

Crimes of Punishment

By Theodore Dalrymple

Notwithstanding their evident differences, Britain and France are very similar in their juridico-political idiocies.



Perhaps idiocy is not quite the right word, insofar as there might be method in the madness. The plan, if there were one, would be as follows: for the juridico-political elite so to provoke the anger of the population that it controls that part of the latter, namely the least educated

and most inarticulate part, turns to riot and brutality. The elite will then be able to claim, "Either us or barbarism."

I do not claim that such a plot exists, only that it might as well exist and could hardly be more effective if it did. Two cases, one in Britain and one in France, illustrate this almost to perfection.

In Britain, a man called Shah Rahman has just been released from prison for a second time, largely because a "special" psychologist considered that he no longer represented a threat to the safety of the public. He—or, more probably, she—has managed to convince him that plotting to blow up the London Stock Exchange and the American embassy, and to kill Boris Johnson and two rabbis, which is what he would have done if

the police hadn't stopped him, is wrong. Presumably, Rahman had a moral Archimedean moment: "Aha! I now realize that one should not, after all, blow up buildings and murder people!"

In France, the mayor of Béziers, Robert Ménard, could be sentenced to five years' imprisonment and/or a fine of 75,000 euros, as well as disqualification from holding public office, for having refused to marry an Algerian illegal immigrant, who had a criminal record, had been in prison, and was under a deportation order, to a French woman, supposedly contrary to present law, which considers it an unconditional human right for an illegal immigrant to marry in France (and thereby, of course, provide himself with a right of residence). There could hardly be a case better suited to provoking insensate rage in a discontented population.

But let us return to the case of Mr. Shah. When he was first found guilty, he was sentenced to twelve years' imprisonment. He was released after five years, *in accordance with normal practice*. In other words, when the judge said, "I sentence you to twelve years' imprisonment," he was lying, because he knew full well that he was doing no such thing, and that the man he was sentencing would be released long before that period had elapsed. If he had said, "I sentence you to five years' imprisonment," knowing that the man would "serve" five years (the word "serve" in this connection has always struck me as odd, for whom would he have been serving?), he would at least have been saying something true, though it might well have resulted in a public outcry. Only five years for having plotted to kill possibly hundreds of people and been prevented from doing so only by the vigilance of the police! What is the state thinking of? In the absence of the death penalty, it would not have been unjust if such a man had been imprisoned for the rest of his life (if he couldn't be deported) without possibility of release. By allowing the judge to say twelve years, when five was meant, the whole criminal justice system was turned into an elaborate and very expensive charade, from

which many people make a good living. It is an equivocation that surely encourages dishonesty in people inclined to dishonesty: For if even judges are dishonest, why be honest oneself?

But this is not all. Such a case as Rahman's induces a state of despair in a large part of the population, and despair in the minds of those who are either inarticulate or lacking in self-control induces a propensity to lash out blindly, stupidly, and viciously—as we have already seen.

Now we come to the question of parole, a system that is completely against the rule of law. To see this, let us conduct the following mental experiment.

Let us suppose that there are two Rahmans, Rahman I and Rahman II. They are associates, and from the point of view of plotting, they are exactly the same, that is to say equally guilty. They follow precisely the same path; they are both released at five years and are both subsequently re-imprisoned for having committed the same act forbidden them, namely the concealment of a bank account that might be used to finance terrorism.

However, the "special" psychologist, and others involved in the granting or withholding of parole, assess them differently. The psychologist deems Rahman I to be no further threat to society, whereas Rahman II is not so deemed, and must therefore stay in prison.

In effect, Rahman II is being punished not for what he has done, but for what he might do in future. Speculations on future conduct are inherently uncertain and, at the very best, statistical in nature. Again, let us suppose that the psychologist and others have come to the conclusion that there is a 95 percent chance that Rahman I will not re-offend, whereas there is a 75 percent chance that Rahman II will re-offend, and should therefore be punished more than Rahman I.

Rahman II, in effect, is not being punished for something beyond reasonable doubt, but on the balance of probabilities, and it is also on the balance of probabilities that Rahman I is being released. This is inherently arbitrary.

The basis of our law is that a man is not to be punished unless he has been found guilty beyond reasonable doubt, and not for what he might do in the future. The system of parole upends this principle completely and is unjust in two directions.

Let us suppose that Rahman II (the one *not* released on parole) would not in fact re-offend if released. Has he any ground of complaint? No, not if his original sentence was not in itself unjust; his only ground of complaint could be that his equally guilty partner in crime was being treated more leniently.

This is not to say, incidentally, that gradual release from prison after a long sentence is not a good idea, so that the prisoner may re-insert himself into society, with or without assistance. But such gradual release should not be considered as parole, but as an inherent part of the punishment, to be carried out irrespective of the speculations of psychologists and others. It would have the effect, perhaps, of making initial sentences more realistic, which is to say more just.

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