



Punishment and Crime

Punishment is a necessary response to crime, but it degrades all concerned when it gives vent to cruelty. Society has come a long way since it was used for revenge. The question is: Can we go further? Can we make punishment pay?

□ The Bible says that the first crime on earth occurred when it had only two inhabitants. God told Adam not to eat the fruit of the tree of knowledge of good and evil; tempted by the serpent, Adam's wife took and ate some of it; Adam ate some too. It was, if you like, a case of theft; God had reserved the fruit of this one tree after inviting the couple to help themselves from all the others. The first crime was swiftly followed by the first punishment: Adam and Eve were banished from the perfection of Eden to the land of toil and suffering which we now know as the real world.

Whether we take this story literally or as a parable, it nevertheless reminds us that crime is as old as mankind and is inherent in the human condition. So is punishment: the most fundamental precept of justice is that people must face the unpleasant consequences of having done wrong.

It is not only Judeo-Christian doctrine that holds this belief. Anthropologists have found that sanctions for criminal behaviour exist in the most primitive societies. Not only is punishment a moral necessity, it is necessary for the survival of the community. Men have always come together to punish other men who have broken the laws of their group in efforts to preserve that group from future harm.

But when men took it upon themselves to wreak the wrath of God on transgressors, they assumed the right to wreak some of their own wrath in the process. The same Old Testament that tells us the

tale of Adam and Eve goes on to tell us that disobedient sons and girls who are not virgins at the time of marriage were to be stoned to death. "So shalt you put evil away from among you," it explains.

In succeeding centuries, people sprang to the task of putting evil away from among them with sadistic relish. Much ingenuity was lavished on devising death sentences, which included drowning, impaling, beheading, hanging, being pushed off a precipice and having all one's bones broken on "the wheel."

Branding, flogging, life-long banishment and being locked in a painful position in a pillory were common penalties for minor offences, but the offences had to be minor indeed not to provoke a death sentence. Until the late 18th century, a large proportion of the crimes in the law books of all European countries were punishable by public execution.

Imprisonment did not come into general use as a medium of punishment until the early 1800s. There had been prisons long before that, but they were mainly places of detention where accused persons were held before and after trial. The new order did not represent any great advance in humane treatment. The notorious English prison of Newgate was, in the words of one visitor, "damp and noisome, half a foot deep in water, with an open sewer running through the centre of the floor . . . The wretched inmates huddled together for warmth upon heaps of rags reeking with foul exhalation."

Reformers like John Howard and Jeremy Bentham were able to bring about some improvements in these ghastly conditions by creating a national sense of shame about them. A gradual shift took place from the idea of social vengeance to the idea of using the prison system to correct criminal behaviour. But the correctional technique remained punitive: its object was to make life so miserable for the convict that he would never consider committing another crime.

Vindictiveness degrades while mercy ennobles

Another objective was to deter potential offenders from turning to crime, despite the knowledge that the horrible punishments of the past had never succeeded in stopping really hardened criminals. In Elizabethan times, professional crime had flourished in the ever-present shadow of the gibbet. Reviewing a book on the subject, Anthony Burgess concluded: "Those who elected for crime for the sheer love of it were as proportionately numerous then as now."

The severity of conditions in prison eased towards the end of the nineteenth century. The guiding philosophy of penology became "an eye for an eye." Often misinterpreted as a licence to indulge in revenge, this Biblical injunction sets limits on the severity and extent of punishment. It means that we should take one eye for one eye and no more.

The Victorian humanists who called for a lessening of the harshness of prison life made the point that the infliction of unnecessary suffering debases and brutalizes the society that condones it. They called for more mercy in penal practices on the grounds that, while vindictiveness degrades the human spirit, mercy ennobles it.

This appeal to the better instincts of the body politic eventually resulted in a more humane correctional system. The concept of correction was later extended to include rehabilitation — that is, conditioning the prisoner to become a useful citizen on his re-entry into normal society.

The system that has emerged in present-day Canada embodies elements of all the functions for which imprisonment has been used in the past. It seeks to punish, deter, rehabilitate and protect the public. While it fulfils some or all of these

purposes in individual cases, what it does not and cannot do is prevent crime.

On the contrary, there is much evidence to show that imprisonment can breed crime by placing impressionable young offenders under the influence of inveterate criminals. This is no new phenomenon. Napoleon Bonaparte is quoted as saying: "The contagion of crime is like the plague. Criminals collected together corrupt each other. They are worse than ever when, at the termination of their imprisonment, they return to society."

To counter this effect, the Canadian penal system seeks to segregate prisoners according to the gravity of their offences. Still, the records of many people who have been in and out of jail show a discouraging progression from minor to major crimes.

If there is one sure antidote to the contagion, it is to have fewer people behind bars. Yet the Canadian justice system has a propensity "to respond to crime by greater overall use of imprisonment in comparison with the justice systems of many similar countries," according to a paper issued by the federal government.

Canadians tend to overestimate the incidence of violent crime

The paper in which this fact is cited is entitled *The Criminal Law in Canadian Society*, published by the Department of Justice in 1982 as a guide to the purpose and principles of the federal-provincial Criminal Law Review. An underlying objective of the review was to reduce the incidence of imprisonment as a punishment and promote alternative ways to make offenders pay.

At first glance this would seem to fly in the face of public opinion. The current public mood appears to favour more and harsher punishment in response to the growing crime rate. But the paper states that people are misinformed about the extent of crime in Canada, partly because they equate the general subject of crime with crimes of violence.

It quotes the results of a Gallup poll in which Canadians were asked: "In your opinion, of every 100 crimes committed in Canada, what per cent involve violence — for example, where the victim

was beaten up, raped, robbed at gunpoint, and so on?" The respondents estimated 53.9 per cent. In fact, the number of crimes of violence in the past few years in Canada has amounted to no more than 8 per cent of all offences reported to police.

The paper speculates that the enormous gap between the public perception and the reality of the situation is partly accounted for by the media's inclination to concentrate on violent crimes for their shock value. Any television newscast is likely to leave the viewer with the impression that violence is far more common than it is. Canadians also watch news and entertainment programs from the United States, from which they infer that in crime, as in so many other things, the two countries are rather similar. The truth is that Canadian society is nowhere near as violent as American society. Almost five times as many violent crimes are committed per capita in the U.S. than in Canada.

This is not to say that our own crime rate holds any reason for complacency. The number of offences reported to police more than doubled in the 1970s, although it has levelled out somewhat since 1975. At the same time, the situation does not appear to justify calls for Draconian measures to protect the public against crime of a violent nature. According to the most recent complete statistics up to 1982, violent crime has not been increasing significantly more than the increase in the population. The homicide rate has declined since 1975.

The Canadian system is not uncommonly lenient

The majority of admissions to the federal penitentiary system in 1981-82 were for non-violent property offences, mostly theft and burglary. The majority of inmates in provincial prisons were there for drinking/driving infractions and non-payment of fines. Otherwise, people are sentenced to jail terms (often because they are unable to pay fines) for a vast variety of reasons. In addition to the 350 laws contained in the federal Criminal Code, there are some 40,000 federal and provincial statutes and countless municipal bylaws.

The classification as criminal offences of such infractions as water-skiing at night and selling

fish without a permit grossly distorts the statistical crime rate. At the same time, the incursion of government regulation into more and more facets of life has created more and more laws to break. Much of the public concern over the "soaring crime rate" arises from this distorted statistical picture. Cries for harsher punishments to meet this supposed menace are also influenced by the mistaken notion that the Canadian system is overly lenient, when in fact it is one of the least lenient in the western world.

The impression that the system is too soft also arises from media coverage which focuses on sensational incidents. Many people gather from the news that parole from prison is easy to obtain. The fact is that parole is not granted as freely in Canada as in most other western countries. The National Parole Board rejects about 60 per cent of all the initial applications it hears.

In the above-mentioned Gallup poll, four out of five of the respondents believed that many paroled convicts commit violent crimes soon after they are let out of prison. They overestimated the actual rate of parolee crime by 500 per cent. One reason for this misunderstanding is that people tend to think that everyone under conditional liberation is on parole, including those free on bail, on probation and under mandatory supervision.

Parole itself is an alternative to incarceration designed to allow convicts to serve a portion of their sentences while becoming re-integrated into the community. Prisoners in Canada normally become eligible for full parole after they have served two-thirds of their sentences or seven years, whichever is less. In the meantime, they may be granted temporary passes for rehabilitative or humanitarian reasons. The National Parole Board may refuse to grant conditional releases to prisoners convicted of violent crimes before they have completed one-half of their sentences. Persons convicted of first-degree murder since 1976 do not become eligible for parole until they have served 25 years.

About one-quarter of those granted parole return to prison either because they have committed a new crime or violated the conditions under which they were released. The recidivism rate rises to about 50 per cent, however, among prisoners under the mandatory supervision of the Board who must be released after they have

completed two-thirds of their sentences under the "time off for good behaviour" rule. These are usually inmates whose applications for parole had been rejected because the Board deemed them a public menace. Hence most of the parolee crime scandals so dear to the hearts of the media concern people who were denied parole until the law dictated that they must be released.

Parole prepares prisoners for their inevitable return

The parole system recognizes the fact that the great majority of prisoners in Canada will be released sooner or later. It only makes sense to re-introduce them gradually and conditionally to community life. But, says a policy statement, "the Board believes, and insists, that the community should not be exposed to unacceptable levels of risk and potential harm, through the release of offenders. The Board's principal concern, therefore, in rendering a decision to grant, deny or revoke a parole is the level of risk that may be posed to the community."

Parole is one element of the system of non-custodial corrections which has lately been growing in Canada. As matters now stand, most sentences imposed by the courts (over and above fines) are being served outside of jail. While in 1981-82, there were 21,000 inmates in federal and provincial prisons, approximately 73,000 convicted persons were serving out their sentences in their communities. Of these, close to 90 per cent had their sentences suspended on probation. If they break the terms of this restricted freedom, they are liable to be jailed.

In the past few years, community correctional services have been branching out in new directions. Specialized programs aimed at target groups such as women, native people and drinking/driving offenders have been established, and more and more of the rehabilitative work is being done by non-professional volunteers.

Governments could not be more pleased with this movement. While 75 per cent of the total

correctional case load in Canada in 1981-82 was being handled within communities, it accounted for only 8 per cent of total correctional expenditures. Keeping people in prison has become an extremely expensive proposition. In Canada as a whole, it costs an average of \$80 to keep one inmate for one day; \$106 a day in the federal system and \$65 in the provincial. It all adds up to more than \$1 billion a year.

For financial reasons alone, the federal and provincial governments are anxious to move more of the correctional system out of the prisons and into the community. One of the pre-established principles of the revision of the Criminal Code recently introduced in the House of Commons is that imprisonment should be considered a last resort to be saved for those whose removal from the community is necessary to protect other citizens.

Another consideration is that carrying out more corrections within the community might help to remedy a basic injustice. Until quite recently, the system looked upon crime as an affront to society in general, and paid little attention to righting the wrongs done to the individual victim of crime.

Experiments are now being made in Canada in framing sentences to be served in the community through which the perpetrator of a crime makes restitution to the victim. Where no one victim can be singled out, offenders are sometimes made to pay back the community by doing public works.

The evolution of the system is likely to continue in this direction. It is not without its risks, of course, but it does seem a natural stage in the civilizing process which began when they stopped hanging people for petty theft. In any case, severe punishment has never eliminated crime; we now know that the chief reason for imprisonment is to "quarantine" criminals and thus protect the public. Since we will never be rid of crime, we may at least try to draw some good out of it. The non-custodial approach offers a chance for crime victims and the community to salvage something from the evil in their midst.