

SPECIAL SUPPLEMENT

"Peace on earth, good will towards men"

In defense of vengeance

Without it, criminals will only be freer to injure us

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The following article defending vengeance in our penal system was first published in Saturday Night.

By BARBARA AMIEL

Last June in Torrance, California, a group of people threw a man over a cliff. The man had confessed to stealing two television sets and a stereo receiver. Later the sheriff explained, "You just don't steal a man's TV." The theft had been reported to the police but the executioners were impatient: the thief was a heroin addict, his haul was relatively small, in all likelihood he would get a suspended sentence. Maybe just a fine. His body was found at the bottom of a 200-foot cliff.

The incident was an eloquent plea in favour of society's institutionalizing of punishment. Criminal law was originally fashioned not only to punish thieves of television sets but to save them from angry mobs and to make sure the Biblical eye-for-an-eye approach to justice did not become an eye for a scratch. Vengeance and retribution were recognized as important threads in the social fabric, not because they deterred or reformed the offender but because they reassured and satisfied the offended.

ANIMAL NEED

This was not the satisfaction of some dark animal need. Citizens entered into the social contract with the understanding that society would guarantee — or at least put a premium on — their lives, dignity, and the right to enjoy their possessions. It was only when retribution followed injury that citizens could be reassured and satisfied that society really did place some value on their persons. This was — and is — a central need for any society. And, just as excessive or unjust punishment brutalizes the offender because it suggests that he is of no value, insufficient punishment brutalizes the victim for the same reason.

"As the judge pronounced sentence the six friends loosened, smiled and slapped one another. Score one. 'What'd I tell you? Four months'."

But in recent decades modern society has turned away from punishment and retribution. Such goals have come to be considered barbaric and unenlightened, and have fallen into disrepute. The ultimate aims of criminal justice have become reform and rehabilitation. The Philadelphia Quakers started it all back in 1789 when they came up with the penitentiary sentence as a humane alternative to exile and an encouragement to reform. The social scientists of the twentieth century were more humane still, with their emphasis on social engineering to achieve similar goals of reform and rehabilitation. But in recent years a battered society has



discovered that these goals are eluding enlightened law-makers and experts much as they eluded the Grand Inquisitors before them.

The fault probably lies in the nature of our institutions and possibly in the nature of man, but almost certainly in the nature of social scientists who seem committed to the belief that all crime has environmental causes. Today we are faced with a choice. We can cling to the idea that more of what we have unsuccessfully tried in the last century will work. Or we can go back to the theories of punishment and exile that existed before. There is no way we can pretend that those earlier solutions worked, if by "work" we mean that they either totally deterred or rehabilitated criminals. They did work, however, if by "work" we mean that they created a sense of reassurance and satisfaction in society at large and made it clear that certain actions were approved and others condemned.

JOHNNY'S FRIENDS

Outside the courtroom in Toronto, six of Johnny's friends sprawled on the benches lining the corridor. Occasionally one of them would get up, his high-heeled platform shoes echoing clack-clack down the halls to the water fountain and then clack-clack back and silence. Sometimes one of the girls giggled. When they talked it was mainly guessing about what the judge would give Johnny for drug trafficking. "Four months," said one of

them contemptuously. "It could be a year, two..." said Johnny's brother, and started crying again. Two years. No joke.

Inside the courtroom, sealed off from the hot June afternoon, sobered by the wood-panelling but most of all by the arrival of the judge, Johnny's friends squirmed on the wooden benches reserved for spectators. No more wisecracks, no more paper darts thrown across the courtroom. They sat on the wooden benches and squirmed because they were scared. Scared that their friend would be sent up for a year or more. Scared he wouldn't be around to organize a new hustle.

FOUR MONTHS

The pre-sentence report was read in snatches. Johnny has been previously convicted of theft and sentenced to four months and two years probation. He'd been paroled after two months, had violated his probation, had left home to live in a hotel with friends. While on probation he was convicted of possession of LSD for purposes of trafficking. Johnny had refused to take vocational courses or improve his education. The judge paused at this and looked concerned. "It is the hope of this court," he said in a vague and distant way, "that you may some time after this next custodial period wish to further your education."

Johnny made no response. The sentence of the court was four months in reformatory and two years' probation. As the judge pronounced sentence the

six friends loosened, smiled, and slapped one another. Score one. Afterwards the thin boy said to Johnny's brother: "What'd I tell you? Four months." As they walked to the escalator they were figuring what to do in September when Johnny would be out on parole.

"Look," he told me, "I could work and work for what \$200 a week? It's a drag. This way I risk maybe a couple of years away, but maybe I get \$100,000. Maybe more."

Two hundred years ago Johnny would have had his hand cut off for stealing a loaf of bread. Whatever that lacked in justice and appropriateness, it did make subsequent thefts difficult. Fifty years ago Johnny, as a second offender, would have gone to prison for a term at least a little longer than that given for his first offence. But with the 1938 Report of the Royal Commission to Investigate the Penal System, chaired by Mr. Justice Joseph Archambault, Canada committed itself to the rehabilitative ideal.

In the following years, platoons of social scientists formulated new methods to rehabilitate Johnny. Central to their thought was a belief that crime was directly related to poverty or social conditions. This did not explain why the overwhelming majority of poor Canadians did not commit crimes, nor why many well-off ones did. Neither did it explain why, during the 1950s, 1960s, and 1970s, when Canadians were enjoying rapidly improving standards of living and social services unequalled in any other period in Canadian history, the crime rates — instead of going down — were rapidly going up. What seemed unthinkable to social scientists was the common-sense notion that much crime may be committed because in the opinion of some people the risk is worth the pay-off.

"Rape and intimidation do not constitute part of a prison sentence, and the society that incarcerates has an obligation to protect the people it punishes."

Some criminals, on the other hand, were quite articulate about their motivation. One such man I knew, from a close and stable lower-middle-class family, has an impressive burglary and manslaughter record. One day in 1970 he took time out from planning an armed robbery in Toronto to explain himself.

"Look," he told me, "I could work and work for what, \$200 a week? It's a drag. This way I risk maybe a couple of years away, but maybe I get \$100,000. Maybe more." A month later he was arrested in Toronto's Union Station on a charge of trafficking in heroin and released on bail. While on bail he went back to "small stuff" — working apartment buildings and selling his haul wigs, jewellery, clothing, and accessories to coffee waitresses and cocktail girls who were delighted to get a fur coat for \$300.

But judges and juries were listening to social scientists, not to criminals, and were relieved to think they were

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