been given a management review team of specialists to pioneer techniques, and I would like to think that in two or three years' time the Prison Service will be the most modern and best managed in the government sector.

Secondly, I think the post-war years have happily brought about a marked détente in prisoner-staff relationship, and this provides us with a springboard to have a go at the business of rehabilitation of prisoners.

And thirdly, because we have got some bigger building programmes in prospect we can look ahead to transforming our real estate.

I suppose my colleagues will accuse me of being over zealous if I say as Wordsworth did of the French Revolution: "Bliss was it in that dawn to be alive..." but at least I don't think we'll fall asleep.

CONTRIBUTORS

PHILIP S. LEWIS, B.SC.(Econ), B.A., joined the Prison Service in 1959 and served for over three years at Portland, followed by a three-year "leave of absence" at Liverpool University studying psychology. Afterwards he was at Hewell Grange for two years and for the last year he has been on the staff at the Prison Service Staff College, Wakefield.

G. E. W. CAVILL joined the Prison Service in 1948 as an officer at Cardiff and has served at Usk, Werrington and principal officer tutor at Wakefield Staff College. He was promoted to assistant governor in 1965 serving as housemaster at Morton Hall Borstal until his transfer to Ashford Remand Centre and is now assistant governor of the young prisoners centre.

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Custody and Treatment in Institutions

P. S. LEWIS

MANY OF THE RESOURCES of any prison service must be devoted to the task of social sanitation. As with any sanitation, this involves flushing the undesirable out of sight and ensuring that he stays flushed, as it were, until the time appointed for his release comes round. In these terms, many of our devices are but newer and better cisterns and our training techniques means of ensuring that our staff know how to pull the chain. We cannot claim that such disposal is relevant to the criminality of the offender—for if we know anything about crime, it is that it is internally and individually motivated whilst the deprivations undergone are external and common to the mass.

With some such considerations as these in mind, the Prison Service has over the last 60 or 70 years paid some attention to the question of treatment. Ideas developed from psychiatry have been imported and in some cases psychiatrists themselves have been employed. The concept of casework has been developed and of late welfare officers qualified in this field have been appointed. Emphasis throughout has been on the one-to-one concept of treatment in which treater and inmate sit down together to discuss the thoughts and motivations of the latter. Almost certainly this was the only way treatment could have developed in institutions —but the implications of the development must be examined.

The first major difficulty which the treater faces within the institution is that of deciding which thoughts and actions are relevant to the life of the criminal outside and which are simply the product of the situation the inmate now finds himself in. Goffman, Sykes and others have shown how these change in an institution in which the total activities of the inmate are carried on within a single framework and Polsky has shown how the influence of the inmates may produce behaviour patterns totally at variance

with those manifest outside. The training of the treater—whether he be welfare officer or psychiatrist—urges him to concentrate on the formative years of the inmate's life and on his relationships outside; yet it may be much more the happenings inside the institution which are to the inmate of greater concern. We must remember too, that the roots of casework lie in the treatment of neurotics voluntarily seeking help—the techniques might be quite inapplicable to the non-neurotic inmate who has not himself initiated moves to obtain aid.

The second major area of difficulty for the treater lies in the natural resistances to change which are in everybody but which are heightened when an element of threat is introduced into the proceedings. This is well expressed by Galtung who points out that—

> "You cannot put the inmate into the institution against his own wishes AND expect him to adopt an attitude of willingness to undergo therapy.
>
> "You cannot at the same time intentionally inflict evils on the inmate or deprive him of positive values during his stay in prison AND expect him to believe that what is done is done for his own good and to co-operate in his own treatment and therapy".

But it is not only for the treater that difficulties arise. What of the inmate himself? To suggest treatment is to imply that he cannot himself, of his own free will, voluntarily desist from crime in the future should he wish to do so. This requires a tremendous redefinition of himself for the criminal—a recognition that one is not in control of self, however well founded, maybe a step far too frightening for most men to take. Neither is the task aided by all the jibes of his mates concerning his sanity when it is discovered that he is visiting the psychiatrist. In so far as a determinist philosophy is accepted, it is perhaps almost exclusively a middle-class preserve.

Serious as the consequences of the application of the one-to-one model are, they almost pale into insignificance beside the consequences for the organisation.

With welfare officers in part answerable to the principal probation officer, the situation is wide open for manipulation and there are frequent reports of this happening particularly in the area of visits. Prisoners may take a positive delight in setting one part of the organisation off against another even though no positive gain may accrue to them directly. The greatest difficulty lies in the uncertainty which duality of control may create. The introduction of a separate welfare service, as well as the introduction of psychiatrists, seems to lead to a polarisation of task in which the governor and his staff come to view themselves exclusively as custodians and the welfare officers and psychiatrists come to see themselves exclusively as treaters. Yet it quickly becomes apparent to the treaters that they cannot adequately

treat unless they in some way affect the techniques used to control the prisoner. Psychiatrist and welfare officer thus wander around the landings discussing particular cases and making special pleas for particular prisoners. An atmosphere of uncertainty is engendered in the custodial staff—they are never quite clear whether to enforce orders to the letter or whether exceptions should be made. If the treatment staff become very powerful in the institution, of course, the officers' dilemma may be so heightened that they fear to give clear directions at all. Yet in this situation, treatment staff cannot feel completely happy either. They see the routine of the establishment as constantly interfering with their treatment functions. In this situation they may either continue to fight, or retire to carry out welfare as opposed to treatment functions.

Problems in these areas do not seem insoluble. If the *primary* task of each institution were to be established, with some being allocated mainly to treatment and others to custody, some of the problems would disappear. But it is also apparent that even in the treatment institution, attention must be paid to the whole range of things that affect the prisoner's life there, rather than merely to the therapy he receives. Custody institutions might well maintain a purely welfare service—it is only when treatment is attempted by this agency that the problems referred to above occur. This sort of solution may be a long way off. Meantime it seems, that unless all treatment staff are completely answerable to the governor in all areas of their work, the difficulties must continue.

BIBLIOGRAPHY

GALTUNG, J. "Prison: the Organisation of Dilemma."
GOFFMAN. "Asylums."
MATHIESEN. "Defences of the Weak."
POLSKY. "Cottage Six."
SYKES. "The Society of Captives."

Progress Report

Ashford Remand Centre

G. E. W. CAVILL

ASHFORD REMAND CENTRE (Middlesex) was opened on the 17th July 1961, in accordance with the provision of section 48, of the Criminal Justice Act, 1948. Originally, Ashford was planned as a borstal allocation centre, but with the need to establish a remand and reporting centre for young men, under the age of 21 who are remanded whilst awaiting trial or convicted awaiting sentence, the four to five years' replanning as an allocation centre was discarded and the first modern remand centre was established. Since the expansion of the Prison Service we now have 10 remand centres. At Ashford alone more than 13,800 inmates pass through the remand centre in the course of a single year, including aliens under 21 awaiting deportation and convicted awaiting Home Office approved school placements

Incorporated within Ashford Remand Centre but as a separate identity, under the control of the governor of the remand centre, is a young prisoners' centre for inmates under the age of 21, who are serving a prison sentence. Daily total averages 45 inmates. Employment with the works department provide useful work for a large number of Y.P.'s but the shortness of sentence precludes any attempt at long term training, although lads with experience in the building and allied trades are employed as far as possible with the engineering department. Young prisoners also work in the laundry, kitchen, officers' mess, sports fields and gardens. The Y.P. centre operates on the lines of a progressive senior adult borstal, where selected inmates work without supervision within and outside of the main security remand establishment. The inmates enjoy a full weekly programme of physical, spiritual and educational activities, and the centre has in addition, rest and recreational rooms with TV, billiards, table-tennis and indoor games. A large sports field provides the weekly setting for cricket/football matches with outside teams. From May of this year two resident lady psychologists run weekly groups with a varied programme of interests ranging from group projects and music appreciation to debates. As with the borstal inmates, a full

after-care service is provided to ensure a smooth return to society under the Probation Service who supply the skilled counselling, guidance needed to readjust to home and employment. Within the centre pre-release planning and external problems are dealt with by the assistant governor, social workers and outside agencies direct.

As a remand centre, Ashford is ideally situated between Staines and Feltham in the Thames Valley area. Excellent rail and bus facilities ensure that solicitors, probation and child care officers, parents, wives, and friends can visit the inmates who in the main are from the Greater London area.

The function of Ashford Remand Centre is to provide the maximum information to the Courts requesting reports and to express expert opinion within the knowledge available from both exterior and interior sources. To this end information is requested where applicable from police, Probation Service, child care authorities, Home Office approved schools, parents, educational authorities, hospitals, attendance centres, etc., where a previous custodial sentence has been served within a penal setting, records and reports are received from detention centres, borstals and young prisoner centres. It is justice for the inmate that reports are detailed and accurate, helpful to the Court that all such information is presented and sound economics that society which foots the bill, receives the best service.

The catchment area that Ashford serves ranges in a line from Harwich to Dover and from Chichester to Aylesbury. Within this area, Ashford provides a service to High Courts (Assizes and Quarter Sessions) and to magistrates and juvenile Courts. Also three remand homes are served by a member of Ashford reporting team (assistant governor) (when borstal reports are requested by a Court, but the youth remanded to one of the remand homes instead of to Ashford).

With the passing of the Criminal Justice Act 1961 and in the spirit of the report of the Streatfeild Committee, there is a greater freedom to express an opinion as to the suitable disposal of a case, with regard to the prospects of diverting the offender from further crime. Although obviously, the seriousness of the offence and the general question of deterrence and other matters of public interest are solely the Courts concern, it is permissible for reports to Court to recommend from amongst the available forms of treatment that are considered most likely to exert a reforming influence. In general this means a choice from amongst the following possibilities:

> Y.P. sentence; borstal training and borstal recall; detention centre training; unsuitable for borstal or D.C. Training; Home Office approved school training; probation (with or without condition of residence); conditional discharge; hospital order; suspended sentence; and non-custodial measures.

The reporting procedure at Ashford is carried out by the deputy

governor and two assistant governors. The deputy governor submits all borstal recall reports. One assistant governor is responsible for reports to the High Courts, the other, for all reports to magistrates and juvenile Courts. The compilation of the final report on behalf of the governor, the deputy and assistant governors have reports from psychologists, social workers, psychological educational testers and from the medical officers when medical reports have also been requested by the Court. In addition they have other reports from agencies as detailed previously.

To evaluate the reports submitted from Ashford a survey of all reports submitted to magistrates and juvenile Courts was carried out from 1st July 1968 to 29th March 1969 (author then moved from reporting team to supervise Y.P. centre at Ashford). During this period a follow-up of 636 reports had been covered. The survey shows that borstal reports have been requested by 61 magistrates Courts and 26 juvenile Courts from within the catchment area, in all cases where there has been a finding of guilt and the young men have been remanded after a conviction for recommendation reports either for a custodial sentence at a borstal establishment or borstal or detention centre.

SURVEY OF THE 636 REPORTS SUBMITTED:

255 lads were recommended for *borstal training.*

179 were sent for borstal training.

3 were sent to a Y.P. centre (imprisonment).

14 were sent for detention centre training.

4 received suspended sentences.

36 were placed on probation.

12 were fined.

6 were given a conditional discharge.

1 was bound over and deported.

120 lads were recommended for *detention centre training.*

96 were sent for detention centre training.

1 was sent for borstal training.

1 received a suspended sentence.

1 received attendance centre training.

12 were placed on probation.

6 were fined.

2 were given a conditional discharge.

1 case dismissed (changed plea).

5 lads were recommended *Y.P. sentences.*

2 were sent to Y.P. centres (imprisonment).

2 received suspended sentences.

1 was placed on probation.

9 lads were recommended for Home Office approved schools.

8 were sent for H.O.A.S. training.

1 was sent for borstal training.

9 lads were recommended for *suspended sentences.*

8 received suspended sentences.

1 received a conditional discharge.

207 were recommended for *probation.*

136 were placed on probation.

4 were sent for borstal training.

15 were sent for detention centre training.

1 was sentenced to an attendance centre.

10 were given conditional discharge.

34 were fined.

2 were bound over.

4 received suspended sentences.

1 was given one day's imprisonment (immediate release).

31 were recommended for non-custodial measures (i.e. to respond to such leniency as the Court may offer).

1 was sent for borstal training.

1 received a suspended sentence.

5 received a conditional discharge.

17 were fined.

6 were placed on probation.

1 was sent to a Y.P. centre (imprisonment).

The survey shows some measure of agreement between Ashford recommendations and the sentences of the Courts. Analyses also indicate that such reports can reduce the period a young man spends in custody, assists the lower Courts in selecting a sentence (considering the recommendation) in keeping with both the needs of society and the individual, also it assists in ensuring that the High Courts are not bedevilled with cases that could have been adequately dealt with in the lower Courts. It must, therefore, follow that committals to custody for Quarter Sessions or Assize often for lengthy periods, are reduced. Even if a custodial sentence is recommended time is saved by the report being immediately available for the High Courts.

During the life of Ashford we have had no reports rejected and all Courts seem willing to consider our advice although not always accepting and acting thereon. The importance Courts place on such reports is shown in that during 1968 some 3,000 reports were requested and submitted.

There are indications that with the increase generally in crime and current Ashford remand intake figures, we shall supply during 1969 an additional 500 reports to Courts above the 1968 figures.

In 1970, *Messrs. Routledge & Kegan Paul Ltd. will publish Mr. Glover's book* Responsibility *in their series "The International Library of Philosophy and Scientific Method". This extract appears by special permission of author and publishers*

Punishment and Responsibility

JONATHAN GLOVER

I. Theory of Punishment

If an ox gore a man or a woman, that they die: then the ox shall be surely stoned . . .— *Exodus.*

A sow, mutilated and dressed in human clothing, was hanged at Falaise in 1386 for biting a child, and three years later a horse was hanged for killing a man at Dijon. In 1454 the Bishop of Lausanne initiated legal proceedings against the leeches which had infected the water at Berne. And in 1474 a cock was burned for having committed a crime against nature and laid an egg. Animals were often considered responsible for sexual offences committed upon them by human beings and were even tortured to elicit groans which were accepted as confessions . . . and as late as 1685 a bull was whipped "to punish it for having assisted heretics".—Christopher Hibbert: *The Roots of Evil.*

TO SOME CRITICS of present methods of dealing with those who break the law, the discussion of how best to determine someone's responsibility for his act seems unnecessary and unproductive. It is sometimes said that the whole conception of punishment is bound up with barbaric ideas of retribution and should be replaced by a "medical" approach that sees crime as a kind of social disease, to be treated rather than avenged. And it is claimed that within the context of this more enlightened attitude, questions of responsibility will not need to arise. Such claims must be attractive to any humane person who considers the past, and present, of the social institution of punishment. It is artificial to discuss questions of legal responsibility in isolation from questions about the purpose of legal punishment and the possibility of realising them by other means.

All States have a penal system: an official mechanism designed to inflict suffering or deprivation on those who break the law. Many people take it for granted that such suffering is inevitable, and for them discussions of the "justification of punishment" are redundant. But others, while accepting the need for punishment, are led by their concern for its effectiveness to make explicit the aims they wish it to realise. Yet others are disturbed by any deliberate infliction of suffering and demand that it should be justified

before they will give it their approval. The problem has traditionally been considered mainly in terms of choosing between the rival claims of retributivists and utilitarians. It is said that a retributivist is one who considers that it is in itself desirable that wrongdoing should be followed by appropriate suffering. We are told that utilitarians, on the other hand, only support punishment where it is justified in terms of reforming the criminal or of deterring other potential criminals, to the extent of sometimes supporting the punishment of innocent people.

But the debate has gradually come to be conducted on a higher level of sophistication. It has been pointed out[1] that there are views that could be called "retributivist" which are compatible with other views that could be called "utilitarian". One could support a retributivist account of the meaning of the word "punishment", such that the infliction of suffering upon the innocent would not count as punishment. And this would be compatible with taking a utilitarian view of the problem of which kinds of acts should be forbidden and thus punishable. But, as critics of such attempts at reconciliation have pointed out, there are many retributivists who hold the moral view that retribution is desirable for its own sake, instead of, or in addition to, holding the retributivist definition of punishment. And their view is still incompatible with utilitarianism. There is also the difficulty that some versions of the utilitarian doctrine do seem capable of justifying the infliction of suffering on the innocent and, whether or not it is called "punishment", this remains a serious objection to those doctrines.

The sophistication of the discussion has also been increased by distinguishing between various different moral questions to which retributivism and utilitarianism are among the rival answers. Professor Hart[2] has argued persuasively that "different principles (each of which may in a sense be called a 'justification') are relevant at different points in any morally acceptable account of punishment. What we should look for are answers to a number of different questions such as: What justifies the general practice of punishment? To whom may punishment be applied? How severely may we punish? In dealing with these and other questions concerning punishment, we should bear in mind that in this, as in most other social institutions, the pursuit of one aim may be qualified by or provide an opportunity, not to be missed, for the pursuit of others". Hart goes on to argue, in the context of the questions he singles out, that one can with consistency give a utilitarian justification of the general practice of punishment and at the same time support the principle of "retribution in distribution": the principle that we may punish only an offender for an offence.

Along with an increasing awareness of the variety of questions that must be answered if any particular

penal system is to be justified, there is an awareness of the variety of moral considerations that may be invoked in the answering of any one of them. It seems less and less helpful to discuss penal policy in terms of the crude categories of retributivism and utilitarianism. It is no doubt unprofitable to attempt to discuss, or even to list, all the possible reasons that could be advanced for punishing people. The pleasure given to sadists by the thought of criminals being punished is, after all, a possible reason for supporting various penal measures. But it is worth noting the variety of aims and principles to be found if one examines some of the main ones that could plausibly be advanced in a discussion of punishment among men both humane and rational. Adding one extra distinction to those mentioned by Hart, we can separate four central questions. What aims justify having the social institution of punishment? What methods of punishment should we use? How should we determine the amount of punishment appropriate in a given case? Whom should we punish?

1. Punishment as a Social Institution

In considering the general justification for having the social institution of punishment, it is easy to assume perhaps too readily that an adequate justification can be found. Many in the anarchist tradition are unpersuaded that this is so: either on the grounds that social rules are alien to the good society, or on the grounds that rules need to be backed by penal sanctions. Those who dismiss this view as absurdly unrealistic should ask themselves what grounds they have for doing so.[3] And if the anarchists seem insufficiently hard-headed, we can turn to Bentham and remember his insistence that there is a class of cases where punishment is needless because the purpose it serves can be equally well achieved by other means, at less cost in human suffering. Bentham's own example of this is any case where "instruction" will be as effective as "terror". To ask for a justification of punishment need not be to presuppose that there is one.

One attempt to justify punishment consists in an appeal to retributive justice. On this view, it is fitting that those who have done what is forbidden should have the suffering they are said to deserve. It is argued that anything other than this would show a disregard for justice. Among objections urged against retributivism are that "retribution" is a polite name for revenge, which is more generally recognised to be evil, and that retributivism exhorts us to cause suffering that benefits no one. But a determined retributivist may say either that revenge is not an evil, or else that retribution can be an impersonal affair without the emotions of hatred and pleasure that combine so unpleasantly in revenge. To the other objection he may simply reply that while retri-

bution may benefit no one, it is not pointless since it is the only means of doing justice. The dispute over this matter seems to be one of the relatively rare cases where there is a clash between two moral views so basic that between them no argument seems possible. The retributivist can only wait in hope that his opponent may in time have an intuition of the justice of retribution. His opponent can only point to the suffering that occurs in the name of retribution, and ask if it is really worth while.

Another reason sometimes advanced for having a penal system is that legal punishment provides a means whereby society can express its feelings of outrage at acts it finds particularly offensive. Durkheim (who was attempting an explanation rather than a justification) said that "an act is criminal when it offends strong and defined states of the collective conscience". And he went on later to say that "punishment consists, then, essentially in a passionate reaction of graduated intensity that society exercises through the medium of a body acting upon those of its members who have violated certain rules of conduct.[4] Some who accept Durkheim's approach to punishment see the passionate reaction as consisting in retribution, and their view has already been noted. But others argue that it is right that we should punish offenders, not because retribution is desirable, but because, as Lord Denning put it: "The ultimate justification of any punishment is not that it is a deterrent but that it is the emphatic denunciation by the community of a crime".[5] This "denunciatory" justification of a penal system is in need of elucidation. Is denunciation an end in itself, or is it a means to some further end, such as reducing the number of crimes committed? If the latter, it is not an alternative "justification", but a view of the means by which one can best realise the utilitarian ends to be discussed below. But if denunciation is an end in itself, it appears either not to justify punishment, or else not to be distinguishable from retribution. For denunciation need not take the form of inflicting suffering on the offender.[6] If we wish to denounce a murder, we could arrange for the Archbishop of Canterbury or the Prime Minister to appear on television and on behalf of the community express feeling of outrage, instead of adding to human misery by sending the murderer to prison. But if it is insisted that the denunciation should take the form of the infliction of suffering, this seems to be merely the retributive theory in disguise.

The utilitarian argument in favour of a penal system is that it is an attempt to reduce the number of times the rules of laws of a society are broken. Here, punishment is thought of as having an effect either upon convicted criminals or upon potential ones. The punishment is intended to reform the criminal by making him see the error of his ways, or by making him

afraid of the consequences of further crime. Or it is intended simply to prevent him, by locking him up, from breaking the law during the period of punishment. Or else it is thought that potential criminals will be persuaded of the wickedness of the offence or be made to fear the consequences of crime. These utilitarian aims are rarely criticised as being in themselves undesirable. Criticism normally takes the form either of saying that they are realised at too high a price, or else it comes from the retributivists and others who say that these should neither be the only aims, nor the main ones, of a penal system.

Among other justifications sometimes advanced is the need to avoid the public taking the law into its own hands. It is suggested that if no system of punishment were institutionalised in a society, feelings of outrage at the breaking of rules would lead to lynch law. This unofficial retaliation is either regarded as evil in itself, or else as evil because the "punishments" would be harsh or unjust, or else as evil because likely to lead to social disintegration. A parallel argument is sometimes brought forward, not to defend institutionalised punishment as such, but to defend the legal prohibition (and hence punishment) of particular kinds of action. The force of either of these arguments depends on the extent to which in a particular society the danger of such unofficial reprisals is a real one, and this is not a question to which there is an a priori solution.

Whether or not one supports the existence of the institution of punishment should depend on the extent to which one thinks that one or more of these aims is worth realising, and upon the extent to which one thinks that such aim or aims can be realised without the sacrifice of other considerations one minds about more. On some moral views, the deliberate infliction of suffering is too high a price to pay for any benefit.

2. Methods of Punishment

It has sometimes been supposed that arguments in support of society's right to punish criminals are sufficient to justify whatever penal apparatus happens to be in existence at the time. But it is possible to approve of punishment without defending tortures, executions or even prisons. In considering arguments as to the rights and wrongs of particular methods of punishment, one need not dwell for long on the defence of various methods, for this will consist in claiming that they effectively realise one or more of the various general aims already discussed. Thus it may be claimed that heavy fines are an effective deterrent for some offences, or that capital punishment is an especially appropriate form of retribution for murder, since it "fits the crime". Or it may be said that probation has a better record of reforming criminals than some other penal methods.

But considerations not already touched upon can be invoked in

criticism of techniques of punishment. One can appeal to the humanitarian principle that some punishments are too cruel to use, however effective they may be. This is perhaps the argument that most people would use against torture, and could without absurdity be invoked against capital punishment, corporal punishment or imprisonment. Notoriously, capital punishment is uniquely open to the objection that no redress is possible where a person punished turns out to have been innocent. Then there is the suggestion that some punishments are too degrading to the offender for their use to be permissible. This could be said of any of the punishments just mentioned, and is an objection that could be urged very strongly against any punishment that derives part of its force from the fact that it takes place in public. Some punishments, notably capital or corporal punishment, but perhaps also imprisonment, could be opposed on the grounds that they are bad for those whose job it is to administer them. (Would you wish your daughter to marry someone who made his living by hanging or flogging people?) There is also the objection that some punishments are harmful or degrading to people who neither suffer nor administer them. I can remember that, when I was aged about 10, children at the school I was at took great interest in executions, and would discuss them with subdued excitement, especially as the announced time of some particular execution drew near.[7] One needs little imagination to see the force of this as an objection to capital punishment.

Another insufficiently considered objection to some forms of punishment is that they bring suffering to people other than the offender. The life of a wife of a man in prison is likely to be one of loneliness, shortage of money, and sexual deprivation. She may be a victim of social stigma, and she is likely to be distressed by the suffering of her husband.[8] Wives are not the only relatives to suffer. One can imagine what it must be like to be the child of a man in prison, although we cannot yet calculate the long-term harm done to such a child. But perhaps capital punishment is most open to this objection: the period before an execution must be one of unspeakable suffering for the parents, wife or children of a condemned man.

Whether or not one supports a particular method of punishment should depend on the extent to which it realises the penal aims one supports, on the extent to which it is open to objections one minds about, and on the extent to which other methods would either realise one's aims better or be less open to the objections. Some current penal methods may turn out both to be open to many moral objections and to be ineffective when judged by their own aims.

3. The Amount of Punishment

Justifications of inflicting a particular amount of punishment on

someone normally appeal to the general aims of punishment. The familiar aims of retribution, denunciation, reform, deterrence and the others appear again. It is suggested that any less punishment would be insufficient retribution. Or it would be an inadequate denunciation, or not enough to reform him, or to deter others, or to protect him from unofficial retaliation. There is the additional principle, sometimes invoked, that like cases should be treated alike, so that if a man was given five years prison last week for this very crime, it would be unjust to give this man only two years. This principle can equally be used to criticise a sentence as being too severe.

There are various principles that can be invoked to criticise the severity of a punishment.[9] It can be criticised on grounds of retributive justice, as being more than is deserved, either by the wickedness of the act or by the harm done. Then there is the humanitarian principle that some amounts of punishment are too great to be given. Or there is the principle that some amounts of punishment are wrong because they cause too much suffering to the innocent family of the criminal. Then there is the utilitarian view that one should always use the minimum punishment needed to realise one's aims, and that the suffering caused by punishment should in no case exceed the suffering it prevents. It is also said that too great a punishment frustrates the aim of reforming the criminal.

It is sometimes suggested that retributive principles, whether used to set a maximum or a minimum limit to punishment, are especially open to the objection that there is no objective measure of retributive appropriateness.[10] But this objection seems to hold equally against any utilitarian rule intended to specify how much punishment is appropriate. There are two different questions that must be answered in order to deal with this problem: there is the question of the relative amounts of punishment that should be given for different offences, and the question of the absolute amounts to be given. Thus, if we agree on the relative question, say that a man should be fined twice as much for his second conviction for tax evasion as for his first, there is still the question of how much he should be fined in either case. The retributivist has to answer these questions by invoking two intuitions. But the utilitarian also has to answer these questions. He must do this on the basis of judgements as to the amount of suffering caused by such crime, the amount caused by the punishment, and the extent to which the punishment will reduce the frequency of the crimes. It is only this last judgement that can in principle be made without any degree of arbitrariness. The powerful objections to retributivism are moral ones, and do not concern quantification. Difficulties about measurement are not unknown to utilitarianism.

4. An Approach to Punishment

The fourth question to be discussed ("whom should we punish?") is the one most closely related to the topic of responsibility. It is possible, before examining this last question, to outline an approach to punishment in the context of which to discuss questions of legal responsibility.

Traditional utilitarianism sought to resolve all moral questions into matters of whether or not certain acts or institutions were more likely than any possible others to bring about the goals of maximizing happiness and minimizing suffering. Criticisms of this doctrine are often practical ones. There are difficulties in measuring happiness, in comparing different kinds of happiness, in comparing the happiness of different people, and in predicting the consequences of one's actions. These practical difficulties are real, but they are perhaps not always as daunting as is sometimes thought. That happiness cannot be measured precisely does not seem a very formidable objection to the view that it would be increased if we produced and distributed enough food for everyone to have enough to eat. But there are other familiar criticisms of utilitarianism, of a more fundamental kind. These are moral criticisms, made from the standpoint of other values, such as justice, freedom, or the sanctity of life, that are held to have an importance that is independent of their contribution to human happiness.

The moral objections to utilitarianism may make one reluctant to say that the maximizing of happiness should be the only goal of social policy. But it is possible to propose a much weakened version of utilitarianism, that is sufficiently modified to meet many of these objections. The modified doctrine would accept that moral appraisal of institutions or actions ought to be based solely on whether they benefit or harm people. (Though even here, in order to allow room for moral objections to cruelty to animals, "people" should perhaps be modified to "conscious beings".) But "benefit" and "harm" need to be interpreted more widely than the traditional utilitarian terms "happiness" and "suffering", or than the even narrower "pleasure" and "pain". Among subscribers to this doctrine there can be many disagreements, for there are great differences of opinion as to what benefits people. Pleasure is not the only benefit. We may also think that people benefit from having a large area of freedom, from living in a society where they treat each other as equals, and from having their individuality respected. But despite its tenuous links with the older, purer utilitarianism, and despite the variety of approaches compatible with it, this modified doctrine is not completely vacuous.

In this relaxed form of utilitarianism, there would be room for ideas of distributive justice. It can be argued that when someone is given an unfairly small share of some benefit being distributed, there

is a further harm done to him over and above that which would be calculated merely by measuring the amount of the benefit he has lost. There would also be room for retributive justice, in some of its forms. It can be argued that unfair punishment harms the victim in a way that is independent of the suffering normally involved in imprisonment or whatever the punishment happens to be. No doubt the nature of the harm involved in these two kinds of unfairness is in need of elucidation, yet one can see the possibility of making a case for its existence. But it is hard to see how the more aggressive forms of retributive justice could be accommodated within this doctrine. It seems entirely unplausible to suggest that anyone is harmed by a state of affairs where adequate retributive suffering is not administered to some wrongdoer. People may sometimes be harmed by a refusal to treat them as responsible agents. But it is hard to believe that treating someone as a responsible agent must involve inflicting retributive suffering on them.[11]

What kinds of penal principles would be compatible with this modified utilitarianism? There is no place for retribution as a general aim justifying the institution of punishment. The reduction of the crime rate is clearly a possible justifying aim, as is the avoidance of unofficial retaliation. But both these aims are subject to the familiar utilitarian qualifications. We are only justified in punishing where there are good grounds for supposing that we are doing less harm than we are preventing. And this can only be the case where, as well as other conditions being satisfied, there is evidence that abolition of punishment for a particular offence would significantly increase either the frequency of the "crime" or else the probability of unofficial retaliation. And so it seems that serious acceptance of this approach to punishment would involve a willingness to experiment far more boldly than we do now. One relevant experiment would be to refrain from punishing a crime for a trial period to see how much difference to the crime rate this made. If total suspension of punishment for a crime was found to increase its frequency, there would then be room for a further experimental period in which punishment was administered, but in smaller doses. Only by means of such investigations can we be sure that we are not inflicting pointless suffering.

There is the further utilitarian restriction that punishment is only justified where there are good grounds for thinking that, as a method of achieving the aims in question, punishment causes less harm than any other equally effective method. Serious acceptance of this restriction would involve being ready to experiment with other methods, such as taking more seriously the possibilities of educating people to see the undesirability of various crimes.

For this we could make use both of schools[12] and of the mass media. We could also change those features of the social environment that seem to stimulate crime.[13]

The view that punishment is a necessary feature of any practically possible human society seems needlessly dogmatic. There is no adequate evidence that human nature is so static that we cannot devise a society in which prohibitions backed by sanctions would be redundant. But it must be admitted, preferably grudgingly, that we do not now live in such a society. We are sufficiently willing to harm each other in pursuit of our own ends for restraining sanctions to be necessary. It is in this context that the aims of a penal system must be considered. In a system guided by the utilitarian principles mentioned, the question of punishment only arises in restricted classes of cases. These are those where the most effective method of making someone give up crime is unpleasant, or at least unwanted by the offenders, or where the offender is too dangerous to let loose, or where the punishment is aimed at deterring others. (For practical purposes in many communities one other type of case can be left on one side: that in which punishment might be administered to prevent unofficial retaliation.) And it is possible that increasing knowledge derived from experiments in doing without punishment, or in finding substitutes for it, will reduce the number of cases where punishment is permissible.

5. Manipulation

A frequently voiced objection to utilitarian social policy is that it appears to involve manipulation of people. In the type of policy mentioned here, the danger of manipulation comes in at two points. There may seem a hint of Brave New World in the proposal to experiment in teaching children the undesirability of various crimes. And there is perhaps a sinister sound to the proposal that punishment should often be replaced by alternative methods of treatment.

The importance people attach to being treated as responsible agents underlines some of the apparently more paradoxical objections to utilitarianism, as when critics talk of a criminal's need or right to be punished. This is one of the anti-utilitarian themes in Dostoyevsky's portrait of Raskolnikov, where we are persuaded that he feels an overwhelming need to expiate his crime by undergoing punishment. One may come to think this merely part of Dostoyevsky's private world, described with such power that one momentarily took it to be how the real world is. Philosophers have pointed out that there is something paradoxical in a desire for punishment of which most criminals are unaware, or a right to it which most of them would willingly forgo. But this dismissal is too brisk. While no doubt few people desire punishment, many are distressed if not treated as responsible agents. A refusal to punish someone can constitute a denial of his status as a

responsible agent. A team of Massachusetts psychiatrists wrote about a convicted murderer: "We find Mr. Cooper an interesting challenge in addition to being genuinely interested in him as a human being. Our impression is that he is quite treatable and might some day be a useful member of society".[14] To see someone as "treatable" or as "an interesting challenge" may be well intentioned, but it is not to see him as one's equal as a responsible agent. It is intelligible that people who are not mentally ill should sometimes prefer punishment to this sort of patronising humanitarianism.[15]

But when some methods of preventing crime other than by punishment are described as "manipulation", it is unclear exactly what this charge comes to. Criticisms of advertising, propaganda, bribery, blackmail, "behaviour therapy" as a treatment for neurosis, and of Brave New World, often take the form of accusations that people are being manipulated. But, if rational discussion of these matters is to be sustained, it is necessary not to allow the emotional overtones of the word "manipulation" to blind us to its diversity of application.

One type of manipulation can easily be described. This involves influencing someone's behaviour in such a way that he has no means of knowing what is causing him to act in the way he does. To make a man do something by means of subliminal advertising, post-hypnotic suggestion or certain types of drug is normally to manipulate him in this way. While it is true that someone with great experience of post-hypnotic suggestion or subliminal advertising may be able to guess that one of these is responsible for an apparently random impulse he feels, the great majority of people are unused to these techniques and without being told, have no means of detecting their influence.

A milder form of manipulation includes all other kinds of non-rational persuasion. Much propaganda and normal advertising falls under this category, as does "behaviour therapy": the application of conditioning techniques in an attempt to alter a pattern of behaviour. The type of persuasion in question is non-rational in that no attempt is made to argue that what is advertised is helpful to people: instead, associations are created in people's minds that in no way reflect real causal or logical relationships. When posters advertising cigarettes depict love scenes, or election notices bear photographs of a happy family enjoying a picnic, the means of persuasion are similar in principle to behaviour therapy. When the behaviour therapist attempts to stop someone smoking by making him sick every time he has a cigarette, the treatment is on the basis of a purely non-rational association: there is no suggestion that in daily life cigarettes are likely to cause sickness. This is also true of the very different association that the cigarette advertiser wishes to create. In real life smoking no

more brings about sexual gratification than politicians bring about picnics. The advertiser is not like someone who makes a false claim in a discussion: the type of advertising under consideration is manipulation because no claim is specifically made. The advertiser hopes the association will be made, but not consciously subjected to examination.

Sometimes accusations of manipulation refer not to the method of persuasion but to its aim. To persuade someone to act in a certain way by means of blackmail is a kind of manipulation, but it is not included in either of the categories mentioned above. A man influenced by blackmail is normally aware of this influence, and the persuasion is in one sense perfectly rational. The association he makes between refusal to obey the blackmailer and subsequent physical assault or public disgrace may correspond exactly to the facts of the situation: the blackmailer may carry out his threats. The key feature of this form of manipulation is not that the actions advocated are not rational means to the ends of the agent, but rather that the agent is provided with new ends in order to further the aims of the manipulator. The blackmailer furthers his own aims by providing his victim with a new end: that of avoiding the threatened unpleasantness.

This kind of manipulation is not only to be found in cases of blackmail or bribery. There are many other ways in which someone can further his own aims by providing other people with new objectives. This is perhaps the main feature that distinguishes indoctrination, from education. An educator is not debarred from putting forward his own views, or those of his party or church, but his long term aim will be to further the child's own interest by providing him with the critical equipment to judge those views for himself. An indoctrinator, on the other hand, puts first his own aim of propagating a particular set of views and tries to instil into the child the pattern of values and aims he considers desirable, giving at best a lower priority to the development of powers of critical thought. It may be objected that indoctrination is often carried out by people who believe that it is in the best interests of the person they are indoctrinating. If one considers one knows the truth about religion, morals or politics, one may think that the end of communicating this truth can justifiably be given first priority, and hence that the development of critical thought is of lesser importance. But even where the aims of the indoctrinator are altruistic, they are still his own aims, and not (at least before the indoctrination) either the present aims of his victim, or a way of realising those present aims. It is true that educators are concerned with stimulating people to adopt new aims, as well as with imparting means of realising present ones. But in accordance with the priorities that distinguish him from the indoctrinator, the educator prefers

a rationally argued rejection of the profferred new aims to an uncritical acceptance of them. He is primarily concerned to help people discover what they want to do, while even a benevolent indoctrinator will put other aims of his own first. High-minded indoctrination is still a kind of manipulation.

It is a distaste for this third kind of manipulation that underlies much criticism of advertising. Some advertising that is neither subliminal nor based on non-rational associations is still open to the charge of manipulating people by creating in them for commercial gain desires that they would not otherwise have. The suggestion is that advertisements do not merely provide us with information about the different products we can buy, but often also deliberately create artificial or "synthesised" wants for products that do not satisfy any of our natural desires.[16] This view as it stands is open to the objection that there is no clear way of distinguishing between wants that are natural and wants that are artificial, and to the further objection that, if there is such a distinction, there seems no reason to suppose that the creation of artificial wants is of itself undesirable. It has been pointed out that the desires for sanitation and for museums are in their different ways created rather than natural wants.[17]

But the opposition to this kind of advertising need not rest on any dubious distinction between natural and artificial desires. The central features that makes this advertising a kind of manipulation is that it creates desires that were not previously present (but not therefore any less "natural") for the commercial gain of the advertiser. It is in aim that advertising is distinguished from the education that creates new desires for sanitation or for museums, or a new desire to see *King Lear*. If the main aim of the advertisement was to benefit the public by providing them with a new desire to try a novel form of biscuit, this would not be manipulation. But it is, because the purpose of creating the new desire is to further the aims of someone else. The educator is distinguished both from the indoctrinator and the advertiser in that his main aim is to show people what can be gained from, say, *King Lear*, so that they are in a position to make an informed choice as to whether this is the kind of play they like. He does not have as his main aim the creation of large audiences whenever *King Lear* is performed.

From the description of only these three varieties of manipulation, one can see that it is unplausible to suggest that all manipulation of people is to be avoided at all costs. It is hard to see what reasonable objection there could be to voluntary submission to the non-rational persuasive techniques of behaviour therapy in order to cure one's neurosis. Objections are more plausible where the conditioning is not voluntarily undertaken. One may object either on the grounds of disapproving of what people are being persuaded of or to do, or else

on the basis of a belief in the desirability of persuasion being carried out openly and rationally. Objections to the form of manipulation that involves giving new desires or ends to someone else in order to further one's own aims are likely to be based on some principle similar to Kent's: "all rational beings come under the law that each of them must treat itself and all others never merely as means, but in every case at the same time as ends in themselves".

In the modified utilitarian approach to punishment proposed here, it would be possible to build in restrictions to operate against all those kinds of manipulation that harm people.[18] If one thinks, as one surely can, that it would be harmful to children (or adults) if they were made to hold moral beliefs by means of drugs, hypnosis or subliminal advertising, it is possible to argue from within this version of utilitarianism against experimenting with these techniques. One might also, on similar grounds, restrict the use of other, less hidden, non-rational techniques of persuasion, such as behaviour therapy. (Though one may sometimes feel that some non-rational means of persuasion are sufficiently harmless to be legitimate, or alternatively that the objections to some forms of crime are stronger than the objections to non-rational persuasion.)

The third type of manipulation mentioned involves giving someone new aims in order to further the aims of someone else, as in blackmail and in some types of indoctrination. This is the kind of manipulation that may involve breaking the rather obscure Kantian rule that we should never treat people "merely as means". It is sometimes suggested that the replacement of punishment by other forms of treatment is a policy open to criticism on these grounds. If this objection is well founded, it is necessary to weigh up the benefits to be gained by the policy, and to decide whether or not the use of these means would be too high a price to pay.

But, when the proposed policy is compared to that followed at present, the objection that it would involve this form of manipulation seems artificial. For our present policy is at least as much open to the same criticisms. At the moment, we send a man to prison, not in order to benefit him, but in order to provide him and others with new aims, which will benefit the public by reducing the number of crimes. And, if the compulsory treatment proposed by the utilitarian is hedged about with restrictions on the types of non-rational persuasion permitted, it can hardly be said that we are treating the offender *merely* as a means. And, if the objection is that we should never treat people even partly as a means, this seems to say that under no circumstances should we ever to any degree sacrifice one person's interests to those of a greater number of people. But this moral principle, which would involve opposing the detention of a dangerous murderer against his will, is unlikely to commend itself to many.

II. Principles of Responsibility

Lord Hewart (*Lord Chief Justice during the 1920's*) suggested that the medical enquiry should be concerned only with a single, simple question: "If this condemned person is now hanged, is there any reason to suppose from his state of mind that he will not understand why he is being hanged?"—Nigel Walker: *Crime and Insanity in England.*

6. WHOM SHOULD WE PUNISH?

Given the existence of a penal system and its techniques of punishment, what arguments can be invoked to defend the punishment of a particular person? Such a defence normally cites the aims used to justify punishment as an institution. Where someone has broken the law, people argue for his punishment on the familiar grounds of retribution, denunciation, reform, deterrence or the need to avoid unofficial retaliation.

But some penal theorists who are willing to justify punishment by appealing to one or more of these aims are unwilling to allow the unrestricted pursuit of any of them and thus propose principles restricting the application of punishment. Several of the above aims would allow or encourage punishment (or perhaps "punishment") of people who have not broken the law.[19] The aim of making a person fear to commit future crime might make us "punish", not only convicted criminals, but also those who seem very likely to become criminals. Already psychological tests given to children at the age of five or six are proving remarkably successful at predicting who will grow up to be a frequent lawbreaker.[20] It seems quite possible that future research might show that "punishment" administered at some crucial stage of emotional development, before any crime had been committed, as a warning of what would follow any detected lawbreaking, would be an effective deterrent. (Whether or not it actually did so might depend on the type of "punishment" used: some present punishments perhaps lead to resentment rather than to fear of repetition, let alone to any kind of "reform".) And where the "punishment" took the form of loss of liberty, this would effectively prevent the potential criminal from most kinds of lawbreaking during the period of his sentence. As mentioned in a previous chapter, "punishment" of the innocent might help in reducing the number of crimes committed by others. It might do this by increasing the general fear of being caught or of being punished, or by helping to convince potential criminals of the wickedness of the offence. Or it might succeed by other means, as when the relations of a criminal are officially "punished", as well as the offender himself. This technique is thought to provide potential criminals with an even stronger motive for obeying the law: during the second world war, sanctions were applied to the

relatives of Russian soldiers taken prisoner by the enemy, in order to give the soldiers a further motive for avoiding capture. It might also be argued that there should sometimes be "punishment" of an innocent man who was widely thought to have broken the law, in order to protect him from unofficial retaliation.

With arguments of this sort in mind, some of those who oppose the legal infliction of suffering on innocent people have proposed the principle of "retribution in distribution", according to which legal punishment may only be given to an offender, and then only for an offence which he could help committing. Such a principle can be defended either on the grounds of justice, or else on the grounds that it leads either to some general social benefit or to the avoidance of some undesirable state of affairs.

Professor Hart has argued for a principle of this kind on both these grounds. His appeal to justice is stated as a "doctrine of fair opportunity", which says that "unless a man has the capacity and a fair opportunity or chance to adjust his behaviour to the law its penalties ought not to be applied to him".[21] Here the relevant conception of fairness is a retributive one, but this doctrine is quite independent of the view that retribution is one of the justifying aims of a penal system. It is also independent of another retributive principle that clashes with even a modified utilitarianism: the principle that no one who has voluntarily broken the law should be allowed to escape punishment.

The other type of argument used here by Hart appeals to considerations of general social utility rather than to any principle of justice. He says that "the system which makes liability to the law's sanctions dependent upon a voluntary act not only maximises the power of the individual to determine by his choice his future fate; it also maximises his power to identify in advance the space which will be left open to him free from the law's interference. Whereas a system from which responsibility was eliminated so that he was liable for what he did by mistake or accident would leave each individual not only less able to exclude the future interference by the law with his life, but also less able to foresee the times of the law's interference".[22] Hart also says that our present system of responsibility is one in which "even if things go wrong, as they do when mistakes are made or accidents occur, a man whose choices are right and who has done his best to keep the law will not suffer. . . . Our system does not interfere till harm has been done and has been proved to have been done with the appropriate mens rea. But the risk that is here taken is not taken for nothing. It is the price we pay for general recognition that a man's fate should depend upon his choice and this is to foster the prime social virtue of self-restraint".[23]

Hart says that underlying these points is the important general principle that in human society we

interpret each other's movements as expressions of choices, and it is of crucial importance to social relationships whether, for example, a blow was deliberate or involuntary. He says: "If as our legal moralists maintain it is important for the law to reflect common judgements of morality, it is surely even more important that it should in general reflect in its judgements on human conduct distinctions which not only underly morality, but pervade the whole of our social life. This it would fail to do if it treated men merely as alterable, predictable, curable or manipulable things". Hart recognises that the arguments for the principle of retribution in distribution need not persuade us to accept it as a principle that should not in any circumstances be infringed, for he reminds us to recognise cases where it secures minimal benefits at too great a social cost.

The general underlying principle that Hart cites in defence of the requirement of mens rea is obscure. It is true that we do in social life attach importance to the intentions underlying actions, and that it is on these for the most part that our reactive attitudes depend. But it is surely unplausible to suggest that the law should be guided by certain distinctions simply because they "pervade the whole of our social life". It seems more reasonable to suggest that people should be treated as much as possible as responsible agents because this is in itself desirable, rather than because such treatment is deeply ingrained in other areas of our social life. And the ambiguities of speaking of treating people "merely as . . . manipulable things" have already been mentioned. It does not seem that all forms of manipulation are in themselves objectionable. And, as with the similar Kantian point about not treating people merely as means, it is unclear just how much consideration one has to give to interests of the person being manipulated before one stops treating him as "merely manipulable".

But despite these difficulties, one can make out a case for the principle of retribution in distribution, not only by invoking Hart's other persuasive arguments, but also by arguing that to abandon it would involve objectionable forms of manipulation. The principle can be seen as a crucial safeguard against one way of treating people merely as means rather than as ends in themselves. If we have to retain punishments for some offences, and if the alternative of compulsory treatment is in some cases either unpleasant or unwanted, there is need to protect people from being arbitrarily subjected to such treatment without giving them any opportunity to avoid it. We are not manipulating people, treating them merely as means, if we make it clear that in general they will only have to submit to punishment or reformative treatment as a result of actions they have freely chosen to perform. It may be that with some crimes the social grounds for a system of strict

liability, flouting the principle of retribution in distribution, will be too strong to ignore. But if one cares about treating people not merely as means, one will place the onus of argument upon the defenders of strict liability in any given case.

It has been suggested by Dr. Nigel Walker[24] that it is a mistake to think of the principle of retribution in distribution as a "morally binding principle", but that we should rather think of it as a "practically desirable one". He says that "it is important to realise that the strongest case for this sophisticated form of retributivism is not that to breach it occasionally is unthinkable or morally insupportable, but that to abandon it completely is politically out of the question". Walker's argument for denying that the principle is morally binding is based on instances where we feel entitled to disobey it. If we have extremely good reasons for supposing that a man will murder or mutilate someone, we are prepared to impose detention on him although he has not yet broken the law. Walker says that at present we deal with such cases by a kind of "double-think". If the man is mentally abnormal, we have him detained in a mental hospital, and salve our consciences by saying that mental hospitals are not part of the penal system. Or if he is too sane for this, we wait for him to commit some technical "breach of the peace" and then have him "bound over to keep the peace". Walker points out that we also often penalise negligence, even where this has caused no harm, as may be the case where someone is punished for driving without due care and attention. And there are the offences of strict liability, so that a shopkeeper, for example, commits an offence if he sells adulterated food even if he has no way of telling that it is adulterated, as in the case of tinned food.

But these instances need not lead us to Walker's conclusion that political considerations are the main justification for obeying the principle of retribution in distribution. In the first place it is necessary to distinguish between the different types of case where Walker claims the principle is breached. It can be argued that the punishment of negligence, unlike offences of strict liability, can be reconciled with Hart's principle. If I drive a car without due care and attention, I am not in the same situation as a shopkeeper selling tinned food that is adulterated, for I am in a position to conform to the law. It is not true that whenever one is negligent one cannot help being so.[25] And, turning from negligence to Walker's most plausible example, the case of the potential murderer is surely just the sort of case Hart must have had in mind when he admitted that sometimes the high social cost of adhering to the principle might justify our not doing so. But this does not remove the principle from the realm of morality to the realm of political expediency. Walker presents us with the alternative that

we are dealing either with a "morally binding" principle or else with a "practically desirable" one. But it is not absurd to speak of a moral principle that admits of exceptions: all that is important is that one should be able to justify the exceptions on other moral grounds.

The question "whom should we punish?" brings up the problem of collective responsibility. It is possible to argue in favour of punishing someone, not because he himself committed the offence, but because he is a member of a group that is held to have done so. Thus it might be thought reasonable when giving out punishments for the Nazi crimes to punish any member of the German government of the period, or any very senior party official, even if there were no evidence that he took an active part in proposing or carrying out the policy of genocide. And some people go so far as to hold all or almost all the German people of the time responsible for that policy, and would perhaps have supported some collective punishment, had that been feasible.

Many people oppose any doctrine of collective responsibility on the grounds that it is unjust to blame or punish individuals who took no part in the action or policy carried out by other people who happened to belong to the same group. But it is important to distinguish here between the question of whether it is wrong to punish or blame people whose only crime was indifference or lack of opposition, and the separate question of whether it is wrong to blame or punish one person for the acts of another. The relatively passive senior Nazi official may be held to have been at least culpably negligent, if one considers that his position was such that he had either special knowledge of the policy or else a degree of influence that he should have used to oppose the policy. And whether or not one holds an ordinary citizen responsible may again depend on the degree of knowledge that one judges was available to him, and on the extent to which one thinks that the evil of the policy makes inactivity amount to culpable negligence. Where one thinks that the inaction of officials or of ordinary citizens amounted to culpable negligence on the part of each one of them then, collective responsibility raises no special difficulties of its own. It only raises special problems where it involves blaming or punishing a whole group of people, some of whom neither did what was wrong nor behaved in a culpably negligent way. In such a case, collective responsibility is open to criticism based on the principle of retribution in distribution. But in the former type of case, collective punishment is no harder to justify than individual punishment for actions or for negligence.

The view being defended here is that it is desirable not to "punish" someone either for a crime he has not committed, or for a crime that he could not help committing. This policy can be defended both on

grounds of justice and on the grounds, stressed by Hart, of maximizing freedom and of fostering self-restraint. But the principle that punishment should not be applied in such cases may come into conflict with the aim of reducing the number of crimes committed. Then one can only choose between the rival aims on the grounds of their relative importance in the situation in question. There are two key problems posed by this doctrine of retribution in distribution. One is this moral question of when there are sufficiently good social reasons for over-riding it. The other concerns the most appropriate mechanism by which a legal decision can be reached as to whether or not someone could help breaking the law.

7. Over-riding the Principle of Retribution in Distribution

It may be that, in very exceptional cases, a judge would be morally justified in over-riding the principle of retribution in distribution to the extent of punishing a man who has not broken the law. But such cases seem only likely to arise where there is a serious threat of lynch law. For the most part, the arguments against inflicting sanctions on the innocent will presumably be found very much stronger than any other considerations.

But, for legislators, the problem of when to flout the principle of retribution in distribution is more often a pressing one. The legislator has to decide whether or not to make a crime one of strict liability, so that some or all of the pleas made by saying "I could not help it" will not be recognised as excusing the offender from punishment.

There is a case for distinguishing here between pleas of no act and of unintentional act, on the one hand, and pleas of excusable intentional act on the other. Where either of the first two kinds of plea are made, unless the unintentional act is the result of negligence, there is a strong presumption in favour of adhering to the principle of retribution in distribution. Punishment in such cases is quite unfair, and only seems justified where the crime is very harmful, and where, at the same time, making it a crime of strict liability will considerably reduce its occurrence.[26]

Why might there not be the same presumption against punishing someone who can make a plea of excusing circumstances or of unalterable intention? For anyone who believes in the principle of retribution in distribution, there is a presumption against punishing anyone who could not help breaking the law. But, where the illegal act was performed intentionally, there may be stronger grounds than in other cases for flouting the principle. One reason for this can be seen by considering the numbers of persistent criminals who may act under the influence of some mental disorder, and could reasonably make a plea of unalterable intention. Mr. Tony Parker's classic description of "Charlie Smith" shows us a persistent offender who has never been

absolved from legal responsibility for his crimes, and yet who obviously has certain psychological incapacities.[27] Information about his inadequate upbringing, about his limited opportunities to find a tolerable way of life when coming out of prison, and evidence about his personality derived from interviews, all make it highly unplausible that Charlie Smith was open to persuasion to give up his life of petty crime. This impression is reinforced by his history, where eight convictions had resulted in total sentences of 26 years, with an average period of freedom between sentences of only 11 weeks. Charlie Smith seems far more representative of persistent offenders than one might suppose. Concluding a survey of 100 recidivist prisoners, Dr. D. J. West writes: "The incidence of psychiatric symptoms was much higher than anticipated. Ten per cent were or had been psychotic and a further 16 per cent had been admitted to hospital or discharged from the Forces on psychiatric grounds. Altogether, at least a third had a history of severe mental disorder".[28]

This raises a serious problem for supporters of the view that those who cannot help what they do should not be subject to legal sanctions. For, if Dr. West's sample is representative, about a third of the most persistent criminals who are caught stand some chance of being included among those who acted as the result of psychological disability. If we adhere very strictly to the principle that the law should not interfere in the lives of such people, we are likely to deprive ourselves of any chance of eliminating a very large proportion of the crimes that are committed. No doubt our present penal treatment of men like Charlie Smith manages to be both unfair and ineffective. But it should not be beyond our powers to devise a form of compulsory treatment sufficiently effective to make the unfairness worth while. Hopelessly inadequate people might benefit from a form of probation, very different from what we now have, where very great supervision would be exercised over their lives. They might be compelled to take certain jobs, and in some cases to live in certain hostels. Instead of the withering of necessary social skills that now takes place in prison, they could learn, under close supervision, how to adapt themselves better to the ordinary world of having a regular job.

A policy of this sort might be defended, not as punishment, but on paternalist grounds as a promising form of treatment for some of those with psychological disabilities. But even where one is reluctant to invoke paternalist arguments in favour of such compulsory supervision, it can be defended as a penal policy whose effectiveness would outweigh the objections to applying compulsion to offenders who could not help what they did. Again, experiment is needed to see how effective such a policy would be. There is no general answer (other

than a vacuous one) to the question "when should we over-ride the principle of retribution in distribution?" We should only do so when the moral gains outweigh the moral losses. And when is that? The answer to this question depends partly on one's moral attitudes. But it also depends partly on information as to the effectiveness of alternative responses to crime. We lack this information because of the timidity and unimaginativeness of our legislators.

8. LEGAL MECHANISMS:
PUNISHMENT AND TREATMENT

Lady Wootton has written as follows: "... mens rea has, so to speak—and this is the crux or the matter—*got into the wrong place.* Traditionally, the requirement of the guilty mind is written into the actual definition of a crime. No guilty intention, no crime, is the rule. Obviously this makes sense if the law's concern is with wickedness: where there is no guilty intention, there can be no wickedness. But it is equally obvious, on the other hand, that an action does not become innocuous merely because whoever performed it meant no harm. If the object of the criminal law is to prevent the occurrence of socially damaging actions, it would be absurd to turn a blind eye to those which were due to carelessness, negligence or even accident. The question of motivation *in the first instance* irrelevant.

"But only in the first instance. At a later stage, that is to say, after what is now known as a conviction, the presence or absence of guilty intention is all-important for its effect on the appropriate measures to be taken to prevent a recurrence of the forbidden act. The prevention of accidental deaths presents different problems from those involved in the prevention of wilful murders".[29]

Lady Wootton advocates this kind of "disregard of responsibility", and says that "one of the most important consequences must be to obscure the present rigid distinction between the penal and the medical institution.... The formal distinction between prison and hospital will become blurred and, one may reasonably expect, eventually obliterated altogether. Both will be simply 'places of safety' in which offenders receive the treatment which experience suggests is most likely to evoke the desired response".[30]

Since Lady Wootton assumes that punishment is at least in part retributive in aim, it is understandable that her own utilitarian approach should lead her to hope that one day punishment will be wholly replaced by treatment. But we have seen that a utilitarian policy for reducing crime might involve "treatment" that was unwanted or unpleasant, either where the aim is to "cure" the offender or to deter other potential offenders. It is in this context that one sees the value of Professor Hart's principle of "retribution in distribution". In the light of this principle, how can

one evaluate Lady Wootton's desire to eliminate the distinction between the penal and the medical institution?

In one respect at least, Lady Wootton's proposals threaten our aim that we should normally not impose suffering on someone for an act that they could not help. In our own society, there is a very real stigma attached to "what is now known as a conviction". Anyone convicted of a crime is in danger of some degree of social disapproval, and for many this may be one of the most unpleasant of the consequences of being caught breaking the law. Under a system where someone who could not help his act is not convicted, he is spared this stigma. Under Lady Wootton's proposed system, he would very likely not be spared this. It may be said in reply to this that, under Lady Wootton's system, stigma would disappear altogether. But it is not clear that the stigma attached to proved law-breaking would disappear merely because this was followed by something called "treatment" rather than by something called "punishment". (In some circles those who have been in a mental hospital carry a greater stigma than those who have been in prison.)[31] And it may be that the social stigma attached to conviction plays an important part in deterring people from breaking the law. If this is so, we may have to weigh the desirability of eliminating this form of suffering against the harm caused by a possible increase in the crime rate. But even if it is both possible and desirable to remove the stigma that goes with conviction, it is clear that this will not happen overnight, so that, in the early stages of implementing Lady Wootton's proposals, some people would suffer in this way for acts they could not help.

A further objection to Lady Wootton's programme is that penal and medical policies may have radically different aims. The point of medicine is to benefit the person who receives it, while the point of penal treatment is to benefit other people by reducing the amount of crime. Sometimes a medical cure can benefit people other than the person cured, who may then be less of a nuisance, and sometimes successful penal treatment may benefit the criminal. Sometimes the most effective penal treatment may be compulsory medical treatment. But the fact that two ends can sometimes be realised by the same means does not mean that they should not be kept distinct. The separateness of penal and medical aims is important here because their realisation can be limited by quite different sets of principles. Compulsory penal treatment may be justified by appealing to the interests of the community, while compulsory medical treatment may be justified on paternalist grounds. From some moral standpoints one could argue that we should be far more reluctant to intervene on paternalist grounds than in the interests of the community, and from other standpoints one could argue from exactly the reverse priorities. Both these types of view would automatically be

denied application in a system that did not recognise the distinction upon which they are based. Lady Wootton's proposals assume that these views can be brushed aside, and this assumption is one we may well be reluctant to accept.

If one wishes to retain the principle that, unless there are strong grounds for their being so treated, people who cannot help their illegal acts should not be subjected to legal penalties, there remains the problem of devising the most appropriate legal mechanism for this. The serious difficulties here do not arise in cases of unintentional acts, but rather in cases of intentional acts resulting from psychological incapacity.

Detailed consideration of legal procedure is not part of the task of a paper such as this. I am only concerned to argue for the acceptances of certain guiding principles. So far as the mechanism of exempting the psychologically inadequate is concerned, some of the relevant general principles can be briefly stated. One is that in questions of psychological capacity, psychiatrists are the best experts we have, and such matters should be decided by them outside the court, rather than by a jury. (Such a system would give considerable power to possibly prejudiced psychiatrists. Our present system gives the same power to possibly prejudiced jurymen.) Another guiding principle, is that the law should put to the panel of psychiatrists a general question about impaired capacities, rather than a question phrased in terms of particular diagnostic categories.

Finally, the question put to the psychiatrists should be less general than "could he help what he did?" or "could he have acted otherwise?" "He could not help it", is a phrase that can be used to make a number of different kinds of claim, and it is undesirable to ask psychiatrists a question that they might answer, say, in the light of hazy notions about determinism. Where a man intentionally performed an act that was illegal, it may be more helpful to ask the psychiatrists whether he could have been persuaded to act differently, than to ask merely whether he lacked the capacity to act differently. It may be that our knowledge is at present so limited that we are bound to be unable to decide with certainty to what extent a person's capacities are impaired. If so, this is a problem that philosophical refinement of the questions to be asked cannot alone overcome.

As our psychiatric knowledge advances, we may find that in other parts of human behaviour we are able to recognise many states where psychological capacities are as clearly impaired as they are in the alcoholic.

If one cares about not punishing those who could not help doing what they did, one may well wish to see a policy of treating dubious borderline cases generously.

REFERENCES

1. By Mr. Anthony Quinton: *On Punishment* : *Analysis*, 1954.
2. Prologomenon to the Principles of Punishment: *Proceedings of the Aristotelian Society*, 1959-60. Reprinted as the first chapter of Hart: *Punishment and Responsibility*, 1968. cf. also Rawls: Two concepts of Rules: *Philosophical Review*, 1955.
3. Can human nature not be changed? How can one be sure?
4. The *Division of Labour in Society*, ch. 2.
5. *Evidence to the Royal Commission on Capital Punishment*, 1953.
6. As Mr. S. I. Benn has pointed out: *An Approach to the Problems of Punishment: Philosophy*, 1958.
7. Miss Leila Berg, in her *Risinghill: Death of a Comprehensive School*, 1968, refers to "such children as are white-faced the whole schoolday when a man is being hanged in the prison down the road" (p. 159).
8. cf. the letter from a prisoner's wife in the *New Statesman*, January 6th, 1967.
9. The 30-year prison sentence passed on some of the "train robbers" seems open to *all* the objections mentioned here.
10. cf. Walker: *The Aims of a Penal System*: *The James Seth Memorial Lecture*, 1966. Anyone familiar with this lecture will realise that I have found it more helpful than my criticisms of it may suggest.
11. Perhaps it is impossible to refute someone who takes a wholly different view of what constitutes benefit or harm. If so, this paragraph should be read simply as a statement of the kinds of considerations which I think ought to be admitted to the discussion of punishment.
12. The contrast between the role of schools as it often is and as it might be brought out in Miss Leila Berg's book on Risinghill.
13. cf. Terence Morris: *The Criminal Area*, 1958.
14. Quoted in Szasz: *Law, Liberty and Psychiatry*, 1963.
15. Mr. Derek Parfitt has pointed out to me that in a world without blame the objection on the grounds of not being treated as an equal would collapse.
16. cf. Galbraith: *The Affluent Society*, 1958.
17. Both these objections are made by Professor Richard Wollheim: *Socialism and Culture*, 1961.
18. The same qualification applies as in reference 11.
19. A prison psychologist tells me that some prisoners believe that this happens now.
20. cf. S. and E. T. Glueck: *Predicting Delinquency and Crime*, 1959.
21. *Punishment and the Elimination of Responsibility*; *Hobhouse Memorial Trust Lecture*, 1962; reprinted in Hart: *Punishment and Responsibility*, 1968. For the principle of justice that "the more difficult it was for the person who undergoes a loss to have avoided the loss, the greater the weight that should be attached to that loss", cf. Haksar: *Responsibility*; *Proceedings of the Aristotelian Society*, supplementary volume 1966. This principle is rejected by C. H. Whitely in the same symposium.
22. *Ibid.*
23. *Ibid.*
24. *The Aims of a Penal System: The James Seth Memorial Lecture*, 1966.
25. cf. Hart: *Negligence, Mens Rea, and Criminal Responsibility;* in Guest: *Oxford Essays in Jurisprudence*, 1961; reprinted in Hart: *Punishment and Responsibility*, 1968.
26. This is the case that can be made in defence of strict liability in the law relating to driving with excessive alcohol in one's blood. It seems harder to make out such a case for strict liability in the law relating, e.g. to the selling of adulterated food.
27. *The Unknown Citizen*, 1963.
28. *The Habitual Prisoner*, 1963.
29. *Crime and the Criminal Law*, 1963, ch. 2.
30. *Ibid*, ch. 3.
31. cf. Dr. Nigel Walker: *Liberty, Liability, Culpability*, in Craft: *Psychopathic Disorders*, 1966. For a suggestive discussion of many aspects of stigma, cf. Goffman: *Stigma: Notes on the Management of Spoiled Identity*, 1963.

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