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Pëtr Kropotkin

Organised Vengeance Called “Justice”

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In the history of society, organisation of Vengeance under the name of Justice is coterminous with the State; they imply one another; they were born together, flourished together and are doomed to perish together.

Coming from an age of serfdom it helps to maintain serfdom in present society; through its police, prisons and the like, it is an open sore, throwing out a constant stream of purulence into society, a far greater evil than the one it is supposed to fight against.

Any society founded on better economics than ours will certainly come also to the conclusion that it is unwise to keep any punitive institution.

The way of doing without it will be found in voluntary arbitration, in greater effectual solidarity, in the powerful educative means which a society will have that does not leave to the policeman the care of its public morality.

In the year 1837, Adolphe Blanqui (brother of the revolutionary leader from whom the Blanquists took their name) wrote a book, *The History of Political Economy*. He showed in it the importance which economics had in the history of humanity for the determination of political forms and also for the building up of current ideas on Right, Morals and Philosophy. Sixty years ago, Liberals and Radicals concentrated their thoughts on politics, and were altogether unaware of the new industrial conditions which were in course of formation out of the ruins of the old regime. It was from Blanqui's point of view quite legitimate that in order to draw attention upon economics and upon the Socialist movement which was then beginning, he should have gone so far as to build the whole history upon economics. Some one-sidedness was not to be avoided, was even perhaps desirable; other factors being under investigation, already more or less known, he needed not to speak about them, and all the strength of his argumentation was to be thrown upon the hitherto unknown factor.

His exaggerations have been pursued by the German school of Social Democrats, forgetful of all other aspects of the development of society. In our turn we, the Anarchists, have shown the great importance of that other factor, the State; and it rests with us to have its bearing upon society clearly established.

However, while laying stress upon the hierarchical, centralised, Jacobin, anti-libertarian principles of the State, we are, perhaps, apt to neglect our criticism of what has been called *Justice*. This report has been written with the special desire to draw attention on the origin of this institution and to invite a discussion which would throw light upon that subject.

* * *

A careful study of the development of society forces upon us the conviction that *State* and *Justice* are two institutions which not only co-exist in society down the stream of history, but are connected together by the bond, of cause and effect. Whosoever admits the necessity of separate, chosen members of society for the special function of distributing punishments to those who have broken the

law, needs a body which enacts these laws, codifies them, establishes standards of punishment — needs special schools for teaching the manufacture and interpretation of laws — needs gaols, gaolers, police, hangmen and army — needs the State.

The primitive tribe, always Communist, does not know of any judge: within the tribe theft, homicide, murder *do not exist*. Customs are sufficient to prevent them. But in the very rare cases in which a member would disregard the sacred rules of the tribe, he would be stoned or burned to death by the tribe as a whole. Each member of it would throw his stone or bring his bundle of wood, in order that it should not be this or that man who has put the culprit to death, but the tribe in its entirety.

When a member of another tribe has injured someone, then the *whole tribe* of the wronged one is responsible for the carrying out of an equal injury; and the *whole tribe* of the assailant is responsible, so that any of its members as opportunity arises may be chosen by any member of the wronged tribe for the retaliation — according to the principle of life for life, tooth for tooth, and so on; wounds to be inflicted exactly as they were received, the grain of corn being the standard of measurement of each wound.

That is the primeval conception of justice.

Later on, in the village life of the first centuries of our era, the conception changed. The idea of Vengeance is by and by left aside — very slowly, of course, chiefly among agricultural populations, still surviving among the warriors — and the idea of Compensation is developed; compensation to the wronged man, or to his family or to the tribe. As the patriarchal family appears, in possession of cattle and of slaves stolen from other tribes, Compensation takes more and more the character of *Evaluation* of the damage done — the value being different according to the rank of the wronged one: so much for a slave killed, so much for a peasant wounded, so much for a chief abused. The scales of *valuation* form the first barbarian codes. To fix the amount, the village community met, the bare facts of the case were ascertained by the enquiry of jurymen chosen in equal number (6 or 12) by both parties or their families. The old members of the village or, better still, the *bards*, to whose memory the tradition is entrusted, or perhaps outside judges invited by the

out of the criminals. Think of all that happens round us and you will understand why Anarchists have no hesitation in declaring that Punishment is worse than Crime. And every one studying those questions and going to the root will come to the same conclusion, and will try to find some other means of protection society against the evil-doers.

Everyone will see that arbitration, arbiters being chosen by the contending parties will be sufficient in the very great majority of cases to quell arising disputes. Everyone will admit that the policy of non-interference now so greatly favoured is a bad habit acquired since the State found it convenient to assume the duty of keeping order. Active intervention of friends, neighbours, passers-by would prevent a large proportion of conflicts. Let it be everybody's duty to assist the weak, the interfere between fighting people, and police will not be required at all.

The student cannot help being struck by the fact that for a couple of centuries there has been a parallel development going on: on one side legal punishment and vengeance have been less and less bloody, not to say milder, torture has been abolished, penalty of death has been limited to fewer cases and in some countries totally abolished; on the other hand anti-social acts have diminished. There is far greater security in our everyday life than in that of our forefathers. Many factors have helped towards softening of manners, but softening of punishment is certainly one of them. Should we not continue in the same line; or should we suppose that a Socialist or Communist society would be inferior in that respect or a capitalistic government?

We can do without judges in society, as well as we can do without bosses in production.

Conclusions.

So-called Justice is a survival from a past serfdom based, for the interest of the privileged classes, on the Roman law and on the ideas of divine Vengeance.

But can we not have judges elected by the people? Let us see where it leads us to. First it must be said that the idea of *laws* directly made by the people has never been seriously entertained; their drafting must always be left to some more enlightened man (hero, *Uebermensch*). Then, besides the judge and the lawmaker (legislator), other man will be needed to explain such laws, to interpret older ones, to study their connections and leading ideas: law universities with staff of teachers and students, acting like a drag on society with all the weight of their inherited traditions and their hair-splitting about the letter of the law. But that is nothing compared with the auxiliaries needed by the judge: on one side the gendarme, the police, the prostitute, the spy, the *agent provocateur*; on the other, the gaoler, the executioner and all the sequel of turpitude which necessarily accompanies them. Finally, you must supply some supervising body to keep all that army of functionaries going. You must not forget to provide money for their maintenance and so on. In short, there is not one function of the State to-day whose services can be dispensed with if we want to keep the judge — be he elected by the people or not.

But what about the Code? The Code, all codes, represents a gathering of traditions, of formulas borrowed from old conceptions absolutely repugnant to all Socialist ideas of to-day; survivals of our slavish past, slavish in action, slavish in speech, slavish in thought. It is of no consequence that some of the leading moral ideas may be in accordance with our own; the moment a punishment is decreed for the non-fulfillment of a good action we will have nothing to do with it. A Code is the past stereotyped and put across the path of human progress.

Every legal punishment is legalised vengeance, vengeance made obligatory, and we must ask ourselves what is the use of vengeance? Does it help maintain social customs? Does it ever prevent the small minorities of breakers of good customs from doing so? Never. On the contrary, to proclaim the duties of vengeance is simply helping the existence of anti-social customs. Think of the amount of filthy perversity thrown into society by the police institution, far more dangerous to society than any act committed by criminals. Think of the “well-intentioned lies” of magistrates meant to get the truth

community, decide the compensation (simple restitution for theft) and the fine to the commune or to the gods.

But gradually, during the immigration of different tribes, many free communities are enslaved. On the same territory live, side by side, conquerors and conquered. Then come the priest and the bishop, feared sorcerers, and by and by the jurymen, the bards, the old men of the tribe are superseded in the valuation of the Compensation by the delegates of the bishop or of the local lord. The fine becomes more and more important: the compensation to the wronged one less and less; the share of the community in the fine comes to naught; the whole payment is pocketed by the chief. The *Old Testament* provides these delegates with the necessary traditional example of judgment. Thus we see the modern judge evolving out of chosen jurymen at the same rate as the feudal system evolves out of the village community. The idea of *Punishment* is born, and soon drives away every other conception, especially under the action of the Church, which taking example by its Hebrew predecessors wants to reign by terror. An injury to a priest is no longer an injury to a man, it is an injury to the divinity, and no punishment is severe enough to chastise such a crime. The cruelty of the judgment increases as time goes on, and the secular power imitates the clerical power.

In the 10th and 11th centuries the mediaeval city appears. Revolution after revolution, city after city expel the judge of the bishop, of the lord, of the duke. The cities make their *Conjuration*. At first the citizens swear to drop all contests arising from the *lex talionis* (law of retaliation) and, if new contests arise, never to appeal to external powers, but to settle everything among themselves. The Guild, the Parish, the Town community are the different degrees of jurisdiction. Bailies, chosen by the members of the guild, the street, the parish or the town, decide the compensation to be granted to the wronged party. In specially important cases, the guild, the street, the parish or the town, convoked to a general meeting, pronounce the sentence. Besides, *Arbitration* in all the stages between individuals, between guilds, between parishes and cities takes a very large extension.

But the organisation lasts only a few centuries. Christianity and a revival of the study of Roman law find their way into the ideas of the people at large. The priest harps incessantly upon the anger and

wrath of God. His favourite argument — still the same in our day — is that eternal punishment will be inflicted for trespass against the law of the Church; applying the words of the Scripture concerning those possessed by evil spirits, the Church discerns a demon in every wrongdoer; she invents all sorts of tortures to drive the demon from the body, and then burns him that he may not relapse. From the very beginning, Priest and Lord act together; the priest is often himself a Lord; the Pope is a King; therefore the one who has broken the law of civil society is by and by treated as the one who has trespassed against the Church. The clerical and the civil powers go hand in hand, the clerical only slightly ahead, their laws and refined tortures increasing steadily in ferocity. The Pope, himself supreme umpire, gathers round himself lawyers, experts in Roman and feudal laws. Common sense, knowledge of usage and customs, study of human nature, are left more and more in the background; they are said to foster bad passions, to be an invention of the devil. “Precedent” ranks as law, and, the older a judgment is, the more important, the more respectable it appears to be. “Precedents” are therefore sought for from imperial Rome and from Hebrew judges.

Arbitration disappears, slowly before the rising power of the bishop, the lord, the king, the pope. As the alliance of religious and civil powers becomes closer, amicable settlements of disputes are forbidden; compensation to the wronged party becomes a thing of the past; — vengeance in the name of a Christian God or of the Roman State being the main point. At the same time, the atrocious character of the penalties inflicted is such that it is almost impossible to read the description of the judicial scenes of that period.

The fundamental ideas of Justice, essential to every society, have thus totally changed between the 11th and 16th centuries. In our article on *The State and its historic role* we have endeavoured to explain how the State took possession of the free cities; let it be sufficient for our present purpose to remark that, when the evolution took place which brought the cities under the sway of the State, the communities had already forsaken, *even in ideal*, the principles of arbitration and compensation which were the essence of popular justice in the 11th century. When the State laid its hand upon the cities the old

conception had entirely gone. Christianity and Roman law had already made States out of free cities. The next step was simply this, that the State established its empire upon the now enslaved cities.

Certainly, it would be interesting to study how economic changes happening during that length of time (five centuries), how distant commerce, exportation, creation of banks and of commercial loans, how wars, colonisation, and capitalist production take the place of communal production, consumption and commerce — to study how all these factors influenced the leading ideas during the same period and helped to that change in the conception of Justice. Some splendid researches are here and there to be found in the works of the historians of the free cities. A few original researches upon the influence of Christian and Roman ideas also exist (though such studies are of a much more difficult nature and always heterodox). But it would be wrong to trace everything back to economics; it would be just the same sort of mistake as if, studying botany, we should say that the amount of heat received by a plant determined its life and growth, forgetting humidity, light and other important factors.

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This historical *resume*, short as it is, shows nevertheless how the State and the evolution of Vengeance, called Justice, are related institutions — derived from one another, supporting one another, being historically one.

But a moment of quiet thought is sufficient to understand how both institutions hold logically together, how both have a common origin in the same idea: *Authority* looking after the security of society and exercising vengeance upon those who break established rules or laws. If you admit the existence of judges, as specially selected members of society entrusted with the care of applying codified traditions, it does not matter by whom chosen or elected, — you have an embryo of State round which other powers that may be will gather. On the other hand, if you admit the centralised structure called State, one of its functions will be to administer justice. Hence the judges.