



THE URGE TO PUNISH

**Notes on a talk given to the Howard League for Penal Reform in
Scotland on 15th December 2004
by Richard Holloway**

- ‘Beware of all those in whom the urge to punish is strong.’ Nietzsche, possibly from Goethe.
- Major premise or assumption: humans are not as free as they think they are. Spinoza said freedom of the will was the name we gave to our ignorance of causality. *With regard to human affairs, not to laugh, not to cry, not to become indignant, but to understand.* Even if we do not claim to be absolute determinists, we have to admit that we are all determined by many factors not in our control: parents, and the parents they had; social situation; environmental factors – in short, all the facts in the universe that contributed, somehow, to where we are at this particular time and place. Compare the probable career of a boy brought up in a sump housing estate with no valid parental role models and that of a boy from a secure background sent to a good school.
- The tragedy is that our acts damage others: *And this is the simple fact that, though we don't know what we are doing when we are acting, we have no possibility ever to undo what we have done. Action processes are not only unpredictable, they are also irreversible; there is no author or maker who can undo,*

destroy, what he has done if he does not like it or when the consequences are disastrous. Hannah Arendt.

- *The tragedy is compounded by the fact that we have a hard-wired instinct to revenge ourselves against those who, however unknowingly, have injured us: Our angers are inarticulate theories of justice; they are articulated, acted out, in revenge. Revenge, one might say, is the genre of rage. If rage renders us helpless, revenge gives us something to do. It organizes our disarray. It is one way of making the world, or one's life, make sense. Revenge turns rupture into story. Adam Phillips.*
- *Something more ugly going on as well. Nietzsche again: It was in the sphere of legal obligations that the moral conceptual world of „guilt,“ „conscience,“ „duty,“ „sacredness of duty“ had its origin: its beginnings were, like the beginnings of everything great on earth, soaked in blood thoroughly and for a long time. And might one not add that, fundamentally, this world has never since lost a certain odor of blood and torture? It was here, too, that that uncanny intertwining of the ideas „guilt and suffering“ was first effected—and by now they may well be inseparable. To ask it again: to what extent can suffering balance debts or guilt? To the extent that to make suffer was in the highest degree pleasurable, to the extent that the injured party exchanged for the loss he had sustained, including the displeasure caused by the loss, an extraordinary counterbalancing pleasure: that of making suffer—a genuine festival...To see others suffer does one good, to make others suffer even more: this is a hard saying but an ancient mighty, human, all-too-human principle...Without cruelty there is no*

festival: thus the longest and most ancient part of human history teaches – and in punishment there is so much that is festive.

- The tragedy is further compounded by the vicious circle of offence-revenge-offence-revenge that is endlessly set up. It was to counter this inflationary dynamic that Moses introduced the Lex Talionis in Exodus, chapter 21. [12] *Whoever strikes a person mortally shall be put to death. [13] If it was not premeditated, but came about by an act of God, then I will appoint for you a place to which the killer may flee. [14] But if someone willfully attacks and kills another by treachery, you shall take the killer from my altar for execution. [18] When individuals quarrel and one strikes the other with a stone or fist so that the injured party, though not dead, is confined to bed, [19] but recovers and walks around outside with the help of a staff, then the assailant shall be free of liability, except to pay for the loss of time, and to arrange for full recovery. [20] When a slave owner strikes a male or female slave with a rod and the slave dies immediately, the owner shall be punished. [21] But if the slave survives a day or two, there is no punishment; for the slave is the owner's property. [22] When people who are fighting injure a pregnant woman so that there is a miscarriage, and yet no further harm follows, the one responsible shall be fined what the woman's husband demands, paying as much as the judges determine. [23] If any harm follows, then you shall give life for life, [24] eye for eye, tooth for tooth, hand for hand, foot for foot, [25] burn for burn, wound for wound, stripe for stripe.*

- A paradox emerges: a) We must try to understand the forces and determining factors that lie behind the actions that we unwittingly commit; b) But we also instinctively and appropriately condemn the irreversible deeds that have been committed; c) And something deep in human nature enjoys the act of punishment for its own sake beyond any idea of utility or justice.
- The history of crime and punishment suggests that we seem to have moved away from a simple one-dimensional response to the offending action to some understanding of the springs of the act, including the complete background of the agent. From a punitive to a therapeutic model where the basic idea is not some sort of redress but transformation. Kilbrandon was a significant leap in this process of deepening our understanding of the elements that determine juvenile delinquency, in particular. Kilbrandon invented the important mantra that needs as well as deeds had to be considered; as well as the recognition that most young offenders were themselves victims not only of crime, but of deeper social forces. They helped us to see the folly of punishing children for the sins of their parents.
- So how do we break into the vicious circle that our behaviour creates for the human community? Arendt makes a profound suggestion: *The possible redemption from the predicament of irreversibility is the faculty of forgiving, and the remedy for unpredictability is contained in the faculty to make and keep promises. The two remedies belong together: forgiving relates to the past and serves to undo its deeds, while binding oneself through promises serves to set up in the ocean of future*

uncertainty islands of security without which not even continuity, let alone durability of any kind, would ever be possible in the relationships between men. Without being forgiven, released from the consequences of what we have done, our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victim of its consequences for ever, not unlike the sorcerer's apprentice who lacked the magic formula to break the spell. Without being bound to the fulfilment of promises, we would never be able to achieve that amount of identity and continuity which together produce the "person" about whom a story can be told; each of us would be condemned to wander helplessly and without direction in the darkness of his own lonely heart, caught in its ever changing moods, contradictions, and equivocalities. In this respect, forgiving and making promises are like control mechanisms built into the very faculty to start new and unending processes.

- In this context, forgiveness is the action that stops the irreversible act from taking over the future both of the agent and of the victim: it gives both back the future.
- In this context, promising is the action on the part of the offender that owns the nature of the irreversible action and seeks, on the basis of that acknowledgement and admission, to change into the future. In the practise of Restorative Justice both elements are emphasised.
- And another paradox emerges, this time a therapeutic paradox: Acceptance by the agent of the fact and irreversibility of his actions, including his own pre-determined nature, fosters a new

level of self-knowledge that allows the pure determinism of his past behaviour to be understood and modified. Self-knowledge, what Plato calls 'the examined life', becomes the therapeutic goal.

CONCLUSION

- The urge, the instinct, to punish, while to some extent understandable and deeply, atavistically rooted, is too blind a force to understand or respond to the psychological complexities of human behaviour: and when engaged in blindly and reactively invariably only serves to fortify and maintain the offending behaviour.
- Our purpose should be to seek to understand delinquent behaviour in order to change and re-direct it; and this can only be achieved on the basis of growing self-knowledge on the part of the offender.
- This remains the genius behind the Kilbrandon approach, alongside the need, in most cases, to find ways of supplying the emotional deficit in the lives of the lost and stunted children who are the main agents of offending behaviour.
- Unfortunately, because of the way law and order issues have become increasingly politicised in our tabloid-driven culture, it is increasingly difficult to have a hard, evidence-based look at the best way to tackle offending behaviour. We certainly have a duty to protect the public, but we also have a duty to educate them in the best and most effective ways to tackle the problems posed for us by the lost children in our midst.

Note: I have developed some of these ideas in my book, ON FORGIVENESS: HOW CAN WE FORGIVE THE UNFORGIVABLE? Published by Canongate in 2002.