

Transcript ~ Law & Punishment

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. . . of obligation was attached to something sacred. It came out of the mysteries or of spiritual and religious practices. And later on, this idea of the sanctity of obligation in a spiritual context gradually became secularized and transferred to law. So laws begin to acquire a kind of sanctity. And then, of course, with the aura of invulnerability, infallibility, inevitability about laws, we find that most people simply can't think away from a legal system.

Now this, of course, is also based upon a great deal of ignorance of the long history of humanity. The very term “law,” as we use it most of the time—as written statutory law—goes back to a root which has to do with laying down, with formulation, with codifying, with collecting. And therefore, in a sense, when we talk of law, we're really talking of written statutory law. Whereas, as Kropotkin very shrewdly and correctly points out, and Godwin is also aware of this, in the history of human society we find that as human beings come together, and especially before the emergence of the modern nation-state, social intercourse gives rise to informal rules, to informal codes.

Certainly anthropologists are always struck by a close-knit tribal culture in which there is a very high degree of correspondence between norms and behavior. That is, in a tribal society, it would be absurd to say, “Why should I do what is such-and-such a practice in the community?” For it to be a practice is for people to carry it out. In other words, there is no hypocritical gap between assertion and practice.

Whereas, as society becomes more complex and actually as the moral foundations of society become more uncertain, or the collective moral capital of a society starts to run down, then people turn with a tremendous kind of panic and awe towards law, towards written law, towards a legal system. And when you join this up with two notions—the notions of sovereignty on the one hand, sovereignty of the state, and representative democracy on the other—one has created really a rather tight picture of the system. This

is what dominates most of modern education, and it is really based upon a somewhat misleading picture of the whole story of humanity.

So if we recognize this, it is very important then to read carefully what especially Godwin is saying, because Kropotkin is much easier to follow. But before I actually say more than has already been said about Godwin, let me mention that it was in the late 19th century that, for the first time, there emerged a justification of law, straightforwardly, in terms of force.

The notion of sovereignty emerged in the 17th century with Bodin, and later with Hegel it assumed a certain metaphysical underpinning—the idea that the state is a supreme coercive authority. Originally, the appeal or mystique of sovereignty really lay upon the state coming out of a long struggle with the church, trying to assert the finality of secular authority as against the supernatural authority, in the name of revelation, claimed by some fallible institution of human beings—priests—who wanted to have the ultimate say on right and wrong.

So given that it was really quite awful to hand over morality to any church or religious institution, as modern society became complex, there was a certain value or justification to the idea of the state as having an authority on behalf of the whole community which is more final than the authority of any particular institution, however much it claims some kind of special status because of religious revelation.

But while this is said, on the other side, this also led people to glorify and justify coercion, and especially the monopoly of force in the hands of the state. Thereby was generated the idea of a centralized framework in which the state stands above all individuals, all institutions, and though acting through a variety of justifications in the name of the community, in fact the state means the government, and the government means a very small collection of individuals working with the backing of the apparatus of the bureaucracy and the armed force of the military.

So with the emergence of this idea of modern state sovereignty, somehow the view is that human freedom and the protection of human rights depend upon such an

institution, or state sovereignty. And earlier, of course, we saw what Bakunin and Kropotkin have to say about that.

But when, late in the 19th century, the first person to propound a modern justification of law — what is called legal positivism — he also was the first professor of jurisprudence, John Austin. He stated outright that the authority of law is simply and squarely based upon the fact of the subordination of the subject to the sovereign. That is, he made a link with state sovereignty and legal positivism. So the law is a command; the law is a command by a superior to a subject.

Austin, again in celebrating this, was very much thinking of the Middle Ages, of appeals to natural law by the church, and he wanted to say that all of this is over. Now, in a modern state, what we really have is the full backing of law by the final centralized authority, which means a coercive authority: the armed force of the modern state.

Now this theory of legal positivism, of course, is not very attractive — the idea that law is a command. And that was the only theory that really lasted for a very long time, from the late 19th century until sometime early in the century. There were variants of this theory, but in the '50s there emerged a very powerful restatement of the theory of law, which gave it a new attractiveness, by Hart — H. L. A. Hart, Professor Hart — in *The Concept of Law*, in which he elaborately criticized legal positivism and tried to replace it by a view of primary and secondary laws which have some continuity with informal rules.

Just as informal rules arise out of a moral consensus in society, because human beings as moral and rational agents cannot live without norms, they cannot live without some conception of right and wrong; and over a period of time certain practices develop, certain conceptions of right and wrong, and given this foundation in the moral life of the community, there arises law. So law is rooted in the very moral life of the community.

At the same time, he was well aware that law does have a backing in sanctions. But he was very concerned to point out that laws are not commands, and if laws have sanctions attached to them, this is only a function of the effectiveness of deterrence of laws. That

is, it is as if society is hoping to educate vast numbers of people into accepting some social conception—which has a moral basis to it—of what is permissible and what is prohibited, and in this education it is useful for people to know that if they fall into temptation, or if they become antisocial, if they violate these norms, there are certain penalties attached.

In other words, Hart really wanted to play down the notion of fear and the fear of sanctions. But if you read this carefully, and then you look at Godwin, you really find that Godwin is hitting at the problem from so fundamental a level that you really can't anymore accept a lot of this. Even this acceptance is based upon a certain liberal optimism which was very strong, especially in the first 50, 60 years of the century—an assumption coming mostly from a society like England, where you have a long story of democratic precedents and the slow evolution of democratic institutions, where also you had the accumulation of moral capital in the name of Protestant Christianity and the transference of that moral capital to modern politics.

Whereas now we live in England itself, but also very much more in a big society like this one, in a mass society like that of America, but generally the world—we live in societies where the moral capital has been used up. And when moral capital is considerably used up, then we come to see law much more for what it is, rather as legal positivism suggested: law as simply representing the sanction of force, and working through threats, working through fear.

And if this is the case, then of course we really have to also think a bit more as to why this arises. This arises because of an intrinsic difficulty in distinguishing law and justice.

In all human beings there is a natural love of justice. There is a golden rule in all religions, a conception of reciprocity, the gift of empathy. Human beings can minimally put themselves in the position of others, can understand the golden rule, can understand reciprocity, and this is very much bound up with sociability. Even in the most corrupt situation, even in the most pathological situation, you will find human beings do practice this informally in private relationships, in small groups among friends.

Now if this is the case, what is really the concept of justice, and how may it be distinguished from law? This is a large subject, but I should mention basically this: justice involves taking all the circumstances that are unique to a person in a situation into account. If every human being is to some extent unique, though every human being shares with all other human beings a commonality as a rational and moral agent, but as an agent, as an actor, each human being has a unique life history. Even the physiological history of each person is different from that of everyone else. So therefore, if three people have the same cup of coffee, they're not really having exactly the same thing. They are at one level, but by the time it gets into the system, what is happening is different because each one has a different physiological story.

And when you bring human memories and the whole psychological makeup of a human being into account, there is a uniqueness to every human being which also lends a certain uniqueness to every situation and to every act. And if so, in theory, to do justice to any person involves taking full account of all that is unique and all that is relevant in his or her particular case.

Now you might say this cannot be done by written laws. This cannot be done in modern society through our modern institutions. This can only be done on a small scale by individuals. This can only be done outside the apparatus of state and other institutions. Well, that would be true.

And also I might go further and say that to do full justice to any one individual in any one situation is a task of perfection. But even though it may be impossible to do total justice to any human being in any situation, it is very meaningful to human beings to feel that an attempt is made, that a credible approximation to justice has taken place.

And we do understand this intuitively; we do understand the notion of fairness. You know, "Let's be fair." We do understand when something goes too far, and yet we can't lay down exact boundaries. Informally, as human beings mature out of their intercourse with each other, they are able to recognize the rough-and-ready limits to injustice and also recognize how reciprocity works.

But the advantage of law is because of this very fact: that each act and each person is unique and each situation is somewhat different from every other, that law is able to create a kind of uniformity by setting up a standard. How law does this is by isolating a criterion based upon a few facts—by selection of criteria, by what would be called restricted universalizability—that is, by taking fewer things into account so that they could be held in common over a wide variety of cases, one is able to formulate laws.

And yet this formulation is always incomplete and inconclusive, which is why laws lead to litigation, they require courts, they lead to more laws and more laws, and laws become more and more complex. And therefore, the point is a situation is reached where what happens under law is so different from what happens under ideal justice that we don't see this, because at a minimum level there are elements of justice built into a legal system, such as impartiality, nondiscrimination, giving everybody his day in court, so to speak.

And because there are these elements that did not originally come out of legal evolution, but came out of the moral evolution of societies, and they became part of progressive, reformed, improved judicial practice, so we do recognize that there are certain minimum elements. But because there are these minimum elements, and because law courts have the goddess of justice outside, and because of all the oaths and ceremonies, we should not be misled into thinking that law is ever actually involved in doing justice.

So once we make clearly the distinction between law and justice, we will remove from law a lot of the moral majesty and mystique that it has appropriated to itself with a lot of ceremony, and which after a point misleads a whole lot of people.

Now when we start to think in this fundamental way, we begin to see how Godwin is really being very original, very bold, totally dissenting from all the other thinkers of his time, and very perceptive. Because Godwin says, look, this is what laws are doing: they are establishing uniform standards. But he reaffirms what he's already said—we're talking about justice—that no two cases are alike, no two acts are ever exactly alike. And

it is very important for human beings as rational agents to develop and engage in the art of rational preservation, rational assessment, and you cannot rationally assess acts if you are misled by a false uniformity in acts which is written into laws.

And therefore he says, what should really flow out of social intercourse—which is a sense of justice—cannot be substituted by a reliance upon laws. And therefore, for him, it will always be the case that three or four rational beings can, by discussion—even though they will not be able to solve all problems or do full justice in a dispute to each other—come to a better understanding, rather than if they just handed over the whole problem to law.

And furthermore, he wants to say that where society can be visualized on a small scale, which is very important for him as an anarchist thinker, where the scale of action is in relation to a face-to-face community, where human beings get to know each other in groups, in neighborhoods, in communities—that is, large communities are made up of little communities—and where there is direct knowledge of each other, then people become relevant to each other as persons.

And when they do something wrong, even if in an emergency you might have to go and hold down somebody, you might have to restrain them even by physical force, you really regret it. Because basically, if you're going to live with that person in that community, you really want to give time for re-education, rational persuasion, and you want to find out more about the person—all the motives, all the elements, emotions working in that person, and so on.

So for Godwin, then, this of course is what must happen, but what is coming in the way is the mystique of law, and this is what, therefore, he wants to deny. So therefore, he creates argument after argument, and he shows that laws multiply, laws produce uncertainties, laws profit upon ambiguities, laws contain a whole lot of other contradictions, and furthermore, laws create a whole class of lawyers who become sophists, as was very well pointed out earlier by Ed.

And once this emerges, what happens is that justice really disappears. The idea of rational persuasion goes, and very quickly, if you want to justify laws, you really have to rely upon some kind of retributionist argument, and also you've really got to cater to resentment.

In other words, it is perfectly true: when there is an outbreak of something irrational, when there is physical violence, there is going to be anger in a community, even among rational people. There's going to be anger, indignation, there is going to be resentment. Furthermore, there is also among human beings an element which wants revenge. So yes, these elements do exist in all human beings: vindictiveness, resentment, anger. But all of these emotions can be no basis for wise and deliberate action which is compatible with the moral growth of all human beings.

These emotions may be very real, and nowadays, of course, politicians have learned to play upon these emotions in their constant worship of law and order. But these emotions are not really the basis of any action, because Godwin says you take any issue on which people feel very strongly, where there is anger, resentment, indignation, look at the same issue after a period of time, and you find the tempers have cooled.

This is very true; it's very true in modern society. Whatever the rights and wrongs of Watergate, whatever the implications—the awesome implications—of the breach of faith at the time, some years after the event it is possible to look at Nixon with some compassion, to see also that the faults of that period were the faults of an entire society, and to get away from this tremendous desire to crucify one single scapegoat.

So we see this again and again. In fact, this is also true really in regards to all those most terrible things that have happened. When Hannah Arendt challenged—when she wrote about Eichmann—the view that there was some kind of huge monster sitting out there, she pointed out what she found from the trial: he was rather a pathetic figure, a pathetic, small-time bureaucrat, unthinking, uncritical, blindly carrying out orders in the name of duty.

And when she saw the utter pathos of this, you could feel very sorry for this person, but she couldn't see how you could get so inordinately angry, unless, of course, you're going to become a racist. Now this angered a lot of Jews, because a lot of Jews assume that the only way you can make sense of the Holocaust is by anger. Whereas actually, many of the people who have suffered—and I've talked to many of them—they can't stand this emphasis upon anger and revenge. They suffered so much, they came to think a lot about what it is to be human, how human beings fall below a certain level. In other words, they came to have more fundamental thoughts about humanity, even though some of them might have also turned quite naturally to their own faith. But there were quite a number who saw beyond their faith.

Whereas many of those who don't suffer, of course, can always create this kind of intense emotionalism. And they do this, of course, thinking thereby they're going to prevent it, which is a great mistake because you only attract it. So on the basis of emotions, even though they may exist in human beings, you cannot really create a theory of what will bring about justice and stability in a society. So from this point of view, what Godwin is saying is very, very important, though complex and difficult to understand.

And Godwin really gets to town when he turns to punishment. Because having himself been brought up as a Calvinist—almost going to become a Calvinist minister at one point, he was the son of a Calvinist priest, and he was very much brought up in Calvinism—when Godwin rejected that as a young man and started to question it, he realized as he grew older that Calvinism, in an extreme religious form of predestination where only a few people are predestined to go to heaven and all the rest are predestined to go to hell, and yet because you don't really know about it, in which category you are, even if you're a Calvinist, you've still got to do your very best just in case, you know, you're going to heaven, you want to make sure that you've earned it... all of this Godwin not only found repugnant, he saw that this was only an extreme version of something which was more widespread and which had been engendered over a long time by religion, namely: an immense concern with retribution, with taking the stance of some kind of God or some kind of being who is an impartial spectator.

Godwin knew how difficult this is, trying to render final judgment, assuming that we know definitely what is the desert, what is the merit, or what is the degree of blameworthiness of a particular person. Godwin says this is really absurd. Godwin combines an agnosticism about human nature with the total faith that human nature is perfectible and can grow over a period of time.

But at any given time, we don't really know, even if we know a person very well—and this is certainly a theme in literature—we don't know what a person's motives are, why a person was led to do something. You find this, of course, very much in Dostoevsky, but you also find it in many great works of literature.

And then Godwin says, if this is so, if you elect a group of strangers and also a certain judge who, he believes, after a point is conditioned by the attitude of sentencing people—if you in a court of strangers, in other words, try to expect that the complexity of human motivation can be understood and exact justice done to what is truly deserved by a human being, and what is the degree of culpability of a person, you are really very mistaken.

Furthermore, Godwin knows that once a person is brought to trial, even before the person is brought to trial—this is why we have the habeas corpus rule, that somebody is innocent until proven guilty—despite this very healthy tradition in the courts, in fact, there is emotion generated. And Godwin was saying this before he even knew or could visualize our century with the mass media. In those days, it was just by popular gossip.

Remember, I believe in the late 19th century, people used to pay money to go and watch hanging. So Victorian society was not that different, actually, from what abominates us in regard to Khomeini's version of Islam. So there was a tremendous sadism in human beings, and Godwin recognizes this. In fact, in one place he says bluntly: man is the most cruel of beings. And it is quite... when you look at the history of human beings, and you think of all the instruments of torture, and when you think of all that has happened, Godwin says, well, it is really appalling what atrocities human beings could commit.

But this arises really because of human weakness, human emotion, and it also arises because of this intense retributive element in human beings, which is founded upon a mistake. Because if we don't really know what exactly a person's motives are, then we can't really have any justification for saying that we can exactly determine the degree of culpability, especially when human beings are acted upon by the environment.

And also for Godwin, which is the doctrine of necessity, all human beings, to some extent, cannot but do what they do; and for Plato, of course, it's because of ignorance. Therefore, by definition, if you do something which is not good, it is because you are ignorant, you are forgetful, you do not really know what is the good of all, and you don't know your own good either. In other words, you have not reached that level, or if you reached it, you fell below it—and this can happen.

So Godwin says, if this is the case, then there is a great deal of moral hunger that has got to do with punishment. And this is because, as was again very well pointed out, one is combining the view of retribution with a view of deterrence. You are saying that you're really punishing somebody so that he will not do something again which he's done before—and that was strictly, once what has been done has been done. Instead of trying to cope with this and find out enough about it and re-educate the person, if you're actually punishing him to confine him and restrain him on the assumption that thereby he will not do it again, again you have made a tremendous assumption for which there is very little basis.

And if you further want to set him up as an example to others, then Godwin says there is no limit to how far you can go in your torturing. In fact, you don't even have to have a person who's actually guilty; you can take an innocent person, then make an example of that person by saying that that person is guilty, torture that person. So all of these things break down.

And what Godwin is trying to establish by argument, and also based upon his particular assumption about human nature, Kropotkin is pointing out by a lot of examples from history, but also a lot of statistics. Because by the time late in the 19th

century Kropotkin wrote about law, statistics had begun to emerge, and one of the things that Kropotkin found to his amazement is that the ratio in every community of murders to all other crimes is amazingly stable.

Also, Kropotkin found what has certainly been confirmed in regard to, say, capital punishment: that merely by abolishing a certain kind of punishment you do not get an increase of crimes. So these are what statistics bring out.

And Kropotkin was also aware that Cesare Lombroso had emerged in Italy, and he tried to show that all these crimes have got a genetic, physiological foundation—they have to do with something in the brain structure. Lombroso studied the heads and the faces of many, many criminals, and he found, even from a purely initial approach to phrenology, that there was evidence of brain damage.

And now Cesare Lombroso, on the other hand, felt that people who are extremely damaged should be eliminated. In that sense, he was rather apt to be taken in by some notion of eugenics. Kropotkin finds it very repugnant. He's a deeply compassionate man who feels that the trouble with law and punishment is the punitive nature of all institutions.

To replace a punitive society by a therapeutic society is the aim of the true anarchist. And you can only create a true therapeutic society if you give up all illusions and delusions about law. You really come to see that there is a side of law which is based upon social usage and social custom, and this would work independently of written laws.

But there's another side to law which represents the appropriation—the appropriation of the dignity of social usage by those who have a desire to dominate. And once, of course, as in Marxist analysis, you not only have a theory of the ruling class at all times, but you talk of modern bourgeois capitalism and you talk of class war, clearly there is an impulse to dominate and to protect certain institutions in society, especially property.

Kropotkin also found that most crimes really have to do with property. And therefore, as long as you encourage property rights and you allow extreme inequalities to exist in

regard to property, you are going to get a situation where there are going to be crimes, because there are going to be many who are wretched and propertyless, but who don't really feel that the rest of society is just.

And Kropotkin also finds from his own experience in prison—which was quite a long experience—and also his study of prisoners, that actually, when prisoners come to jail, it is as if they are entering a school of crime. Godwin also calls prisons—he calls them "seminaries of vice"—and Kropotkin calls them "schools of crime."

This is extraordinary, because early this year I had to speak on the problem of violence and religion in the community, because of the enormous fears generated early in the year about the increase of crime. And when I did a little investigation of statistics, I was amazed, indeed appalled, to find that the vast majority of crimes today in America are committed by people under a certain age—you might say under 25. Believe it or not, the vast majority of crimes are committed by people between, let us say, 18 and 25.

And you certainly would be able to empathize with many of these people; you'd be able to understand how they emerged, because they were very much like some people that you had in junior high and in high school. These people who started maybe with shoplifting, started with some kind of cynicism, fear of failure, a feeling that the dice is loaded against them, all because they had all kinds of false expectations in regard to their money and their status—you know, just ignorant—these people, after they commit their first crimes, they become extremely brutalized. Because when they are suddenly put in jail, and then they come into a system which is not only systematically working through coercion and regimentation, but through this very dehumanization that Kropotkin talks about, it is a tremendous shock for them and it actually weakens their will.

Because for Kropotkin, people who commit a crime are people whose will is weak. And Kropotkin says, be honest: there is hardly a human being who can say that at some time he or she has not had thoughts of a kind which indeed you would say are criminal, whether it be in regard to murdering or in regard to stealing. And yet most human beings somehow manage to prevent this from becoming a fact in their lives. They prevent

themselves from acting it out by some degree of restraint—maybe cowardice—but certainly, they have enough will to hold back.

Whereas, he says, there are some people, unfortunately, who simply are very weak-willed—and often, remember, weak-willed people may have a lot of bluster. They may outwardly look as if they're coming on very strong, but inwardly they're terrified; they're very, very weak-willed. And when you put these weak-willed people in jails and they're submitted to this extreme dehumanization, when they're treated as a thing with hard labor, and also they come into contact with hardened criminals and cynics, they become so brutalized that they really become trained as efficient criminals.

So when they come out, you can be certain they are going to do crimes of a much more serious sort. They may become cleverer and not get caught, and in some cases in modern America, they also study enough law to be able to use every legal loophole in the trial, and also many of them expect to come back in a relatively short time. So there is a very real sense in which prisons actually create more and more criminals and more and more brutalization.

And for Kropotkin, part of the reason is not only are the criminals brutalized and the guards brutalized—and this is interesting, because only a few days ago we had the instance of a guard in California who wanted to resign because he could no longer keep secret what had been well-known among all the guards: the way they would sometimes kill people, beat people all the time, and do all kinds of things and cook the files, and he just couldn't stand it anymore.

So this does go on. But Kropotkin is saying the deeper fact is that among people who are in jail, it's very difficult to convince them that they are there because of justice, because justice had to be done to them, even if they recognize that they did something which was wrong and that they had a fair trial. But somehow they feel that theirs were small misdemeanors, that there are really big crooks in every society, in the corporations, in the economy, and big crimes go away unpunished.

In other words, they are people who have made a moral rejection. It may be instinctive, it may be exaggerated, but it is also rooted in a recognition of the very nature of capitalist society.

And on the other hand, Kropotkin wants to say, it is paradoxically only in the 18th century, after the French Revolution, with the emergence of the middle class—the bourgeois middle class—that you got a new kind of celebration of law, which really had to do with the protection of property rights. And you got almost a religion: a religion based upon obedience to state authority. So that at every point, through schools, through colleges, through the media, through books, people are being indoctrinated into unquestioning obedience to external authority.

And for Kropotkin, this is terrible. This is pernicious, because what it does is to sap creativity in human beings. It is to prevent the emergence of thinking individuals. Instead of human beings thinking for themselves and making up their minds about the merits of every case, they are conditioned by a certain attitude of blind, unpredictable allegiance to external authority.

So as long as this is the case, you cannot really expect any justice from such a society; that is, terms will never be equal for all. And he also points out that peasants are taken in by the initial-level equality because they can get to a court or they can be heard, and they also are taken in at some level by democratic institutions. But when you really think about it, what you have is a certain formal façade of equality; but in fact, the institutions which purportedly give you this reinforce deep-seated inequalities in the economy, in the social structure.

And therefore for Kropotkin—and here Kropotkin, of course, is a Marxist, is a socialist, is a communist—he believes that as long as there is class war, as long as there is class conflict, as long as in capitalism there is a necessary dominance of capital... and he says the dominance of capital is very similar to the dominance of law. Capital accumulates and law emerges through fraud and violence. And this, of course, to him is supported by history.

In other words, what history represents is a very complex process of appropriation of the moral quality of justice by law based upon force. And what history also represents is the accumulation and appropriation of capital out of the common labor of vast numbers of human beings.

So therefore he says, property rights really represent something false: the illusion that you are entitled to own something because you have paid for it or because you inherited it, when in fact nobody really can claim that anything that he or she feels entitled to can be separated from the enormous interdependence of all human beings, from the common labor of the whole community. So that by definition, other than meeting basic needs, to accumulate property is to be involved in expropriation—is to participate in a system of expropriation.

Now Godwin had already pointed out that when you are punishing for the sake of future crimes, what you're really doing is capitalizing upon suspicion, which means that if you really accept the deterrent theory, you create a suspicious society. Now put this together with what Kropotkin is saying: we start to get a very uncomfortable picture of the kind of society we live in, and which is becoming more and more fear-ridden, paranoid, and suspicious.

So people do accumulate some wealth, some property, and then the fears are so intense of it being taken away from them—fears of a sort that you create a kind of psychotic climate. And when you do, what in effect you're doing is you're giving up on human nature. You're giving up on the possibility of an alternative way of life. You're giving up the possibility of thinking up alternative structures of society.

And why does this arise? Kropotkin says: because of servility. In other words, he's saying that slavery, feudalism, and all of these early forms of domination became much more grotesque in modern bourgeois capitalism, because they produced a collective psychological state of servility—servility to the law, servility to authority. And in the state of servility, most people are cowards.

And even if people think and talk in terms of self-interest, as Tolstoy said, most people are either dupes about what their self-interest is, or they are victims where, in pursuing their self-interest, someone else who has a sharper sense of interest and who is much stronger and more ruthless gets the better advantage.

So it is not the case that if you educate everybody into an awareness of their own rights or of their own interests, then everybody is going to benefit. In fact, no: it plays into the hands of those who are more cunning, more ruthless, those who are more powerful.

And there are also, of course, many people who live with illusions. Once they live with the illusion of freedom, simply because they are afraid that they always keep clear of certain situations which will bring them into conflict with the law, or they avoid ghettos, or people who they think are criminal, ultimately at a point they can create a kind of illusion. But this illusion is very thin, because behind it they are very insecure and very afraid.

So in other words, in terms of our experience with a breakdown of a vast modern mass society, where we are using up this modern capital—quite independent of whatever we may think of capitalism, even simply because of the competitive ethos of modern society, but also the dehumanization that takes place in a variety of ways—we really have to attend very seriously to that kind of fundamental thinking about law, punishment, and prisons which we find in Godwin and Kropotkin. Because except among a few anarchist thinkers like this, you will not find this willingness to question something fundamentally.

Most of the time, again, we're reading that which is celebrating law, which is reaffirming retribution, which is speaking in the name of deterrence, which is throwing a lot of statistics in your eyes, and somehow implying that all these institutions protect us, that these institutions are unavoidable, they're a sign of progress, and so on and so forth.

And here, that is partly because, going back to what Hobbes and Locke did, we have this tendency to justify what exists by creating a caricatured, ghastly alternative. Because

for Hobbes, either you have to accept the sovereign or the state of nature. We also in our thinking assume that once we start to question existing institutions, the only alternative would be total chaos and bloodshed.

And here Godwin is very interesting, because he actually looks at this alternative—looks at the alternative of anarchy. And Godwin is not defending anarchy; he's an anarchist. He's not in favor of mere chaos, but he's pointing out: even anarchy or chaos is much better than regimentation and despotism, because anarchy tends to destroy itself; it is short-lived. And if it lasts, of course, it's going to convert into despotism.

In other words, what he's really pointing out is: if you remove a lot of these restrictions, of course, human beings, being very much what they are, they're going to engage in antisocial acts; but when they engage in them, at some level it's going to cancel out. At some level, you're going to find that it is going to convert itself into a situation where people then learn to organize themselves locally, collectively.

And this also is interesting, because we do find from experience in Los Angeles and elsewhere that where individuals gather together and organize voluntarily groups that become involved in patrolling a certain area, but also getting to know people—and where the police really get to know individuals as in the old England, which is what changed with the riots, the sudden discovery that the police were alienated from a whole lot of people who had moved because of modern mobility—where you can get these alternatives, it is amazing how crime can go down.

But of course, for Godwin, you want much more than that. You also want to reaffirm that your so-called criminal is capable, if you show him enough understanding, if you're patient with him, of being changed.

Kropotkin, on the other hand, from his experience in prison, doesn't think very much of reformation in prisons, because he has seen what it does. People are pretending to be reforming prisoners, but actually the very isolation from other human beings, the very solitude, the very deprivation of freedom, he says, is so demoralizing. When you have taken away from a human being that person's freedom, that person is not going to be rational,

that person is not going to respond to human sympathy, is going to be in fact offended by sympathy, doesn't want to be patronized.

So Kropotkin is really saying you have got to show what sympathy can do in situations where there is no coercion, no isolation, no indoctrination in the name of allegiance to authority and the supposed virtues of prisons. So this really makes you think, because even though for a long time people talk in terms of a therapeutic society, they talk in terms of prisons becoming involved in education, in reform, loosening up restrictions—all of this talk has gone on for about 50 years. But what has happened really is nothing at all.

All that has happened in fact is—and here Kropotkin is very shrewd—one economic factor dominates: every prison institution is trying to hold down the maximum number of prisoners with a minimum number of guards. That is the economics of prisons. So as long as you want to hold down vast numbers of people with a few guards, you are going to get inevitably a system of rules in prison which involves brutalization and dehumanization. It is as if you have to have... if you really want the kind of ideal prison, you have to have so many guards there is no longer really a prison.

So in other words, there is something in the very prison system—the way it works—and that is very much like colonialism and imperialism: it works through fear, it works through brutalization, and it cannot afford to truly engage in a dialogue. And therefore, it is like giving up on human beings.

And once you recognize that there is some kind of similarity between the worst offenders and the worst elements in all of us, we have no basis really for being very self-righteous and getting off into a big emotional kick of indignation, resentment, and retribution. Even if we have all these elements, we ought to be bigger than this. We ought to be ashamed of these. We ought to think in terms of the most generous and forward-looking outlook, and we ought to recognize from our own lives how certain things made a difference, how we ourselves might have gone the way of others if we had not had certain opportunities.

And we should be willing to extend these opportunities freely and generously, with absolute faith that there is in every human being the same core—the core that can recognize (it's got nothing to do with being intellectual) but that can recognize reciprocity, that can understand reason and persuasion, that can respond to sympathy, and that can also visualize alternatives.

Because when people get pushed to a situation where they cannot visualize alternatives, then, of course, they become like automatons. And as Kropotkin says, the very logic of prisons is to convert people into automatons. So if for all human beings we want the same thing—to extend the horizon of alternatives, always to make people feel that there are other ways, that there are other opportunities, that there are many beginnings—if this is what we want to do, we can't merely do it for a few and not for all.

And we can't do it and also support institutions which are based upon the opposite assumptions—ultimately really based upon original sin, based upon a negative view of human nature, and therefore work through fear. We have to, at a very fundamental level, replace these operators working through guilt, fear, and sin by a different class of operators working through generosity, reciprocity, and reason. Until we have really tried this, we are in no position to know how much better off we would be; but you can be certain we cannot be as badly off as we are now, if we really care to look at the facts fairly and squarely.

So this is why, whether or not you become a total supporter of Godwin or Kropotkin, it is a very healthy antidote to the endless conformity that is engendered by modern indoctrination to read what Godwin says on punishment, what Kropotkin says on law and prison, because it will then force you to explore alternative ways. Because essentially both of them are saying, by analogy with health: prevention is better than cure.

And just as there is a revolution in health when we really begin to be not so obsessed with cures—and even in America now, there is an increased concern, as there has been always in other parts of the world, with prevention—well, what is true of medicine is even more true of vice and crime. We have to be concerned with prevention, and we

have to be concerned with education. We have to be concerned with positive alternatives. We have to be concerned with the philosophy of growth, with giving opportunities and making these opportunities real.

But once you start thinking this way, of course, then you're really going to object to so many things in society that you're going to become a true rebel.