

could obtain this recompense from the State, which, in its turn, would be entitled to recover this expense concerning criminals. There can be two sources for this: confiscation of properties and income from the forced labor of convicts. The majority of legal experts are up in arms against the first, chiefly owing to the following reasons: first, confiscation affects the rights of innocent persons—the family of the criminal; and second, it introduces inequality into punishment since the rich criminal from whom property is taken suffers more than the poor one, from whom there is nothing to confiscate.

It is not possible to agree with either consideration. There is no need for confiscation to be extended without fail to all property—a portion sufficient for the security of the family can always be allotted. And if despite this, in rare cases of *very* rich criminals, should the material situation of their families for all that substantially change, then there is nothing unjust here: on the contrary, it would be disturbing to moral sensibility to encounter extreme luxury in the family of a murderer or robber—it would make no difference even if there were joyous celebration at the home of the deceased—and, in any case, the State has no cause to concern itself any more about the families of criminals than about the families of innocent victims. Precisely in the same way, there is nothing unjust in the inequality of the force of punishment owing to confiscation because up to the commission of the crime the rich criminal had wealth that the indigent criminal was lacking in and, thus the subsequent inequality only balances the former one; moreover, wealth which is connected to great possibilities of education and intellectual development is in itself—*ceteris paribus*—an aggravating circumstance for the criminal.

However, the question of confiscation, owing to the comparatively small number of rich criminals, does not have great practical significance. More important is the question of the utilization of criminal labor. Forced labor, which now serves in the capacity of an essential educative instrument, should be preserved as a constant ingredient of any punitive measures. It is just and expedient that the income from this work be used in part for the compensation of the victims or their families. I do not know of any serious objections to this, and in this way punishment manifestly acquires the desired character of natural justice in distinction from arbitrary revenge.

##### 5.

Here is the entire substance of model punishment: the deprivation of freedom for a more or less protracted time, not determined beforehand and conforming with real changes in the condition of the criminal, and afterward forced work

for his own benefit and for the compensation of victims. It is reduced to the conditional restriction of the criminal's individual and property rights as the natural result of crime. This is what society should *take* from the criminal; but in place of this it should *give* him active assistance in his correction and moral regeneration. It is precisely from this aspect that a radical reform of prison institutions to transform them into moral-psychiatric establishments is particularly essential.

There was a time when people who were mentally ill were accosted as wild, subdued animals; they were shackled, beaten with sticks, and so on. This was considered completely in the order of things even less than a hundred years or so ago; now these things are recalled with horror. Since the historical process is moving faster and faster, I still hope to see the day when our average prisons and camps today will be viewed as we all now view ancient psychiatric institutions with iron cages and chains for the sick. The contemporary situation of prisons, despite indubitable successes everywhere in recent times, is still determined to a significant degree by the ancient concept of punishment as *torture*, deliberately imposed on the criminal according to the rule "Even torture serves the criminal right."<sup>\*43</sup>

According to the real concept of punishment, its positive task in relation to the criminal is not physical torment, but his moral recovery or correction. This idea has already long been entertained by various writers (chiefly theologians and philosophers, and only a few jurists) and calls forth against itself firm objections of a dual sort: on the part of legal experts and on the part of "criminal anthropologists." On the juridical side, it is maintained that to correct the criminal means to intrude into his inner world, and that society and the State do not have any right to this. But there are two misunderstandings here.

First, the task of criminal correction is only one of the cases, in the indicated aspect, of the obliging and positive effect of society or the State on its needy and its not fully enfranchised. In denying such an influence in principle as an intrusion into the inner world, the teaching of children in public schools, the treatment of the insane in public hospitals, and so on, would all have to be rejected.

\* Incidentally, graphic details of the application of this rule among us in the recent past (and very recent indeed) can be found in A. F. Koni's excellent monograph about Dr. Gaaz (*Vestnik Evropy*, Jan.-Feb. 1897). Much good was undertaken within the Russian corrections department on the initiative of K. K. Gort and in the administration of M. N. Galkin-Brasskii as well.

Where, then, is there an intrusion into the inner world here? In fact, by the act of the crime the criminal has *revealed, has laid bare* his inner world and has need of a reverse influence in order to be returned to his normal boundaries. Especially strange in this objection is that society acknowledges the right to put a man in conditions *which are corrupting*, as incidentally both today's prisons and camps are, but the right and the duty to put a man in conditions *which build morals* are removed from society.

The second misunderstanding consists in the fact that the term *correction* is understood as foisting some prepared rules of morality from without; but why the clumsiness in adopting this as a norm? For a criminal who is at all capable of correction, it is, of course, for the most part *self-correction*, while external assistance should strictly only place a man in the most favorable conditions for this, to help as well to sustain him in this inner process.

But is the reform of criminals possible at all? Many representatives of criminal anthropology assert the physically fateful character of inherited and innate criminal tendencies and thus their irreformability. That hereditary criminals and born criminals exist is without doubt; that among them are irremediable ones—is rather hard to deny; but the assertion that all or even the majority of criminals are absolutely irremediable—is completely arbitrary, contradicts experience, and does not merit criticism. If we are right to grant only that certain criminals are irremediable, then with the impossibility of saying beforehand with full conviction whether a given criminal belongs or does not belong to this group, it is necessary to place *all* of them in conditions that are the most favorable for their possible correction.

The first and fundamental condition of the successful solution of the corrective problem is certainly that there would stand at the head of penitentiary institutions people capable of this kind of difficult and lofty purpose—selected legal experts, psychiatrists, moralists, and persons with a true religious calling.

A public trusteeship over the criminal with the aim of his possible correction is entrusted to people who are particularly talented for this—this is the definitive definition of *punishment* or a positive counteraction to crime in agreement with moral principle. The right to self-defense, which undoubtedly belongs to society, is satisfied better than anything by this kind of punishment: a reformed criminal not only will not be dangerous to society but will repay it with interest for its care. Model criminal justice and a penitential system which corresponds to it—real justice and mercy to criminals without injury to the innocent—here is the most explicit and complete proof of the true connection between law and

morality, or the true concept of law as the balance of two moral interests: the public good and individual freedom. Without this connection or this balance, a humane corrective establishment for criminals, just like a clinic for dangerous patients, is just nonsense. If the public good is given preponderance, the criminals as well as the harmful sick should simply be destroyed. If individual freedom is given preponderance, then every coercive measure against both must be rejected. Conscience and reason, and today now also experience, point out the correct path, which neither permits the inhuman extermination of harmful people, nor inhumanly allows them to exterminate others.<sup>44</sup>