

C. S. Lewis on Crime, Punishment, and Natural Law

Spring 2019 Natural Law Workshop Series at Berkeley Law

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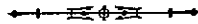
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Selections from *God in the Dock*:

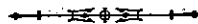
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The Collected Works of
C. S. LEWIS

The Pilgrim's Regress



Christian Reflections



God in the Dock



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God in the Dock

Essays on Theology and Ethics

Edited by
Walter Hooper

The Humanitarian Theory of Punishment

IN ENGLAND WE HAVE lately had a controversy about Capital Punishment. I do not know whether a murderer is more likely to repent and make a good end on the gallows a few weeks after his trial or in the prison infirmary thirty years later. I do not know whether the fear of death is an indispensable deterrent. I need not, for the purpose of this article, decide whether it is a morally permissible deterrent. Those are questions which I propose to leave untouched. My subject is not Capital Punishment in particular, but that theory of punishment in general which the controversy showed to be almost universal among my fellow-countrymen. It may be called the Humanitarian theory. Those who hold it think that it is mild and merciful. In this I believe that they are seriously mistaken. I believe that the 'Humanity' which it claims is a dangerous illusion and disguises the possibility of cruelty and injustice without end. I urge a return to the traditional or Retributive theory not solely, not even primarily, in the interests of society, but in the interests of the criminal.

According to the Humanitarian theory, to punish a man because he deserves it, and as much as he deserves, is mere revenge, and, therefore, barbarous and immoral. It is maintained that the only legitimate motives for punishing are the desire to deter others by example or to mend the criminal. When this theory is combined, as frequently happens, with the belief that all crime is more or less pathological, the idea of mending tails off into that of healing or curing and punishment becomes therapeutic. Thus it appears at first sight that we have passed from the harsh and self-righteous notion of giving the wicked their deserts to the charitable and enlightened one of tending the psychologically sick. What could be more amiable? One little point which is taken for granted in this theory needs, however, to be made explicit. The things done to the criminal, even if they are called cures, will be just as compulsory as they were in the old days when we called them punishments. If a tendency to steal can be cured by psychotherapy, the thief will no doubt be forced to undergo the treatment. Otherwise, society cannot continue.

My contention is that this doctrine, merciful though it appears, really means that each one of us, from the moment he breaks the law, is deprived of the rights of a human being.

The reason is this. The Humanitarian theory removes from Punishment the concept of Desert. But the concept of Desert is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust. I do not here contend that the question 'Is it deserved?' is the only one we can reasonably ask about a punishment. We may very properly ask whether

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it is likely to deter others and to reform the criminal. But neither of these two last questions is a question about justice. There is no sense in talking about a 'just deterrent' or a 'just cure'. We demand of a deterrent not whether it is just but whether it will deter. We demand of a cure not whether it is just but whether it succeeds. Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a 'case'.

The distinction will become clearer if we ask who will be qualified to determine sentences when sentences are no longer held to derive their propriety from the criminal's deservings. On the old view the problem of fixing the right sentence was a moral problem. Accordingly, the judge who did it was a person trained in jurisprudence; trained, that is, in a science which deals with rights and duties, and which, in origin at least, was consciously accepting guidance from the Law of Nature, and from Scripture. We must admit that in the actual penal code of most countries at most times these high originals were so much modified by local custom, class interests, and utilitarian concessions, as to be very imperfectly recognizable. But the code was never in principle, and not always in fact, beyond the control of the conscience of the society. And when (say, in eighteenth-century England) actual punishments conflicted too violently with the moral sense of the community, juries refused to convict and reform was finally brought about. This was possible because, so long as we are thinking in terms of Desert, the propriety of the penal code, being a moral question, is a question on which every man has the right to an opinion, not because he follows this or that profession, but because he is simply a man, a rational animal enjoying the Natural Light. But all this is changed when we drop the concept of Desert. The only two questions we may now ask about a punishment are whether it deters and whether it cures. But these are not questions on which anyone is entitled to have an opinion simply because he is a man. He is not entitled to an opinion even if, in addition to being a man, he should happen also to be a jurist, a Christian, and a moral theologian. For they are not questions about principle but about matter of fact; and for such *cuiquam in sua arte credendum*.¹ Only the expert 'penologist' (let barbarous things have barbarous names), in the light of previous experiment, can tell us what is likely to deter; only the psychotherapist can tell us what is likely to cure. It will be in vain for the rest of us, speaking simply as men, to say, 'but this punishment is hideously unjust, hideously disproportionate to the criminal's deserts'. The experts with perfect logic will reply, 'but nobody was talking about deserts. No one was talking about *punishment* in your archaic vindictive sense of the word. Here are the statistics proving that this treatment deters. Here are the statistics proving that this other treatment cures. What is your trouble?'

The Humanitarian theory, then, removes sentences from the hands of jurists whom the public conscience is entitled to criticize and places them in the hands of technical experts whose special sciences do not even employ such categories as

1. 'We must believe the expert in his own field.'

rights or justice. It might be argued that since this transference results from an abandonment of the old idea of punishment, and, therefore, of all vindictive motives, it will be safe to leave our criminals in such hands. I will not pause to comment on the simple-minded view of fallen human nature which such a belief implies. Let us rather remember that the 'cure' of criminals is to be compulsory; and let us then watch how the theory actually works in the mind of the Humanitarian. The immediate starting point of this article was a letter I read in one of our Leftist weeklies. The author was pleading that a certain sin, now treated by our laws as a crime, should henceforward be treated as a disease. And he complained that under the present system the offender, after a term in gaol, was simply let out to return to his original environment where he would probably relapse. What he complained of was not the shutting up but the letting out. On his remedial view of punishment the offender should, of course, be detained until he was cured. And of course the official straighteners are the only people who can say when that is. The first result of the Humanitarian theory is, therefore, to substitute for a definite sentence (reflecting to some extent the community's moral judgment on the degree of ill-desert involved) an indefinite sentence terminable only by the word of those experts—and they are not experts in moral theology nor even in the Law of Nature—who inflict it. Which of us, if he stood in the dock, would not prefer to be tried by the old system?

It may be said that by the continued use of the word punishment and the use of the verb 'inflict' I am misrepresenting Humanitarians. They are not punishing, not inflicting, only healing. But do not let us be deceived by a name. To be taken without consent from my home and friends; to lose my liberty; to undergo all those assaults on my personality which modern psychotherapy knows how to deliver; to be re-made after some pattern of 'normality' hatched in a Viennese laboratory to which I never professed allegiance; to know that this process will never end until either my captors have succeeded or I grown wise enough to cheat them with apparent success—who cares whether this is called Punishment or not? That it includes most of the elements for which any punishment is feared—shame, exile, bondage, and years eaten by the locust—is obvious. Only enormous ill-desert could justify it; but ill-desert is the very conception which the Humanitarian theory has thrown overboard.

If we turn from the curative to the deterrent justification of punishment we shall find the new theory even more alarming. When you punish a man *in terrorem*,² make of him an 'example' to others, you are admittedly using him as a means to an end; someone else's end. This, in itself, would be a very wicked thing to do. On the classical theory of Punishment it was of course justified on the ground that the man deserved it. That was assumed to be established before any question of 'making him an example' arose. You then, as the saying is, killed two birds with one stone; in the process of giving him what he deserved you set an example to others. But take away desert and the whole morality of the punishment disappears. Why, in Heaven's name, am I to be sacrificed to the good of society in this way?—unless, of course, I deserve it.

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But that is not the worst. If the justification of exemplary punishment is not to be based on desert but solely on its efficacy as a deterrent, it is not absolutely necessary that the man we punish should even have committed the crime. The deterrent effect demands that the public should draw the moral, 'If we do such an act we shall suffer like that man.' The punishment of a man actually guilty whom the public think innocent will not have the desired effect; the punishment of a man actually innocent will, provided the public think him guilty. But every modern State has powers which make it easy to fake a trial. When a victim is urgently needed for exemplary purposes and a guilty victim cannot be found, all the purposes of deterrence will be equally served by the punishment (call it cure if you prefer) of an innocent victim, provided that the public can be cheated into thinking him guilty. It is no use to ask me why I assume that our rulers will be so wicked. The punishment of an innocent, that is, an undeserving, man is wicked only if we grant the traditional view that righteous punishment means deserved punishment. Once we have abandoned that criterion, all punishments have to be justified, if at all, on other grounds that have nothing to do with desert. Where the punishment of the innocent can be justified on those grounds (and it could in some cases be justified as a deterrent) it will be no less moral than any other punishment. Any distaste for it on the part of a Humanitarian will be merely a hang-over from the Retributive theory.

It is, indeed, important to notice that my argument so far supposes no evil intentions on the part of the Humanitarian and considers only what is involved in the logic of his position. My contention is that good men (not bad men) consistently acting upon that position would act as cruelly and unjustly as the greatest tyrants. They might in some respects act even worse. Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience. They may be more likely to go to Heaven yet at the same time likelier to make a Hell of earth. Their very kindness stings with intolerable insult. To be 'cured' against one's will and cured of states which we may not regard as disease is to be put on a level with those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals. But to be punished, however severely, because we have deserved it, because we 'ought to have known better', is to be treated as a human person made in God's image.

In reality, however, we must face the possibility of bad rulers armed with a Humanitarian theory of punishment. A great many popular blue prints for a Christian society are merely what the Elizabethans called 'eggs in moonshine' because they assume that the whole society is Christian or that the Christians are in control. This is not so in most contemporary States. Even if it were, our rulers would still be fallen men, and, therefore, neither very wise nor very good. As it is, they will usually be unbelievers. And since wisdom and virtue are not the only or the commonest qualifications for a place in the government, they will not often be even the best unbelievers.

The practical problem of Christian politics is not that of drawing up schemes for a Christian society, but that of living as innocently as we can with unbelieving fellow-subjects under unbelieving rulers who will never be perfectly wise and good and who will sometimes be very wicked and very foolish. And when they are wicked the Humanitarian theory of punishment will put in their hands a finer instrument of tyranny than wickedness ever had before. For if crime and disease are to be regarded as the same thing, it follows that any state of mind which our masters choose to call 'disease' can be treated as crime; and compulsorily cured. It will be vain to plead that states of mind which displease government need not always involve moral turpitude and do not therefore always deserve forfeiture of liberty. For our masters will not be using the concepts of Desert and Punishment but those of disease and cure. We know that one school of psychology already regards religion as a neurosis. When this particular neurosis becomes inconvenient to government, what is to hinder government from proceeding to 'cure' it? Such 'cure' will, of course, be compulsory; but under the Humanitarian theory it will not be called by the shocking name of Persecution. No one will blame us for being Christians, no one will hate us, no one will revile us. The new Nero will approach us with the silky manners of a doctor, and though all will be in fact as compulsory as the *tunica molesta* or Smithfield or Tyburn, all will go on within the unemotional therapeutic sphere where words like 'right' and 'wrong' or 'freedom' and 'slavery' are never heard. And thus when the command is given, every prominent Christian in the land may vanish overnight into Institutions for the Treatment of the Ideologically Unsound, and it will rest with the expert gaolers to say when (if ever) they are to re-emerge. But it will not be persecution. Even if the treatment is painful, even if it is life-long, even if it is fatal, that will be only a regrettable accident; the intention was purely therapeutic. In ordinary medicine there were painful operations and fatal operations; so in this. But because they are 'treatment', not punishment, they can be criticized only by fellow-experts and on technical grounds, never by men as men and on grounds of justice.

This is why I think it essential to oppose the Humanitarian theory of punishment, root and branch, wherever we encounter it. It carries on its front a semblance of mercy which is wholly false. That is how it can deceive men of good will. The error began, perhaps, with Shelley's statement that the distinction between mercy and justice was invented in the courts of tyrants. It sounds noble, and was indeed the error of a noble mind. But the distinction is essential. The older view was that mercy 'tempered' justice, or (on the highest level of all) that mercy and justice had met and kissed. The essential act of mercy was to pardon; and pardon in its very essence involves the recognition of guilt and ill-desert in the recipient. If crime is only a disease which needs cure, not sin which deserves punishment, it cannot be pardoned. How can you pardon a man for having a gumboil or a club foot? But the Humanitarian theory wants simply to abolish Justice and substitute Mercy for it. This means that you start being 'kind' to people before you have considered their rights, and then force upon them supposed kindnesses which no one but you will recognize as kindnesses and which the recipient will feel as abominable cruelties. You have overshot the mark. Mercy, detached from Justice, grows unmerciful. That

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is the important paradox. As there are plants which will flourish only in mountain soil, so it appears that Mercy will flower only when it grows in the crannies of the rock of Justice: transplanted to the marshlands of mere Humanitarianism, it becomes a man-eating weed, all the more dangerous because it is still called by the same name as the mountain variety. But we ought long ago to have learned our lesson. We should be too old now to be deceived by those humane pretensions which have served to usher in every cruelty of the revolutionary period in which we live. These are the 'precious balms' which will 'break our heads'.³

There is a fine sentence in Bunyan: 'It came burning hot into my mind, whatever he said, and however he flattered, when he got me home to his House, he would sell me for a Slave.'⁴ There is a fine couplet, too, in John Ball:

*Be war or ye be wo;
Knoweth your frend from your foo.*⁵

On Punishment: A Reply to Criticism
by C. S. Lewis

I have to thank the Editor for this opportunity of replying to two most interesting critiques of my article on the Humanitarian Theory of Punishment, one by Professor J. J. C. Smart⁶ and the other by Drs N. Morris and D. Buckle.⁷

Professor Smart makes a distinction between questions of the First and of the Second Order: 'First' are questions like 'Ought I to return this book?'; Second, like 'Is promise-making a good institution?' He claims that these two Orders of question require different methods of treatment. The first can be answered by Intuition (in the sense which moral philosophers sometimes give that word). We 'see' what is 'right' at once, because the proposed action falls under a rule. But second-order questions can be answered only on 'utilitarian' principles. Since 'right' means 'agreeable to the rules' it is senseless to ask if the rules themselves are 'right'; we can only ask if they are useful. A parallel would be this: granted a fixed spelling we may ask whether a word is spelled correctly, but cannot ask whether the spelling system is correct, only if it is consistent or convenient. Or again, a form may be grammatically right, but the grammar of a whole language cannot be right or wrong.

Professor Smart is here, of course, treating in a new way a very ancient distinction. It was realised by all the thinkers of the past that you could consider either (a) Whether an act was 'just' in the sense of conforming to a law or custom, or (b) Whether a law or custom was itself 'just'. To the ancients and medievals, however, the distinction was one between (a) Justice by law or convention, *nomò (i)*, and (b) Justice 'simply' or 'by nature', *haplòs* or *physei*, or between (a) Positive Law,

3. Psalm cxli. 6.

4. *The Pilgrim's Progress*, ed. James Blanton Wharey, second edition revised by Roger Sharrock, Oxford English Texts (Oxford, 1960), Part I, p. 70.

5. 'John Ball's Letter to the Peasants of Essex, 1381', lines 11-12, found in *Fourteenth Century Verse and Prose*, ed. Kenneth Sisam (Oxford, 1921), p. 161.

6. 'Comment: The Humanitarian Theory of Punishment', *Res Judicatae* vol. VI (February 1954), pp. 368-71.

7. 'Reply to C. S. Lewis', *Res Judicatae*, vol. VI (June 1953), pp. 231-237.

and (b) Natural Law. Both inquiries were about justice, but the distinction between them was acknowledged. The novelty of Professor Smart's system consists in confining the concept of justice to the First-order questions.

It is claimed that the new system (1) avoids a *petitio* inherent in any appeal to the Law of Nature or the 'simply' just; for 'to say that this is the Law of Nature is only to say that this is the rule we should adopt'; and (2) gets rid of dogmatic subjectivism. For the idea of desert in my article may be only 'Lewis's personal preference'.

I am not convinced, however, that Professor Smart's system does avoid these inconveniences.

Those rules are to be accepted which are useful to the community, utility being (I think) what will make that community 'happier'.* Does this mean that the happiness of the community is to be pursued *at all costs*, or only to be pursued in so far as this pursuit is compatible with certain degrees of mercy, human dignity, and veracity? (I must not add 'of justice' because, in Professor Smart's view, the rules themselves cannot be either just or unjust). If we take the second alternative, if we admit that there are some things, or even any one thing, which a community ought not to do however much it will increase its happiness, then we have really given up the position. We are now judging the useful by some other standard (whether we call it Conscience, or Practical Reason, or Law of Nature or Personal Preference). Suppose then, we take the first alternative: the happiness of the community is to be pursued at all costs. In certain circumstances the costs may be very heavy. In war, in some not improbable future when the world's food runs short, during some threat of revolution, very shocking things may be likely to make the community happier or to preserve its existence. We cannot be sure that frame-ups, witch-hunts, even cannibalism, would never be in this sense 'useful'. Let us suppose (what, I am very sure, is false) that Professor Smart is prepared to go the whole hog. It then remains to ask him why he does so or why he thinks we should agree with him. He of all men cannot reply that *salus populi suprema lex*⁸ is the Law of Nature; firstly, because we others know that 'the people should be preserved' is not the Law of Nature but only one clause in that Law. What then could a pursuit of the community's happiness at all costs be based on if not on Professor Smart's 'personal preference'? The real difference between him and me would then be simply that we have different desires. Or, rather, that I have one more desire than he. For, like him, I desire the continuance and happiness of my country (and species),* but then I also desire that they should be people of a certain sort, behaving in a certain way. The second desire is the stronger of the two. If I cannot have both, I had rather that the human race, having a certain quality in their lives, should continue for only a few centuries than that, losing freedom, friendship, dignity, and mercy, and learning to be quite content without them, they should continue for millions of millennia. If it is merely a matter of wishes, there is really no further question for discussion.

*See the penultimate paragraph of Professor Smart's article.

8. Cicero, *De Legibus*, bk. III, pt. iii, sect. 8. 'The safety of the people is the highest law.'

* I am not sure whether for Professor Smart the 'community' means the nation or the species. If the former, difficulties arise about international morality, in discussing which I think Professor Smart would have to come to the species sooner or later.

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Lots of people feel like me, and lots feel the other way. I believe that it is in our age being decided which kind of man will win.

And that is why, if I may say so without discourtesy, Professor Smart and I both matter so little compared with Drs Morris and Buckle. We are only dons; they are criminologists, a lawyer and a psychiatrist respectively. And the only thing which leads me so far off my own beat as to write about 'Penology' at all is my intense anxiety as to which side in this immensely important conflict will have the Law for its ally. This leads me to the only serious disagreement between my two critics and myself.

Other disagreements there are, but they mainly turn on misunderstandings for which I am probably to blame. Thus:

(1) There was certainly too little, if there was anything, in my article about the protection of the community. I am afraid I took it for granted. But the distinction in my mind would not be, as my critics suppose (Morris and Buckle, p. 232), one between 'subsidiary' and 'vital' elements in punishment. I call the act of taking a packet of cigarettes off a counter and slipping it into one's pocket 'purchase' or 'theft' according as one does or does not pay for it. This does not mean that I consider the taking away of the goods as 'subsidiary' in an act of purchase. It means that what legitimises it, what makes it purchase at all, is the paying. I call the sexual act chaste or unchaste according as the parties are or are not married to one another. This does not mean that I consider it as 'subsidiary' to marriage, but that what legitimises it, what makes it a specimen of conjugal behaviour at all, is marriage. In the same way, I am ready to make both the protection of society and the 'cure' of the criminal as important as you please in punishment, but only on a certain condition: namely, that the initial act of thus interfering with a man's liberty be justified on grounds of desert. Like payment in purchase, or marriage as regards the sexual act, it is this, and (I believe) this alone, which legitimises our proceeding and makes it an instance of punishment at all, instead of an instance of tyranny—or, perhaps, of war.

(2) I agree about criminal *children* (see Morris and Buckle, p. 234). There has been progress in this matter. Very primitive societies will 'try' and 'punish' an axe or a spear in cases of unintentional homicide. Somewhere (I think, in the Empire) during the later Middle Ages a pig was solemnly tried for murder. Till quite recently, we may (I don't know) have tried children as if they had adult responsibility. These things have rightly been abolished. But the whole question is whether you want the process to be carried further: whether you want us all to be simultaneously deprived of the protection and released from the responsibilities of adult citizenship and reduced to the level of the child, the pig, and the axe. I don't want this because I don't think there are in fact any people who stand to the rest of us as adult to child, man to beast, or animate to inanimate.* I think the laws which laid down a 'desertless' theory of punishment would in reality be made and administered by people just like the rest of us.

But the real disagreement is this. Drs Morris and Buckle, fully alive to dangers of the sort I dread and reprobating them no less than I, believe that we have a safe-

* This is really the same objection as that which I would make to Aristotle's theory of slavery (*Politics* 1254A *et seq.*). We can all recognize the 'natural' slaves (I am perhaps one myself) but where are the 'natural' masters?

guard. It lies in the Courts, in their incorruptible judges, their excellent techniques, and 'the controls of natural justice which the law has built up' (p. 233). Yes; if the whole tradition of natural justice which the law has for so long incorporated, will survive the completion of that change in our attitude to punishment which we are now discussing. But that for me is precisely the question. Our Courts, I agree, 'have traditionally represented the common man and the common man's view of morality' (p. 233). It is true that we must extend the term 'common man' to cover Locke, Grotius, Hooker, Poynt, Aquinas, Justinian, the Stoics, and Aristotle, but I have no objection to that; in one most important, and to me glorious, sense they were all common men.* But that whole tradition is tied up with ideas of free-will, responsibility, rights, and the law of nature. Can it survive in Courts whose penal practice daily subordinates 'desert' to therapy and the protection of society? Can the Law assume one philosophy in practice and continue to enjoy the safeguards of a different philosophy?

I write as the son of one lawyer and the lifelong friend of another,⁹ to two criminologists one of whom is a lawyer. I believe an approximation between their view and mine is not to be despaired of, for we have the same ends at heart. I wish society to be protected and I should be very glad if all punishments were also cures. All I plead for is the *prior* condition of ill desert; loss of liberty justified on retributive grounds *before* we begin considering the other factors. After that, as you please. Till that, there is really no question of 'punishment'. We are not such poltroons that we want to be protected unconditionally, though when a man has deserved punishment we shall very properly look to our protection in devising it. We are not such busybodies that we want to improve all our neighbours by force; but when one of our neighbours has justly forfeited his right not to be interfered with, we shall charitably try to make his punishment improve him. But we will not presume to teach him (who, after all, are we?) till he has merited that we should 'larn him'. Will Dr Morris and Dr Buckle come so far to meet me as that? On their decision and on that of others in similar important offices, depends, I believe, the continued dignity and beneficence of that great discipline the Law, but also much more. For, if I am not deceived, we are all at this moment helping to decide whether humanity shall retain all that has hitherto made humanity worth preserving, or whether we must slide down into the subhumanity imagined by Mr Aldous Huxley and George Orwell and partially realised in Hitler's Germany. For the extermination of the Jews really would have been 'useful' if the racial theories had been correct; there is no foretelling what may come to seem, or even to be, 'useful', and 'necessity' was always 'the tyrant's plea'.¹⁰

*See also Lewis: *The Abolition of Man* (London, 1943), especially the Appendix.

9. Owen Barfield.

10. See Letter 12.

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Delinquents in the Snow

VOICES 'OFF', OUTSIDE the front door, annually remind us (usually at the most inconvenient moment) that the season of carols has come again. At my front door they are, once every year, the voices of the local choir; on the forty-five other annual occasions they are those of boys or children who have not even tried to learn to sing, or to memorize the words of the piece they are murdering. The instruments they play with real conviction are the door-bell and the knocker; and money is what they are after.

I am pretty sure that some of them are the very same hooligans who trespass in my garden, rob my orchard, hack down my trees and scream outside my windows, though everyone in the neighbourhood knows that there is serious illness in my family. I am afraid I deal with them badly in the capacity of 'waits'. I neither forgive like a Christian nor turn the dog on them like an indignant householder. I pay the blackmail. I give, but give ungraciously, and make the worst of both worlds.

It would be silly to publish this fact (more proper for a confessor's ear) if I did not think that this smouldering resentment, against which I win so many battles but never win the war, was at present very widely shared by law-abiding people. And Heaven knows, many of them have better cause to feel it than I. I have not been driven to suicide like Mr Pilgrim. I am not mourning for a raped and murdered daughter whose murderer will be kept (partly at my expense) in a mental hospital till he gets out and catches some other child. My greatest grievance is trivial in comparison. But, as it raises all the issues, I will tell it.

Not long ago some of my young neighbours broke into a little pavilion or bungalow which stands in my garden and stole several objects—curious weapons and an optical instrument. This time the police discovered who they were. As more than one of them had been convicted of similar crimes before, we had high hopes that some adequately deterrent sentence would be given. But I was warned: 'It'll all be no good if the old woman's on the bench.' I had, of course, to attend the juvenile court and all fell out pat as the warning had said. The—let us call her—Elderly Lady presided. It was abundantly proved that the crime had been planned and that it was done for gain: some of the swag had already been sold. The Elderly Lady inflicted a small fine. That is, she punished not the culprits but their parents. But what alarmed me more was her concluding speech to the prisoners. She told them that they must, they really must, give up these 'stupid pranks'.

Of course I must not accuse the Elderly Lady of injustice. Justice has been so variously defined. If it means, as Thrasymachus thought, 'the interest of the stronger', she was very just; for she enforced her own will and that of the criminals and they together are incomparably stronger than I.

But if her intention was—and I do not doubt that the road on which such justice is leading us all is paved with good ones—to prevent these boys from growing up into confirmed criminals, I question whether her method was well judged. If they listened to her (we may hope they did not) what they carried away was the conviction that planned robbery for gain would be classified as a 'prank'—a childishness which they might be expected to grow out of. A better way of leading them on, without any sense of frontiers crossed, from mere inconsiderate romping and plundering orchards to burglary, arson, rape and murder, would seem hard to imagine.

This little incident seems to me characteristic of our age. Criminal law increasingly protects the criminal and ceases to protect his victim. One might fear that we were moving towards a Dictatorship of the Criminals or (what is perhaps the same thing) mere anarchy. But that is not my fear; my fear is almost the opposite.

According to the classical political theory of this country we surrendered our right of self-protection to the State on condition that the State would protect us. Roughly, you promised not to stab your daughter's murderer on the understanding that the State would catch him and hang him. Of course this was never true as a historical account of the genesis of the State. The power of the group over the individual is by nature unlimited and the individual submits because he has to. The State, under favourable conditions (they have ceased), by defining that power, limits it and gives the individual a little freedom.

But the classical theory morally grounds our obligation to civil obedience; explains why it is right (as well as unavoidable) to pay taxes, why it is wrong (as well as dangerous) to stab your daughter's murderer. At present the very uncomfortable position is this: the State protects us less because it is unwilling to protect us against criminals at home and manifestly grows less and less able to protect us against foreign enemies. At the same time it demands from us more and more. We seldom had fewer rights and liberties nor more burdens: and we get less security in return. While our obligations increase their moral ground is taken away.

And the question that torments me is how long flesh and blood will continue to endure it. There was even, not so long ago, a question whether they ought to. No one, I hope, thinks Dr Johnson a barbarian. Yet he maintained that if, under a peculiarity of Scottish law, the murderer of a man's father escapes, the man might reasonably say, 'I am amongst barbarians, who . . . refuse to do justice . . . I am therefore in a state of nature . . . I will stab the murderer of my father.' (This is recorded in Boswell's *Journal of a Tour of the Hebrides* under 22 August 1773.)

Much more obviously, on these principles, when the State ceases to protect me from hooligans I might reasonably, if I could, catch and trash them myself. When the State cannot or will not protect, 'nature' is come again and the right of self-protection reverts to the individual. But of course if I could and did I should be prosecuted. The Elderly Lady and her kind who are so merciful to theft would have no mercy on me; and I should be pilloried in the gutter Press as a 'sadist' by journalists who neither know nor care what that word, or any word, means.

What I fear, however, is not, or not chiefly, sporadic outbreaks of individual vengeance. I am more afraid, our conditions being so like that of the South after the American Civil War, that some sort of Ku Klux Klan may appear and that this

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might eventually develop into something like a Right or Central revolution. For those who suffer are chiefly the provident, the resolute, the men who want to work, who have built up, in the face of implacable discouragement, some sort of life worth preserving and wish to preserve it. That most (by no means all) of them are 'middle class' is not very relevant. They do not get their qualities from a class: they belong to that class because they have those qualities. For in a society like ours no stock which has diligence, forethought or talent, and is prepared to practise self-denial, is likely to remain proletarian for more than a generation. They are, in fact, the bearers of what little moral, intellectual, or economic vitality remains. They are not nonentities. There is a point at which their patience will snap.

The Elderly Lady, if she read this article, would say I was 'threatening'—linguistic nicety not being much in her line. If by a *threat* you mean (but then you don't know much English) the conjectural prediction of a highly undesirable event, then I threaten. But if by the word *threat* you imply that I wish for such a result or would willingly contribute to it, then you are wrong. Revolutions seldom cure the evil against which they are directed; they always beget a hundred others. Often they perpetuate the old evil under a new name. We may be sure that, if a Ku Klux Klan arose, its ranks would soon be chiefly filled by the same sort of hooligans who provoked it. A Right or Central revolution would be as hypocritical, filthy and ferocious as any other. My fear is lest we should be making it more probable.

This may be judged an article unfit for the season of peace and goodwill. Yet there is a connection. Not all kinds of peace are compatible with all kinds of goodwill, nor do all those who say 'Peace, peace' inherit the blessing promised to the peacemakers.¹ The real *pacificus* is he who promotes peace, not he who gasses about it. Peace, peace . . . we won't be hard on you . . . it was only a boyish prank . . . you had a neurosis . . . promise not to do it again . . . out of this in the long run I do not think either goodwill or peace will come. Planting new primroses on the primrose path is no long-term benevolence.

There! They're at it again. 'Ark, the errol hygel sings.' They're knocking louder. Well, they come but fifty times a year. Boxing Day² is only two and a half weeks ahead; then perhaps we shall have a little quiet in which to remember the birth of Christ.

1. Jeremiah vi. 14; viii. 11 and Matthew v. 9.

2. The first week-day after Christmas.

- (b) C. S. Lewis, 'Version Vernacular', *ibid.* (31 December 1958), p. 1515.

Sir: Thank you for publishing my 'Rejoinder to Dr Pittenger' (Nov. 26). Now would you, please, complete your kindness by publishing the statement that 'populam' (p. 1360) is either my typist's or your printer's error for 'populum'?

An article on 'translation' such as Dr Pittenger suggests in his letter in the Dec. 24 issue certainly needs doing, but I could not usefully do it for Americans. The vernacular into which they would have to translate is not quite the same as that into which I have translated. Small differences, in addressing proletarians, may be all-important.

In both countries an essential part of the ordination exam ought to be a passage from some recognized theological work set for translation into vulgar English—just like doing Latin prose. Failure on this paper should mean failure on the whole exam. It is absolutely disgraceful that we expect missionaries to the Bantus to learn Bantu hut never ask whether our missionaries to the Americans or English can speak American or English. Any fool can write *learned* language. The vernacular is the real test. If you can't turn your faith into it, then either you don't understand it or you don't believe it.

12

Capital Punishment and Death Penalty

- (a) C. S. Lewis, 'Capital Punishment', *Church Times*, vol. CXLIV (1 December 1961), p. 7:

Sir,—I do not know whether capital punishment should or should not be abolished, for neither the natural light, nor scripture, nor ecclesiastical authority seems to tell me. But I am concerned about the grounds on which its abolition is being sought.

To say that by hanging a man we presumptuously judge him to be irredeemable is, I submit, simply untrue. My Prayer Book includes an exhortation to those under sentence of death which throughout implies the exact opposite. The real question is whether a murderer is more likely to repent and make a good end three weeks hence in the execution shed or, say, thirty years later in the prison infirmary. No mortal can know. But those who have most right to an opinion are those who know most by experience about the effect of prolonged prison life. I wish some prison chaplains, governors and warders would contribute to the discussion.

The suggestion of compensation for the relatives of the murdered man is in itself reasonable, but it ought not to be even remotely connected with the case for or against capital punishment. If it is, we shall be giving countenance to the archaic, and surely erroneous view that murder is primarily an offence not against society but against individuals.

Hanging is not a more irrevocable act than any other. You can't bring an innocent man to life: but neither can you give him back the years which wrongful imprisonment has eaten.

Other correspondents have pointed out that a theory of punishment which is purely exemplary or purely reformatory, or both, is shockingly immoral. Only the concept of desert connects punishment with morality at all. If deterrence is all that matters, the execution of an innocent man, provided the public think him guilty, would be fully justified. If reformation alone is in question, then there is nothing against painful and compulsory reform for all our defects, and a Government which believes Christianity to be a neurosis will have a perfectly good right to hand us all over to their straighteners for 'cure' to-morrow.

(b) Claude Davis, *ibid.* (8 December 1961), p. 14.

(c) C. S. Lewis, 'Death Penalty', *ibid.* (15 December 1961), p. 12:

Sir,—Dr Davis rightly reproves me for using the word *society* as I did. This hypostatized abstraction has already done harm enough. But I only meant 'all of us'. The absurdity of the view which treats murder as an offence against a single family is best illustrated by a case in the private speeches of Demosthenes (I can't turn it up at the moment, but your more scholarly readers no doubt can).

A man, *A*, set free a female slave, *B*, his old nurse. *B* married. Her husband died without issue. Someone then murdered *B*. But under Athenian law no one could prosecute because there was no injured party. *A* could not act because *B*, when murdered, was no longer his property. There was no widower, and there were no orphans.

I am on neither side in the present controversy. But I still think the abolitionists conduct their case very ill. They seem incapable of stating it without imputing vile motives to their opponents. If unbelievers often look at your correspondence column, I am afraid they may carry away a bad impression of our logic, manners and charity.

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