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DMESIS.

BY CHARLES S. PEIRCE.

THE mathematician Sylvester, (whose false accusation against me, hastily made and wickedly persisted in, is powerless to affect my estimate of his genius,) created, when he was in this country, a mathematical journal, which, by virtue of his fecundation, still makes a not quite insignificant figure in the thought-building business of this world; and upon the title-page of it he wrote for a motto that phrase of the Epistle to his people, *πραγμάτων ἔλεγχος οὐ βλεπομένων*, "the evidence of things not seen." One wonders what he meant. Sure, mathematics only makes plain things that *are* seen, and less than any science is disposed to take anything on *faith*. But I guess the motto was covertly addressed to the thinkers of Europe, and meant to say, "you may jeer at the idea of fruits of pure intellect ripening in America; it is, indeed, a thing hardly yet seen; but the establishment of this journal is my testimony that a germinal capacity for higher things is here." No doubt, it amused the Jew that Christians should not resent his thus using one of their holiest symbols to serve the purpose of a calembourg.

How wonderfully Christian faith has been dissolving away since the appearance of the "Origin of Species"—especially among the clergy! Whether this is true or not of Christian faith considered as the acceptance of a formula, I am sure that it is if the phrase be taken in its more spiritual sense, for that attunement of the mind to nature which renders the truth of the beatitudes axiomatic. It is a trite remark enough that the general idea of those hyperbolic statements is the first principle of Christianity, from which the rest naturally flows. I am one of those who think this idea is also the heart of true philosophy;—an idea that ought to be carried out, right away, at all hazards, and to all lengths. But I find each year fewer people to agree with me in this.

In order to illustrate how I would conceive that the policy of the State ought to be governed by Christian Faith, let me ask upon what justifiable pretense do we punish criminals? They are secluded from everything beautiful and elevating, and are treated in the harshest

manner and the most tetrical spirit, and just as they are settling down to this mode of life, are turned out, to be caught again in a few months; and this is repeated over and over again, all their lives long. If they are capable of being made worse than they were when first taken, the imprisonment accomplishes it. The common run do not suffer, because they are utterly insensible. Even those who were respectable are relatively unfeeling persons,—and if they suffer at first, their imprisonment soon deadens all capacity for pain. The anguish and the misery is for their good wives and children and parents. This is the way we are treating criminals, to-day; and I do not ask what our real motive is; for I have no leisure to dispute with persons who choose to shut their eyes to the fact that we really punish criminals because we detest them. But I ask, what is our excuse for such behaviour? Some will allege the authority of the bible. But the bible is an accursed book if it can properly be used to justify iniquity. An unchristian maxim would be unchristian though the angel Gabriel were to descend to utter it. The very idea of Christian grace is that we can draw from within our own breasts the truth of God. We cannot shirk responsibility for wickedness by any bible-texts. Others will say, we must punish criminals because the State is under an obligation to preserve itself. It is true that such an obligation exists. Only, as Whewell well says, "we may speak of the duty of self-preservation as the *lower* duty of a state in comparison with other duties, such as the duty of rendering its subjects moral and intelligent, which are its *higher* duties."* But self-preservation, while not high on the scale of duty, is a forcible excuse for wrong-doing. Others, and they are very many, will hold that punishment is involved in the higher duty of the State to "maintain true religion and virtue." Still others, while repudiating any such duty, will maintain the opinion that punishment is justified by the principle of the greatest good to the greatest number.

Here, I believe, are all the reasons that are to be alleged for the justification of punishment; and there is many and many a mind who will conceive that the

* *Morality*, § 848.

next problem is to fit these together, like a Chinese puzzle, to cover the case. But that is the practice of a rhetorician, not of a logician, nor of a philosopher. The proper method is to examine each of these reasons and see whether it be valid or not. The one which, I doubt not, has strongest hold upon the minds of men is the notion that it is the duty of government "to maintain virtue"; for Protestants hardly think any longer that it is its duty to support the church. So long as government is imposed upon the people from above, and the people have no say in it, its duties, whatever they may be, are no concern of the people. But just so far as we have any power to determine what the government shall do, its acts become our acts; and we can delegate to it no right to do anything which we have not ourselves a right to do. The theory that the government has rights not derived from the people, but from God, but yet that the people have a right to determine what God's institution shall do and what it shall not do, may be the Puritan doctrine, but it is a miserable device to absolve men from responsibility for atrocities. In a government by the people, the whole question is, What right has one man to punish another? I will grant that it is every man's duty to maintain true religion and virtue. It is his duty to do this, first, by exemplifying them, and secondly, by loving persuasions. But any unamiable conduct toward those who seem to violate the precepts of religion and virtue is prohibited by the prime principle of Christianity. "Vengeance is mine: I will repay, saith the Lord."

Putting aside this reason, then, there remain the two principles of self-preservation and of general utility. These connect themselves with the right to punish only upon the supposition that punishment goes to prevent crime. Upon these principles, then, punishment is inflicted solely in view of its effects in the future, and not at all in retribution for the past. Punishment, as so justified, ceases to be punishment; it is only prophylaxy. In that view, a man cannot be punished for anything past and done, as such, but only in so far as what he has done indicates what he or others may do in the future. But the *guilt* of a man, upon those principles, can neither justify nor aid in justifying the infliction of any pain. With his guilt his fellow-citizens can have nothing to do; and in the question of inflicting pains upon him, he is to be looked upon, so far as their action is concerned, as a citizen worthy of the same consideration that any other citizen receives.

The way in which the principle of self-preservation works is best seen in an example. Suppose the authorities get the idea the country is in danger of invasion. They may send an army which may erect an earthwork on the land of one of their own citizens, and ruin

his estate. It is an outrage upon him; but the excuse for it is the terror of the people. So far as punishment can be justified by the principle of self-preservation, it is simply an outrage upon the individual which danger of imminent destruction of the state has rendered necessary. Now it is not truthful to say that the government is put into fear of its existence by the doings of a sneak-thief.

But if the attempt to justify punishment by the principle of self-preservation is ridiculous, the attempt to justify it on utilitarian grounds is far worse. It is barbarous, revolting, and unchristian. The idea of putting a man to death, or, more dreadful still, of imprisoning him for years, deadening his soul and disgracing him for life, not for any guilt of his, but just for the sake of distributing to each unit of the population a fraction of a cent's worth of additional security! Why, such a principle would reduce cannibalism to a question of how much meat a man would yield! The Christian conscience condemns such villany with its strongest emphasis! Utilitarianism is the spirit of hell.

The amount of it is, you have no right whatever to punish criminals. The most that can be said is that if you can see no other way of defending yourself against them, and are afraid to do the Christian thing, then the weakness of your faith, your inability to keep steadily before your apprehension the fact that the Christian course of conduct is always the strongest course, must serve as your excuse.

Even this excuse shrinks to small dimensions when we inquire into the assumption on which it rests, that punishment prevents crime. Punishment does not prevent all the crime that actually gets committed. As a matter of well-determined observation, it has no deterrent influence upon the criminal classes. Some new and horrid penalty might affect their imaginations; but the punishments they know so well do not. A regular criminal, after years of incarceration, will repeat the act so punished, in the first fifteen minutes after his release, if he only finds an opportunity. All that punishment affects is, first, to modify misdeeds, and cause, for example, a person to live by swindling instead of by direct theft, and second, to deter some respectable people from yielding to mighty temptations. In the former class of cases the cure is worse than the disease: swindling is more dangerous and more harmful than theft. In the latter class the temptations are mostly owing to the neglect by the state of its higher duties; and it must not plead the effect of its own neglect as its excuse for committing an outrage.

A friend looking over my shoulder, asks: "How would you treat criminals, then?" Me? Oh, well, you know I am no penologist; and perhaps I could

not give a very wise answer to that question. But I should love them; and should try to treat them with loving kindness in the light of truth, and should hope for the blessing of heaven on my effort. I know that they are deformed or diseased souls. I feel that their being so is, in some unknown measure, the fault of our own grinding selfishness, our thoughtless dishonesty. Some degree of care and tenderness we owe them as a debt, and the residue not so owing I would give them if I could. They are weak and miserable, and need better care than other people.

My friend thinks I cannot logically escape proposing some definite plan. If so, I can only offer what my first principle seems directly to suggest. It will serve as a preliminary sketch of a way.

1. A judicial process substantially the same as the present form of trial shall* determine the criminality of the accused. I use the word criminality to denote the commission of an act which the state will regard as affording a conclusive presumption of an unsound mind.

2. Upon conviction the criminal will be handed over to the care of an executive commission of psychopathologists, to be appointed by the civil power, but to be dismissed at the bidding of a parliament of criminologists.

3. The criminal, now become a patient, is to be under the charge of this commission until discharged by it as cured.

4. During this time he will be confined in an asylum as closely as may be necessary, but in the most agreeable possible manner, and with the most refining and elevating surroundings.

5. The patient will be prevented from propagating the species while under treatment.

6. The most essential elements of human happiness being exercise and self-respect, the patient will be trained to earn his share of the expenses of the asylum in which he is confined; and his treatment will be somewhat proportioned to the amount of his earnings.

7. The products of the patient's labor will be disposed of at the highest market prices, and preferably in foreign markets. The whole thing will be run in a business-like and profitable manner.

8. Everything about the asylum will be made beautiful, and everything will be done to awaken the higher man. Under a proper economy in the distribution of labor, the better man will be the better workman.

9. The patient will be interested in the system, and in works of personal benevolence.

10. Upon his discharge, which, if it ever takes place, will only be after many years, the former patient

*I am bound to use the simple future, for politeness would forbid my seeming to doubt that people will embrace with alacrity the first means that presents itself of pouring out their Christian love upon a large class of their neighbors.

will be provided with a situation in which he may earn a sufficient living and may aspire to satisfy his desires.

11. At first only the grossest misdeeds will be dealt with, such as violence and theft. All attempt to deal with others will be abandoned for a time, until these worst crimes have been nearly eradicated. When there is room in the asylums, such ill-doing as drunkenness, impurity, gambling, and cruelty to animals will be taken in hand. Finally, perhaps even dishonesty and idleness may be attacked.

I hold that it is the duty of the state to do all this, or something better, no matter what the results may be, no matter what the cost may be. At the same time, it is proper to forecast the results and the expense, so far as we are able to do so.

The results are divisible into the effects on the criminals and the effects on society. The first of the former will be that the entire world of habitual criminals will shortly be shut up for good. For convictions will be more readily pronounced than now, defenses will be less strenuous, and confinement will continue during life, or a long series of years, instead of for a few weeks or months, as now. Thus, habitual crime will soon be brought to an end. The small class of non-habitual crimes to which existing punishments are deterrent will, no doubt, be somewhat increased; but only slightly so, because the chief preventive part of punishment, which is the social disgrace, will remain only too severe under the new system, as it is now. It will be all the better for the health of the body politic that these malignant humours should find some vent, and society be purged of those whom nothing but the fear of judicial punishment restrains.

The greater part of the habitual criminals will, I admit, prove to be absolutely incurable; for their disease is congenital and organic. They will, however, be made as happy as it is possible for them to be; and all will become industrious. A considerable minority will be redeemed into a state of self-respecting citizenship. This will be the case with all non-habitual and non-hereditary criminals. There is not one of any class who will not be a happier and a worthier man under the new system than he is at present.

By far the most important effect upon society at large will be the direct impression received from the public disavowal of and repentance for the present hatred of criminals. Two gospels are current in our day. One is the gospel of Christ. It proclaims that God is Love; that Love it is that is the creative, the vivifying, the evolutionary principle of the universe; and that if we can only enter into the spirit of Love, so as to see how it acts and to put our trust in it, then we shall be able to bring about a new stage of man's development. The other gospel is the gospel of politi-

cal economy and of natural selection. It teaches that the great engine of all advance, the redeemer of the world, is the combination of bestial passion, ruthless selfishness, and famine to exterminate the weak. Now, there are plenty of people in this world silly enough to try to accept both of these gospels together. They take the gospel of hate as the framework of their belief, and seek to embellish it with fringes torn from the gospel of love. But as Jesus profoundly said, you cannot serve God and Mammon. The moment the state has accepted any plan like the one here modestly suggested for the treatment of criminals, it will have committed itself to the gospel of love and have renounced the gospel of hate. The direct spiritual influence of such a choice upon each and every citizen would be incomparably the most important of all its effects upon society in general.

But the material consequences must be noticed, too. The elevating tone and civilising influence of such a spirit will in half a generation make itself felt in the diminution of all crime and increased security of property. Ordinary crimes will soon practically cease, because the entire criminal class will be under lock and key, and the criminal breed on its way to extirpation. The increase in a small class of crimes will serve to direct attention to defects in our social arrangements, the correction of which will be followed by the happiest results.

In estimating the cost of the new plan, it is to be considered that by far the greatest expense of the existing system is for the judicial proceedings. It is common now for men to be convicted twenty or thirty times over, and it would be cheaper to provide for them, for life, at the Hotel Richelieu. These expenses, on the new system, will not come to a tithe of their present amount, because no criminal will be convicted more than once. For the first few years the criminal asylums will be terribly expensive; but at length they will become fully self-supporting. Finally, private losses from crime will be diminished to a vanishing point.

Thus, from every side, blessings will be poured upon us, when we can once bring our hard hearts to give over our cruel hatred for these miserable brothers. For, observe, hatred alone it is that maintains the existing system.

I am perfectly confident that some sapient head will now be ready with the objection that people will commit crimes in order to be put in these asylums. If the people meant are criminals, that is, are about to commit crimes anyway, the quicker they get into the asylums the better. But if the idea is that truly virtuous citizens are going to cut the throats of their grandmothers under a false pretense of being wicked, simply that they may enjoy the reward of crime,

namely, hard labor and continence for life, then I think they ought not to be confined in criminal asylums, but in the mad-house, and the author of this wonderful objection with them.

PRISON PROBLEMS.

BY FELIX L. OSWALD.

It has often been remarked that the changes in the moral standards of a nation are reflected in the tendency of its educational methods, and a similar test might be derived from the varying principles of remedial education, applied to the management of our penal institutes.

At a time when the chief problem of life was supposed to consist in the enforcement of ecclesiastical dogmas, it would have been considered much less inhuman to stint a convict in food than to deprive him of clerical ministrations. After the conquest of Granada the Moorish prisoners, captured in the rebellious cities of southern Spain, were fed like dogs and stabled in subterranean dungeons; but the Spanish government went to a considerable expense in hiring able interpreters for the purpose of instructing the poor unbelievers in the tenets of the Catholic church. Extreme unction was granted to criminals who had asked in vain for a drink of water to mitigate the tortures of the rack; and Colonel George Ruxton, in his "Adventures in Mexico and the Rocky Mountains," describes an episode in a border-town where the representatives of Spanish-American civilisation massacred a whole tribe of Apache Indians, including a new-born child, that was dipped into a vessel with holy water "to save its soul," before its brains were dashed out against a wall.

In modern Russia Czar-worship outranks every other duty, and the Siberian mine-convicts, who work seven days a week and never hear the voice of a priest, are permitted to rest on the birthday of the Autocrat.

Our Christian-commercial civilisation still inculcates the efficacy of prayer in averting the evils of life—with one important exception. The appeal to the aid of preternatural agencies is supposed to obviate hailstorms and locust-swarms, wars and diseases, but we fully recognise its failure to prevent famine, and in the education of our children our tithe-gathering moralists waive the orthodox anathemas against the sinfulness of providing for the needs of the morrow.

Our convicts, too, are carefully trained in habits of industry, but the preservation of their physical and moral health is apparently still entrusted to the care of a miracle-working providence. Nothing but a miracle can prevent the development of pulmonary diseases in crowded buildings constructed on the plan of nine out of ten of our American state prisons, not to mention village jails and the man-pens of our southern