

Crime And Civil Society

Can We Become A
More Law-Abiding People?

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Rival Explanations of Crime

Why are most people law-abiding and some people criminals? Why do some societies experience more crime than others? Why do England and Wales have more crime than most comparable countries? Confronted by these questions, most common-sense observers would look at the impact of the criminal justice system. What are the chances of being caught, convicted and punished in England and Wales compared with elsewhere? Such comparisons are not easy to make, but the US Department of Justice has published a comparison of England and Wales with the US from 1981-1996.

It will be discussed in more detail below, but the findings may be summarised as follows. From 1981 to 1996 the risk of imprisonment increased in the USA and the crime rate fell. In England and Wales the opposite happened: the risk of imprisonment fell and the crime rate increased. Take one example: in the USA the number of imprisoned burglars for every 1,000 alleged burglars increased from 5.5 in 1981 to 8.4 in 1994. In England and Wales the number of imprisoned burglars per 1,000 alleged burglars fell from 7.8 in 1981 to only 2.2 in 1995. What happened to the burglary rate? In the USA, burglaries per 1,000 households fell by about half from 105.9 in 1981 to 54.4 in 1994. In England and Wales, burglaries per 1,000 households increased from 40.9 in 1981 to 82.9 in 1995. The study was carried out by Patrick Langan at the US Department of Justice and Cambridge University's Professor David Farrington, one of Britain's most respected criminologists.

However, some commentators are reluctant to draw the conclusion that crime can be deterred by increasing the risk of punishment. They believe there are underlying causes of crime, such as poverty or unemployment, and conclude that punishment is irrelevant. Among the landmark books was Karl Menninger's *The Crime of Punishment* in 1968. He was a psychiatrist who thought that the social sciences had proved that individuals were not responsible for their conduct. In his view, our actions are determined by circumstances, some of which are visible and some hidden (except to the psychologist). To punish someone, therefore, was to penalise them for something beyond their control, no different from punishing someone who had caught a

common cold. Offenders should be seen as having a medical problem and receive treatment in order to rehabilitate them. He accepted that wrongdoers should make amends for losses suffered by victims but argued that no further penalty should be exacted. Any sanction that was not purely compensatory was vengeance or retaliation.

Psychologists tend to focus on the individual, but other criminologists prefer to focus on social circumstances. They share Menninger's view that criminals are not responsible for their conduct but believe that the solution lies, not in the rehabilitation of individuals, but in political action to change social conditions. The circumstances thought to be especially important are material, variously seen as social class, poverty, social exclusion or unemployment.

One of the most famous political slogans of recent times—tough on crime, tough on the causes of crime—was intended by its inventor, Tony Blair, to satisfy the two main contenders in the debate: those who want to hold criminals responsible for their actions, and those who deny personal responsibility because they believe that individuals are forced to commit crimes by a variety of 'underlying causes'. Mr Blair knew that voters in areas vulnerable to crime wanted action taken to apprehend and jail criminals. He would be tough on crime to please them, and, in order to accommodate the social and psychological determinists, he would continue to tackle 'underlying causes', particularly poverty.

However, Mr Blair's dichotomy still fails to get to the heart of the matter. There are important underlying causes, but until recently we have tended to focus on the wrong ones.

Underlying Causes

One of the most exhaustive studies of the causes of crime in recent times was published in 1985 by James Q. Wilson and Richard Herrnstein, *Crime and Human Nature: the Definitive Study of the Causes of Crime*. It brings together what we have learnt from criminal justice practice and academic disciplines, including economics, sociology, political philosophy and psychology. The authors argue that the long-term rate of crime is affected by three main factors.

1. The age structure of the population, specifically the proportion of young males. In each generation a proportion of the young males have proved to be predisposed to crime. They are characterised by low intelligence, a short time horizon and an aggressive temperament. If that proportion goes up, other things being equal, crime is likely to rise.

2. The net benefits of crime, including the number of criminal opportunities, and the costs if caught. The actual risk of punishment may rise or fall over time and may or may not correspond to the perceived risk of punishment. Other things being equal, if crime pays, a society is likely to experience more of it, and vice versa.
3. Social or cultural changes that reduce or increase 'social investment' in institutions that encourage law-abiding behaviour. Schools, churches and families can play an especially important role in encouraging individuals to think ahead, consider the feelings and interests of other people, and accept common rules. In ordinary language, if children are brought up to have a conscience, they will not commit a crime even if they think they can get away with it.

According to Wilson and Herrnstein, changes in material conditions often cited by criminologists as an underlying cause of crime—especially poverty and social exclusion—do not seem to have been important. During the twentieth century periods of recession and economic growth were both associated with increased crime.

Is poverty an underlying cause of crime?

Farrington's longitudinal study of South London found that the peak age of offending was 17-18, but it was also the peak age of affluence for many convicted males. Those who had been convicted tended to come from low-income families at age eight and had low-incomes themselves at age 32, but at age 18 they were well-off compared with their contemporaries. Convicted delinquents tended to be unskilled labourers, for example on building sites, and on a full adult wage, whereas non-delinquents tended to be students or in low-paid jobs with good prospects, such as bank clerks.¹ A direct attack on poverty as a risk factor when these youths were aged 18—by transferring money to the least affluent—would have passed money to non-offenders and disregarded deeper explanations of their behaviour.

The crime debate has been strongly influenced by criminologists who have contended that changes in material conditions are an underlying cause of crime—especially poverty and social exclusion. However, during the twentieth century periods of recession and economic growth were both associated with increased crime.

David Pyle and Derek Deadman studied burglary and robbery between 1946 and 1991. They found that personal consumption was negatively correlated with changes in crime (increasing personal consumption led to falling crime). Unemployment, however, was positively correlated with crime.²

Robert Witt and colleagues found that between 1988 and 1996 year-to-year changes in burglary and vehicle crime were positively correlated with year-to-year changes in the unemployment rate and the number of cars per head.³

Simon Field had earlier found that from 1950 to 1987 year-to-year changes in burglary, robbery and theft of vehicles were negatively correlated with year-to-year changes in personal consumption. He had also found that year-to-year increases in beer consumption were positively correlated with year-to-year increases in violent crime.⁴

Farrington and Jolliffe found that from 1981-1999 inflation-adjusted personal consumption per head was positively correlated with all types of crime except vehicle theft (measured by the BCS) and burglary and vehicle theft (recorded by the police). Inflation-adjusted GDP per capita was positively correlated with all types of crime except survey vehicle theft. In fact in the 1980s and 1990s personal consumption and GDP per head increased over time, whereas survey vehicle theft increased considerably and then fell sharply. To their surprise, beer consumption per head was negatively correlated with all types of crime. In addition, vehicle theft did not increase with the number of vehicles available to be stolen.⁵

These inconsistent results suggest that such theories offer only weak explanations for crime. The fact that in some periods personal consumption is positively correlated with crime (Farrington and Jolliffe) and in others (Field) negatively correlated, suggests that it was not the most important influence on behaviour. Similarly, beer consumption was positively correlated with crime in Field's study. He thought that increased income allowed greater beer consumption which, in turn, led to violence. However, Farrington and Jolliffe discovered a negative correlation.

From the late 1950s until the mid-1990s there was a constant increase in crime, despite ups and downs in the economic cycle. During the same period, social trends such as divorce, out-of-wedlock births, and alcohol and drug abuse were also increasing. Wilson and Herrnstein argue that changes in 'social investment' in moral education, especially in schools and in the family, offer a more convincing explanation of the increases in all these trends, including crime. In essence, our culture reduced the amount of collective effort it put into declaring and upholding community standards.

Moreover, we should not forget that a principal driver of behaviour is personal attitudes or beliefs. At any one time some people may have no job and want the money a job would provide. Indeed, at all levels

of income there will be people who want more than they have got. But, whether they seek to satisfy their wants by legal or illegal means is always a personal choice. They will be influenced by community standards—some internalised, some consciously accepted as a personal guide, and others obeyed out of fear of the consequences of non-compliance. If there are some opinion leaders who say that unrequited material wants are acceptable grounds for crime, some potential law breakers will take that as an indication of prevailing public opinion. To avoid ambiguity, it is very important that accepted community standards should be openly discussed and made clear for all to see.

In denying or disregarding the importance of such influences, deterministic theories neglect one of the most important qualities of the human race: our capacity to be influenced by one another and to change our beliefs and practices in the light of experience.

We will need to return to these questions later, but first we need to get behind the most visible differences of opinion to the underlying assumptions being made by various protagonists—especially their beliefs about human nature, the human condition, and the appropriate scope and role of government.

Left-wing and right-wing

Contemporary discussion continues to be bedevilled by misleading contrasts, not least the tendency to classify policies as ‘left-wing’ or ‘right-wing’. It is usually assumed that the left believe crime to be the result of social conditions and advocate changing those conditions through political action. The right are assumed to oppose this view and to argue that some people are bad and that their wrongdoing is only tenuously connected with their social conditions. Right-wing policies should, therefore, aim to deter offending by detecting, convicting and punishing criminals.

A book by David Wilson and John Ashton, *What Everyone in Britain Should Know About Crime and Punishment*, published in 1998, sums up the assumptions made by many criminologists:

Right-wing theories tend to blame human wickedness and greed, permissive social policies, sexual freedom, the media, family breakdown and lack of respect for authority. In contrast, left-wing theories emphasise the role of social and economic factors, materialism and lack of support.⁶

David Wilson and Ashton go on to define the differences between the main political parties in these terms:

Conservatism is an individualist doctrine which holds the individual to be free and rational, and therefore entirely responsible for his or her own actions. The parties of the left and centre, by contrast, believe that individual actions are shaped not

only by individual will, but also by the broader social and economic context in which they occur.⁷

These assertions embody many unstated assumptions. The claim that conservatives believe that individuals are 'entirely responsible for' their own actions confuses two notions: the idea that individuals are in fact the cause of events that affect them; and the idea that individuals are responsible for making the most of the situation in which they find themselves. A consistent defender of personal responsibility would argue that we often find ourselves in situations neither of our choosing nor of our making, but that we nonetheless remain responsible for discovering the best way forward. Whether or not our earlier actions contributed to any given predicament is always an open question.

Wilson and Ashton also claim that the left believe that individual actions are shaped by social conditions, whereas the right emphasise individual choice. However, when we look more deeply into the attitudes associated by Wilson and Ashton with the left, the list of acknowledged 'social conditions' is restricted. Moreover, their list of favoured 'right-wing' explanations includes permissive social policies and family breakdown. If these are not 'social', then Wilson and Ashton must be using the term in a highly idiosyncratic manner. In truth, thinkers of the right invariably attach considerable weight to changes in social conditions as methods of reducing crime, including the support of schools in which children are given a clear moral lead, and the fostering of stable families because they are held to provide the best environment for raising children.

Typically the left focuses on economic circumstances, especially poverty and unemployment, and advocates public policies to change the income distribution. At the same time, intellectuals who identify with the left tend to disregard analyses that focus on other social conditions, like family breakdown, discipline in schools and the role of religion. They are particularly reluctant to acknowledge that some families and certain family types—particularly step-families and single-parent families—are more frequently associated with crime. And typically they do not want to see changes in social conditions that would restore the prominence of the family based on lifelong marriage, despite clearly demonstrated links between family breakdown and crime. Moreover, some on the political left do not want to see schools made more orderly and are often suspicious of religion.

Thus, the division is not between those who emphasise underlying social causes and those who do not; it is more a debate about which underlying social causes are important.

Rival views of the human condition

One of the main divisions of opinion is between deterministic explanations of behaviour and those which emphasise personal responsibility. Among the former are Marxist economic determinism; genetic determinism which contends that paedophiles, for instance, will always be a risk to children; loose theories that 'crime is caused by poverty'; and situational theories, including those claiming that we have more crime today compared with 50 years ago because there is more to steal.

Among the theories emphasising personal responsibility two approaches stand out: those that see man as a rational calculator, guided by self-interest; and those that see man as a moral agent, guided by a conscience shaped by the wider society.

Man as a rational self-interested calculator

Hobbes was a keen observer of the human condition and lived through the bitter religious wars of the seventeenth century. He noted that people were inclined to fight each other for the things they wanted, including material gain, personal safety, prestige, and to impose their favourite beliefs on others. However, to avoid constant conflict, the right to use private violence had been surrendered to rulers whose task was to protect everyone from foreign attack and from criminals at home. At its simplest, Hobbes thought that people were inherently bad, from which it followed that it was necessary to erect institutions to control them. Without government to maintain law and order, life would famously be 'solitary, poor, nasty, brutish, and short'.

Hobbes saw people as capable of rationally calculating their own advantage, a view later developed by the utilitarians, especially Bentham. This meant that public policy towards crime should be based on ensuring that the punishment for a crime exceeded any advantage the offender might gain. When people compare the benefit of their crime 'with the harm of their punishment', said Hobbes, they will 'choose that which appeareth best for themselves'. This view continues to be strongly supported today.

Man as a moral agent, guided by conscience shaped by society

The tradition of the early liberals such as David Hume and Adam Smith owes much to Aristotle. It rests on the view that people are inherently predisposed to acquire a conscience. In this view, people are

naturally social creatures and have an innate disposition to please other people and avoid their disapproval. To be sure, people are capable of selfishness but the challenge is, not only to check self-interest, but also to harness those natural moral sentiments which enable us to put ourselves in other people's shoes and develop a shared sense of right and wrong. The human challenge, therefore, is to devise or nurture the institutions that encourage mutual sympathy and concern. This means that families and schools are of special importance, as well as all those institutions of civil society that bring people together for common purposes without anyone commanding them to do so.

In this tradition of thought it makes no sense to think of people in a pre-social condition. No such state of affairs has ever been the reality. From the beginning people lived together in families, and later in tribes, villages, towns and wider social groupings for mutual support and protection. Functioning families, above all, prepare children for an adult life of personal responsibility. To understand the human condition as if nothing is going on but the calculation of pains and pleasures is insufficient. It is of particular relevance to any discussion of crime to recognise that most people do not commit offences even when they can be certain of avoiding punishment. They are guided by conscience. Human beings are born with a capacity to develop an internal sense of right and wrong, but whether they grow up with a well-developed conscience or not depends most of all on their family, and also on the reinforcements provided by the wider society, including schools, churches and intellectuals (including criminologists).

Man as a natural altruist, corrupted by society

So far we have contrasted deterministic theories with those emphasising individual responsibility, especially within a shared culture in which a particular sense of right and wrong is upheld. There is another influential group of modern thinkers who derive their ideas from Rousseau, with modifications. The essential idea is that 'society' causes self-serving or aggressive behaviour. The political remedy is not to uphold common standards but to release individuals from their grip—to sweep away intrusive institutions and emancipate man's true nature. According to Rousseau:

It is then certain that compassion is a natural feeling, which by moderating the activity of love of self in each individual, contributes to the preservation of the whole species. It is this compassion ... which in a state of nature supplies the place of laws, morals, and virtues.⁸

In *Émile*, he writes:

Our wisdom is slavish prejudice, our customs consist in control, constraint, compulsion. Civilised man is born and dies a slave... All his life long man is imprisoned by our institutions.⁹

Such thinking does not necessarily deny the importance of individual responsibility in all cases, but it repudiates Adam Smith's view that upholding community standards is central to a civilised society.

Rousseau regarded Hobbes' arguments as pernicious. People are not naturally wicked, or scheming, or selfish. They are inherently good. They will not attack other people, unless taught to do so; and they will naturally sympathise with the misfortunes of others, unless they are urged by their society to be callous or uncaring. The corruption of people began with the formation of societies. Property played a central part in Rousseau's demonology: 'The first man, who having enclosed a piece of ground, bethought himself of saying, "This is mine," and found people simple enough to believe him' was the real founder of society. Property led to wars and inequality. For Hobbes, seeking glory and gain were natural, but for Rousseau they were the result of social convention. Rousseau's influence, especially the belief that people are not really responsible for their actions (because society has corrupted them) is still prevalent today, especially among criminologists. Many such theories boil down to the assertion that 'society made me do it'. However, Rousseau was not an economic determinist. His belief that 'society' corrupted individuals belongs in the deterministic camp, but his belief that raw human nature was essentially compassionate was not consistent with the claim that poverty causes crime.

One version of Rousseau's doctrine led to demands for individuals to be 'true to themselves'. But if it is true, for instance, that a paedophile has a genetic desire to have sex with young children, then he is being true to himself. Most people think he should *not* be true to himself. Instead he should be *untrue*, or rather true to the prevailing community standards of right and wrong.

Today, Rousseau's theories tend to underpin the thinking of people who see themselves as 'progressives'. For example, an *Observer* leader in April 2003 said this: 'Home Secretary David Blunkett has, whatever some critics might say, a progressive agenda on crime. He has long expressed his desire to reduce the prison population'. Yet, the leader writer notes, the prison population has risen to record levels.

In the assumption that it is 'progressive' to reduce the prison population, we can see the hand of Rousseau. Human nature is held to be essentially good and so, in an ideal society, few people would be in prison. Most people would agree that it would be better to have a smaller prison population, but only so long as the reason why few

people are in prison is that there is very little crime. To have few people in prison whilst there is a high level of crime is not a sign of a civilised society. It may be an indication that the leaders of society have lost their nerve, or perhaps the capacity to separate facts from personal preferences. Moreover, in failing to combat crime, such leaders are more likely to increase it.

The underlying mistake is to confuse hopes for human nature with assumptions about the current reality of human conduct. To confront human behaviour as we find it, is not to abandon hope for a better world, it is simply being realistic about what needs to be done to change the behaviour of known offenders and about the measures necessary to protect the public while the behaviour of offenders is changing.

Our assumptions

We accept that there is evidence that some people have innate tendencies. But, we do not claim that some people are born criminals. It is true that individuals who are impulsive (will not defer rewards or plan ahead) and of below average intelligence are more likely to be criminals, but much hinges on the early years when parents can either modify or encourage any natural predispositions. Failure at this stage can influence children to display little regard for the feelings of others—and such children are more likely to be the ones who turn to crime at an early age.

In *Crime and Human Nature*, Wilson and Herrnstein take pains to explain the style of parenting that most effectively diminishes criminal tendencies. The interaction with parents takes place on three levels.¹⁰ First there is the development of 'attachment', a word used by Wilson and Herrnstein in a slightly wider sense than is common among psychologists. They mean the encouragement of a desire to win the approval of others and a sense that the child can count on receiving that approval when it is merited. Second, there is the development of a 'time horizon', an ability to think ahead and defer pleasures. And third, is the development of 'conscience', that is internalised constraints on certain actions. People with a strong conscience will feel anxious or uneasy—bad about themselves—when they flout the standards they have come to accept.

Effective parents tend to be warm rather than cold, and consistent in applying restrictions, not erratic. Warm and consistent parenting typically produces children with a strong conscience. To avoid confusion with utilitarianism, Wilson and Herrnstein emphasise that conscience is not about the calculation of advantage, that is merely

seeking the approval or avoiding the disapproval of others. They accept that behaviour patterns are reinforced by rewards and punishments but deny that individuals are controlled by external factors. Children learn, not only how to gain rewards from others, but to internalise principles of conduct so that they share the same sense of right and wrong. Such beliefs and habits become part of their character to such a degree that they may be 'incapable' of committing crimes. This interpretation is caricatured by some sociologists as 'authoritarian', because values have been taught by society (mainly parents). In doing so they reveal their debt to Rousseau, who regarded moral education as a departure from built-in goodness.

If the interpretation of Wilson and Herrnstein is true, parental skills matter a great deal. It also explains why broken homes are important. Because parenting is a difficult task, if one parent must do the job of two it becomes more difficult still. Single parents, therefore, have less chance of success, particularly when confronted by an inherently difficult child, and still more so when they live in a disorderly neighbourhood where mutual support may be hard to come by. By the same token, a lone parent may be able to raise a child successfully if he or she is not naturally pre-disposed to crime, and the school and wider community are supportive.

Schools can play an important role in encouraging a shared sense of right and wrong, but since the Second World War there has been a fundamental dispute about the purposes of education. The critics of the established system, who had become dominant by the 1960s and 1970s, disliked schools that emphasised discipline, orderly classrooms and teachers imparting knowledge to pupils. Schools characterised by rules (symbolised by children sitting in rows listening), an emphasis on good character and the teaching of basic skills and knowledge, came to be despised. The emphasis on 'manners maketh man' was nothing but a disguise for hypocrisy and, anyway, it was all about imposing middle-class values on the masses (automatically assumed to be a bad thing, as Rousseau had taught).

Old fashioned schools were to be replaced by less formal institutions in which children would sit, not in rows, but in groups, theoretically working together. Teachers should not transmit knowledge but help pupils to discover it for themselves, a doctrine also straight out of Rousseau's *Émile*. This is how the back cover of the 1993 Everyman edition described its influence: 'Rousseau was certain of man's natural goodness, yet he perceived a world in which that benevolence was obliterated: from birth to death, men were fashioned by artificial social

constraints into conditions of servitude, mutual distrust and alienation. Changes had to be made, allowing this natural goodness unhindered development.' The blurb goes on accurately to sum up the influence of Rousseau on education: 'Such is the impact of this doctrine upon educational practice that it seems today mere commonsense'.

Champions of traditional schooling were put on the defensive. Their counter-criticism was that schools should prepare pupils for life in a free society in which basic skills, such as reading, writing and numeracy would be an invaluable asset. No less important, a free society also rested on personal responsibility and co-operation with others and so a school should play its part in encouraging children to assert self-control and consider the feelings of other people. They understood from historical experience that the alternative to *self* control was *social* control and so, a society that wished to live under limited government must comprise individuals who imposed a voluntary check on their own wants for the good of all.

Moreover, defenders of a free society know that people who grow up without basic skills and without a sense of personal responsibility for their own conduct offer easy pickings for political wire-pullers. In reality, the followers of Rousseau were demanding the emancipation of pupils from the school rules that prepared them, not to be obedient to hated 'middle-class' authority, but to be capable of criticising it from a position of strength based on careful thought and sound knowledge, acquired in a shared process of open, public discussion.

To sum up: we accept that natural endowments and psychiatric imperatives make a difference, but contend that socialisation within the family and other key face-to-face institutions is the vital formative influence. We further contend, contrary to the followers of Rousseau, who regard social institutions as harmful, that the raising of children capable of exercising responsible and unselfish choices in a free society depends on the careful maintenance of institutions such as marriage. We do not deny that people often find themselves in circumstances not of their choosing but, contrary to determinists, we claim that how individuals respond, once in a given situation, is a matter of choice. To say this is not to accept that people are utilitarian calculators who do nothing but weigh the costs and benefits of actions, but it is to claim that we adapt our behaviour depending on the positive and negative consequences of which we are aware—guided at the same time by conscience shaped by our immediate family and the wider society.

We contend that man is best understood as a moral agent. The challenge, we might say, is to understand the institutions that work

with the grain of human nature, not to get back to raw nature, which may lead us astray. Often, success in creating peaceful and stable societies depends on ignoring or overcoming nature—especially aggression and self-interest. What we call civilisation is partly a triumph over nature (our worst instincts) and partly working with the grain of our nature, by upholding institutions such as marriage that protect children and encourage concern for others.

The human challenge is how best to organise a coherent society despite human limitations. Having few people in jail is a legitimate measure of a good society, but only if there is little crime, which would imply that most people were guided by a strong sense that harming others is wrong. The aim of policy should be a low rate of imprisonment *because* we have a low crime rate, not a low rate of imprisonment, *whatever* the crime rate.

Where do justice and equity fit in?

So far we have considered rival theories of human nature and what they imply for public policy towards punishment and rehabilitation. But where does ‘justice’ fit in? Some enthusiasts for rehabilitation are actively disdainful towards the champions of ‘just deserts’. Two of the leading enthusiasts, Don Andrews and James Bonta, for example, claim that just-deserts theorists believe that ‘being held accountable for one’s behaviour through judicial processing somehow makes one more responsible’. And they go on to accuse such theorists of dismissing ‘human diversity’ and ‘direct human treatment services’ in favour of ‘big picture’ concerns of ‘justice’ and ‘preventing the breakdown of society’.¹¹

Their dismissal of ‘justice’ as a ‘big picture’ concern suggests that they have failed to make a distinction which has played a prominent part in the post-war crime debate at least since H.L.A. Hart’s ‘Prolegomenon to the Principles of Punishment’ of 1959.¹²

According to Hart, the battle between champions of rehabilitation, justice and utilitarianism failed to distinguish between, on the one hand, the overall justifying aim of the system of law and, on the other, the distribution or allocation of punishments. A system of law backed by threats of punishment must be understood as part of a communal effort to make rules for everyone to live by, usually in the belief that they are to the benefit of all.¹³ The idea of an implicit social contract captures some of what is meant. As we all go about the daily business of earning a living, buying, selling and entering into agreements with others, it would often be a great advantage to break the rules—so long

as everyone else was obeying them. But this would give the law-breaker an unfair advantage which had been deliberately foregone by the majority of law-abiding people out of a half-conscious sense that we all need to take 'the rough with the smooth' or that 'what you lose on the swings you gain on the roundabouts'. Punishment is necessary as retribution to restore balance. For this reason we speak of a criminal's 'debt' to society. We restore equity when the debt is discharged. There could be no equity while some people—the least scrupulous or most selfish—were able to gain advantage by ignoring the rules obeyed by everyone else, often to their own immediate *disadvantage*.

According to Hart, a society can be seen as:

offering individuals including the criminal the protection of the laws on terms which are fair, because they not only consist of a framework of reciprocal rights and duties, but because within this framework each individual is given a *fair* opportunity to choose between keeping the law required for society's protection or paying the penalty.¹⁴

Criminal punishment, he says:

defers action till harm has been done; its primary operation consists simply in announcing certain standards of behaviour and attaching penalties for deviation, making it less eligible, and then leaving individuals to choose.¹⁵

This system maximises individual freedom. Individuals can 'obey or pay'. They can identify beforehand when they will be punished and plan accordingly.

Rehabilitation is intended to strengthen an offender's disposition to keep within the law by methods other than fear of punishment, perhaps by encouraging repentance, recognition of moral guilt, or greater awareness of social responsibility; or perhaps offering education, vocational training, or psychological treatment. Hart finds it paradoxical that rehabilitation should be considered the dominant aim 'as if the main purpose of providing punishment for murder was to reform the murderer not to prevent murder.'¹⁶

Rehabilitation, he says, is a remedial step, the opportunity for which arises when the criminal law has 'failed in its primary task of securing society from the evil which breach of the law involves'. There are two groups of people in any society: those who have broken a law, and those who have not so far, but might. To treat rehabilitation as the dominant aim would, according to Hart, be to forgo hope of influencing the majority of non-offenders.¹⁷

In Hart's terminology, the possibility of reforming a criminal is an important consideration during the *allocation* of judicial sanctions, but it cannot serve as the paramount objective without disregarding the

main purpose of any system of law, that of using moral re-affirmation and the threat of punishment to influence people who have not offended—so far.

Responsibility and blame

One further line of criticism should be attended to. We have defended the idea that individuals are personally responsible for dealing justly with others, but some critics claim that crime is an illness in need of curative treatment. The psychiatrist Willard Gaylin, for example, wrote in 1982 that: 'Psychiatrically speaking, nothing is wrong—only sick. If an act is not a choice but merely the inevitable product of a series of past experiences, a man can be no more guilty of a crime than he is guilty of an abscess'.¹⁸

In an earlier and more famous book to which reference has already been made, *The Crime of Punishment*, another psychiatrist, Karl Menninger, wrote that it was 'simply not true' that most offenders were 'fully aware' of what they had done. Officials should replace 'the punitive attitude with a therapeutic attitude'. Crime should be seen as an illness: 'It should be treated, and it could be.'¹⁹

We do not accept this point of view. Crime is behaviour to which there is an alternative and it is up to each of us to make the right choice or take the consequences.

To sum up: the remainder of the study will examine two main explanations for crime. First, that crime increases when the net benefits outweigh the net disadvantages. And second, that crime will increase or decrease depending on the collective effort made by members of society to declare and uphold shared standards of right and wrong. This second explanation directs our attention to the primary socialisation of children, especially in the family.

Notes

Preface

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- 17 Hart, *Punishment and Responsibility*, 1970, p. 27.
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