

Justice Means Punishment

by Theodore Dalrymple



What do people mean when they demand justice for George Floyd?

I shall return in a moment to this question. Let me first sketch my own attitude to his death, which is not very different, I imagine, from that of most people. He was killed by a policeman behaving in a brutal fashion, and it is very difficult to think of extenuating circumstances for that officer's conduct. Even had George Floyd not been altogether angelic in his own conduct, it is part of a policeman's duty to deal with awkward customers without killing them in brutal and even sadistic fashion.

Even worse, from the social point of view, was that Officer Derek Chauvin was watched by three of his colleagues who did nothing to intervene. This suggests, at least *prima facie*, that there is something deeper wrong with the Minneapolis police force than individual rogue behaviour (though it wouldn't surprise me, either, if it emerged that Derek Chauvin

was a bully to his police colleagues as well as to the public, and that they were afraid of him). To establish any such general fault with the Minneapolis police force with reasonable certainty, however, would require a genuinely independent and impartial enquiry, if such an enquiry could now ever be held. In the meantime, Chauvin and the three others ought to be tried according to law.

I can now return to my original question: what do people mean when they demand justice for George Floyd? I think this is easily answered: they mean severe punishment of Chauvin and his accomplices. I surmise that, in their hearts, many would want the death penalty to be applied to him, however much they might want that penalty abolished in all other cases.

I have no quarrel with the idea of severe punishment in a case such as this: I doubt that anyone does. (I assume that there is little or nothing to be said in mitigation for the man accused, though no doubt a clever lawyer will find something to say.) And Mr. Chauvin will be severely punished even if his prison sentence is not a very long one, for I know as a former prison doctor that the lot of an imprisoned policeman, even for a far lesser crime than his, is not a happy one. He will have to be under special protection for the duration of his sentence: prisoners, who may have a poor memory for what they themselves have done, have the memory of elephants for policemen. A momentary lapse in his protection, ever more likely to happen the longer his sentence continues, will be sufficient for him to suffer a vicious attack. So long as he remains in prison, then, he will never know a moment's peace of mind.

The curious thing, however, is that no one, not even the most ardent of penological liberals, is arguing that Chauvin was the victim of his circumstances (his upbringing in a violent, racist household or society, for instance) and therefore that he was not fully responsible for what he did. Nor is anyone arguing that punishment in his case would not work and that

what he needs is some kind of therapy. They do not doubt for an instant that he should be severely punished, probably more severely than he actually *will* be punished.

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In short, even penological liberals believe that there are cases in which wrongdoers should be punished, though in most other circumstances they would deny that punishment is justified either philosophically or by its empirical results.

In other words, they divide the population into two: those who may rightfully be subjected to punishment (a small minority), and those who may not. The latter at most require some kind of therapy to correct their disordered conduct, which arises from unfavourable life-experiences, usually in childhood. Much of their disordered conduct, though, may simply be excused, as it is considered understandable given their circumstances. In the eyes of penological liberals, it is the circumstances that need to change before criminals can be expected to comport themselves decently.

Of course, mitigation and excuse must be part of any system of criminal justice and, particularly in the case of mitigation, it is impossible to draw perfectly clear lines. But the notion of crime should not be mitigated to the point of extinction, so that no one is really responsible for anything except for those, like Derek Chauvin, whom we place in the "punishable class," those deemed fully responsible for their actions without mitigation.

The implicit division of humanity into the minority such as Derek Chauvin, Harvey Weinstein, and Bernie Madoff who are deemed rightly punishable, and the majority who are not,

unintentionally confers on the former a superior status, for only they are held to be fully human, with free will and moral responsibility. Ordinary street robbers or other common criminals, who are held by penological liberals to be but the victims of their circumstance and therefore not deserving of punishment, are reduced to the status of mere mechanisms who register what impinges on them as a barometer registers atmospheric pressure. This is wrong as a matter of fact—street robbers know full well what they are doing—and demeaning. They are given the status that Descartes conferred on animals.

Justice must be tempered by mercy, if for no other reason than that what some people deserve is so horrible that we would be brutes ourselves if we inflicted it. It is well to remember also that we are all sinners. But, as the calls for justice for George Floyd (meaning punishment for his killer or killers) demonstrate, it is impossible to expunge from the human mind the idea that punishment, fundamentally, is the correct response to wrongdoing. To excuse some and not others, and to excuse them without strict moral criteria but *ex officio*, that is to say by membership in a social, racial, or occupational group, is to undermine the only equality that really matters, namely equality under the law.

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