

The Brothel Boy



I wonder—does any other Old Etonian roll his own cigarettes? I'm not sure why I do. They are cheaper, of course, but the taste is not very different, and bits and pieces of tobacco do drift into one's mouth and require picking off the tongue or lips, which seems to disturb some who observe it. In the Club they make no secret of their disapproval—"A frightfully low-bred habit."

"Blair, do take one of mine, it's so much easier."

"No thanks, I prefer these," and I watch their foreheads wrinkle in revulsion.

I had carefully rolled a cigarette and was about to moisten the paper, my tongue protruding, mouth agape, when a native boy burst into my office shouting, "Come, come, Sir. Hurry please. They are killing the brothel boy."

I knew, of course, of the local brothel, but not of any "brothel boy." A homosexual prostitute seemed most unlikely in Burma, quite out of character with local values and prevailing behaviour—but I had mistaken his role. At all events, I hurried to where I was led to find several village men standing over the unconscious youth but desisting now from further violence. They were, it was immediately obvious, the remainder of a mob of assailants.

The boy was unconscious, bleeding from the head and face from wounds inflicted by repeated kicks. His shoulder was twisted, obviously broken. His clothes, when whole scarcely adequate, were now gaping, tom,

and bloody. He lay in a foetal curve, clutching his groin. The expression on what was left of his features was of anguished surprise, the lips drawn back, mortal fear apparent. The smell of fear and violence, of sweat and vomit, was pervasive.

Resentfully they stood back to allow me to inspect him. Then, not concealing their reluctance, they helped me to carry him to the police station, where I telephoned Dr. Veraswami at the nearby hospital. By the time Dr. Veraswami had arrived, I knew the outline of the events that led to the brothel boy's beating. Some villagers returning to the fields in the afternoon had heard a girl's screams from a heavily overgrown area near the Salween River customarily used for washing, but not at this time of day. When they reached her the screaming had ceased; she lay, a young girl, naked in the brothel boy's arms. She had been raped. In her struggles she had apparently struck her head violently on a sharp rock. The boy had made no effort to flee.

The girl was taken to her home. More villagers arrived, and the boy was attacked. He might or might not have been killed, or the villagers might have overcome their dislike of the Raj's justice sufficiently to bring him to me. In any event, my arrival may merely have saved him for the hangman. It was, after all, a clear case—a young girl, a virgin, raped and injured by the brothel boy.

And it became an even clearer case when, a few days later, she died from the combined effects of the head wound and septicaemia. A villainous mixture of local herbs that the villagers had applied to her head wound probably hastened her death. Dr. Veraswami had not been called.

The law began its processes. My first few months in Moulmein had taught me what must be done to prepare for a trial. In the preliminary enquiry into more serious cases I usually acted only as judge and prosecutor, avoiding the further incongruous role of defence counsel that I sometimes assumed in the trial of less serious crimes. It was not required, but I had fallen into the practice of asking one or other of the three Burmese in Moulmein claiming some forensic skill to represent indigent natives accused in serious cases. But this time my requests were firmly rejected. There was nothing to be said. He had raped her and she had died. He had been caught immediately. He did not deny what he had done. The only question was whether the villagers would kill him or whether the Raj, with its quaint, imported formality and pretence of impartiality, would do so. They could see no reason to impede the Raj. So I was judge, prosecutor, and defence counsel, equally untrained in all three roles, though with developing experience in minor disputes and less criminal matters. Certainly the boy could not do much for himself.

I interviewed him under close guard in the hospital. I tried to talk quietly to him; I didn't hurry, sitting silent for long periods. He would look down and away, immobile, never volunteering a word or a gesture. The effect was of one cloyingly anxious to please, but not knowing how to. Whenever I asked him what had happened by the river, he would rush to

sweaty verbosity, his head and shoulders bobbing forward with exaggerated sincerity, "Please Sir, I paid, I'm sorry Sir . . . Please Sir, I paid, I'm sorry Sir," the words running on with rising inflexion, flooding incoherently into one another, until he would begin to sob. When the crying stopped he would return to his motionless silence. And if I again even remotely probed the events by the river, the same miserable routine would follow.

If I asked him to do something, to stand up or sit down, to open a window or door, to bring me a chair, he would leap to comply, diligence gleaming in his eyes, ingratiatingly obedient, like a well-trained dog. But I could achieve no communication with him beyond his prompt obedience to simple orders. I tried different tactics to relate to him, asking him about many things, always speaking clearly and slowly, but to little effect. Sometimes he would seem to understand and give a monosyllabic reply, accompanied always by a clipped "Sir," and sometimes he would offer a shy and innocent smile, but his words and smiles seemed quite random, having little to do with my questions. And as soon as I approached the matter of the girl, or of washing by the river, or even of money, out would spill the "Please Sir, I paid, I'm sorry Sir" flowing to tears, sometimes preceded by the incongruous smile.

"A 'perseveration,' I believe it is called," Dr. Veraswami told me. "Over and over and over he says the same things in the same words in his mind, believing them completely, I think, but not knowing what they mean. Sometimes he will say it all, sometimes bits and pieces, you will find, but always in the same sequence, going round and round, exactly the same. You will get very little more from him. It is all his silly mind will let him think about. Perhaps not so silly, isn't it? Safer so. But I doubt he pretends; he does not mangle, I think. He tells you all he can tell himself."

So it proved. The boy was obviously stupid. And the meaningless repetition and cringing self-pity became increasingly distasteful.

I went to the brothel to try to learn more of the boy. He had, it was recalled, been born there some twenty or so years ago. His mother had worked for the previous owners of the brothel but had died a few years after the boy's birth. His father was, of course, undiscoverable; any one of the fertile male population of this or neighbouring villages could be a candidate for that unsought honour. The present brothel keeper, a smarmy lady of large physique, expressed unqualified praise of her own virtue in having let the boy stay when she bought the brothel some years ago. He was, she said, until now an entirely reliable *punkah wallah*, willing to keep the fans moving for the more prosperous clients who wanted them and would pay for them, while he faded into the background.

I could understand how unobtrusive he would have been. As interested in him as I was, I found it hard to see him as a person at all. On any subject apart from the crime, he said only what he thought he ought to say. Otherwise, immobile, slight, turned away, he seemed as present as the furniture.

"How did he keep himself?" I asked the proprietress of the brothel. She

was lyrical in praise of her generosity: She kept him without charge. Actually let him sleep inside. Clothed and fed him. And sometimes, she said, customers who were anxious to show off would give him a few annas, which, in her bountiful kindness, she let him keep. This was, I supposed, the source of his savings, which he had tried to give to the girl he killed.

"Did he help the girls if they were treated badly by a customer?" I further enquired. Indeed not; that was her job. And, archly, she added that there were always men of the village to whom she could look for assistance if she needed it. But that was very rare. The girls knew they should expect, even encourage, vigour in some customers. They were often the best customers. And the girls knew she would care for them if they were hurt. It would have been most improper for the boy to intervene. He was enough trouble to her without that.

All he was expected to do, she explained, was to keep the punkah moving gently to begin with and perhaps later slightly more swiftly so that, by different methods, he and the girl could cool the customer. She laughed with betel-gummed delight at her own wit and then explained to me that the boy's job was very easy, that often he did it on his back, his arms pillowing his head, his heel in the loop of rattan which, by rhythmic pressure, waved the overhead punkah. She developed this theme of his sloth and her own generosity at some length.

"What of his schooling?" I asked. This question confirmed her view of the idiocy of the white servants of the Raj. Powerful, eye-rolling laughter was her response, so that I had that often recurring sense of how alien and useless I was in this Burmese setting. A brothel boy at school would be more at home than this assistant police magistrate in Lower Burma. And about as useful, I suppose, in her view.

I asked the brothel keeper if she knew how the boy had met the girl he killed. Her already ample bosom rose, swelled, and trembled with indignation. He had met the girl when he helped her with her parents' laundry. Washing was men's work, but the girl's father was often unwell and the girl did it for him. It was, of course, the brothel boy's duty, in return for the brothel keeper's munificence towards him, to do the washing for the brothel, which took him daily to the river. The boy had, she thought, on occasion assisted the girl by helping her carry some of her parents' laundry to and from the river. She had, it appeared, most unwisely chatted and played with him in a friendly way when they met. The proprietress had on one occasion made it her business, indeed gone out of her way, to warn the girl that the boy was a fool, a simpleton, not to be trusted, and that she should behave towards him like everyone else—not talk to the stupid boy except to tell him what to do or not to do or to reprimand him. But the girl would not listen. She was only a child of twelve or thirteen, but even so she certainly should have known better, as the younger girls in the brothel all understood, after the kindly but firm warnings so generously given.

I turned to Dr. Veraswami to try to understand the boy and his crime.

As usual, Dr. Veraswami was pleased to talk to me about this or any other subject. Both of us lacked friends and conversation partners in Moulmein. Dr. Veraswami's children by his first marriage were grown and departed; those by his second were old enough to love but not to talk with. And his present wife would run to hide in the kitchen when she saw me approaching their bungalow. She had, the doctor told me with a gentle smile, "many fine qualities indeed, indeed, but the confidence in conversation of a particularly timid mouse."

Dr. Veraswami was the only person I enjoyed in Moulmein, certainly the only one I felt at all close to since, try as I would, I could never establish a reciprocal warmth of feeling with any of the natives, though I think some of them knew I respected them. My servants would not talk at all of the crime, looking anxiously resentful and falling silent if I mentioned the boy. By contrast, in the Club, it was a subject of unending, energetic, circumlocutiously salacious chatter, the details of which I attempted to spare myself by stressing that, since the matter was *subjudice*, I should not mention it or receive advice about it. This did no good, of course, but it did give me a further excuse to avoid the Club, and confirmed the prevalent view of me there as a posturing outsider, probably a coolie lover.

Dr. Veraswami had, after all, worked in a mental hospital, and he was closer to the Burmese, certainly in their illnesses, than anyone who was not Burmese. So I turned to him.

"The boy iss, I think, quite retarded, but to what level iss hard to tell." Dr. Veraswami seemed perplexed. "Iss not easy to be sure. After all, my friend, he iss quite illiterate. Unlike you, he and the books move in different circles, always have, always will. Measuring such a mind iss beyond me and others also, issn't it? But he iss certainly far backward, far backward."¹

The villagers had made much of the girl's virginity; I wondered about the boy's sexual experience. Dr. Veraswami was again hesitant, but did not doubt my speculation that the violence by the river might have been the boy's first experience of intercourse. The boy had witnessed much, of course, but the brothel girls would certainly see themselves as superior to and distant from the boy. Chastity, in the sense of absence of congress with a woman, may well have been forced on the boy.

"Is he mad? Was he mad?" I asked the doctor.

"To be sure, I don't know at all. ... He iss certainly not normal. But given his life, Mr. Blair, how would you know what he thinks ... if he does think, ass you mean it?"

"Mad or not, is he likely to do something like this again, or has he learned his lesson?" Surely the swift and brutal punishment for his venery, then the arrest and everyone condemning him, had instructed even his dull mind.

Dr. Veraswami was not so sure. "One would think so, indeed one would. But I must tell you that there are cases like his where even after very severe punishment the act iss repeated. You must not, Mr. Blair, underestimate . . . ," and here he grasped wildly in the air for an unembarrassing

euphemism, and with triumph found it, ". . . the power of the gonads! Of course, if you hold him in prison for twenty years there would then be little risk—these fires do with the years bum less intensely, believe me—but I doubt he would survive so long in prison."

Dr. Veraswami's resignation in the matter began to annoy me. "Well, if you can't help with why he did it, or whether he's dangerous, what should be done about him?"

"He will be hanged, of course."

I protested that we both knew the boy meant no harm, no evil. The more I thought about him and his crime, the less wicked it seemed, though the injury to the girl and her family was obviously extreme; but it was a tragedy, not a sin.

Dr. Veraswami was relentless. "You think him retarded, and he iss. You think him ignorant of what he should and should not do, and he iss. You think he meant no harm, just like an animal, a reaction to the girl. But don't you see, Mr. Blair, all your English colleagues see him ass just the same ass other Burmese, indistinguishable from all other native boys. All look alike. All are stupid, ignorant, cunning, untrustworthy, dirty, smelly, sexually uncontrolled. All are the same. To excuse him because he iss just like the rest would in their minds be madness in you, not in him."

I had no ready answer. "And," he continued, glancing towards the village, "so I fear iss the view of the Burmese. A brothel boy, yess, but in no other way different. They don't let mind speed worry them. You think he iss different and therefore innocent where others who did what he did would be guilty; you may be right, probably so, but the villagers don't agree! You must do what your British friends at the Club and the villagers expect you to do."

My testiness increased. "You seem so content in this, Doctor. The boy is surely less responsible than most killers; he meant no harm insofar as he understood what was happening, and you seem so swiftly to accept his hanging. Surely he is less worthy of being hanged than most murderers."

Dr. Veraswami was waving his head vigorously from side to side as I spoke. This, I had earlier discovered, was a frequent Indian gesture easily mistaken for dissent, but having the larger meaning of a qualified assent—in effect, you are nearly right but not quite. "The gaol, the prison, perhaps," he said, waving in the direction of the dung-coloured walls of the gaol, still visible in the bright light of sunset. "He could sit there on the other side of the wall with the rest until he died, perhaps. He will learn nothing there, ass you know. Have even less to do than in the brothel. If anything he will become even more idiot than now. And they will prey on him." Then, after a pause to acknowledge my troubled silence, "Or perhaps the place where we lock up the mad. Have you seen it? Worse, I think, than the prison. Yes, I remember, you have been there."

I had and it was. No psychiatrist could possibly wish to work in such circumstances, and none did. It was indeed the least desirable service for any doctor, Burmese or Indian—and no English doctor had as yet ever

drunk enough to find himself posted there. Veraswami did his best for his insane patients, but he had much else to do.

"But iss it not much the same, even in England?" Dr. Veraswami asked. It was not really a question. He knew. I did not know. But what he implied was probably the truth.

"So what, Mr. Police Magistrate, would you have us do with the boy? Shall I take him home with me? Keep him here to serve us beer? Iss it not difficult enough for me to live in this dreadful place without taking him ass a son to my bosom? The villagers would indeed then reject me entirely quite. Or iss he to be a part of the police magistracy? You would be more doubted and even less respected—a most unwise move indeed. . . ." And he trailed off to vague head wavings.

"I wonder, Doctor, if one of us could have talked to the girl before she died—what would she have wanted me to do?"

"She would have been more scared of me than of you—Indian doctors, ass you know, bewitch village maidens and turn them into hyenas or other horrible animals; English policemen merely steal them! I doubt either of uss could have made her understand verry much about the boy. But what if we could? How could she forgive him? How tell him he was forgiven? Take the money from him, perhaps? It iss offensive. No, you will get no help from such thoughts, my friend. It could not in any way have been her problem. It iss yours."

Later, reflecting on the realities Dr. Veraswami had held up to me, I found myself dreaming the reformer's dream, summoning the resources of medicine, psychiatry, prisons without brutality, and a political caring that was ages removed from Burma under the Raj.

Did much change? I was not sure. Certainly the boy would not be executed, since, with the movement towards minimum social decencies, the executioner is one of the first functionaries to be retired. But others tend to take his place. A larger, self-caring bureaucracy often accompanies a larger caring for others. The boy might well be held until cured, but how would one ever know? Only by letting him out. And one can't do that until he is cured. So he must be held. The false language of treatment and cure would replace the Burmese bluntness of condign punishment—and which is to be preferred? If the boy could choose, he would choose to avoid the hangman, but there would be other whips and torments waiting for him even in my dream of the all-loving State.

My daydreams that the boy and I were elsewhere and in another time, rather than here and now in Moulmein, were understandable but gave me no comfort. My decision would have been cruelly lonely had not Dr. Veraswami seemed to enjoy our discussions and to be willing to help me in my thrashings around to avoid hanging the boy. Sometimes, however, he struck home hurtfully. I was pressing him for his opinion of how the boy felt in the act of killing—caring, cruel, lost, bewildered? I suggested confusion and a sense of isolation. Dr. Veraswami looked incredibly embarrassed. "Did you not tell me, dear friend, of some difficulties you and some of your

distinguished young friends ... as it were . . . experienced at that fine English preparatory school you attended before Eton? St. Cyprian's, isn't it?" I had no idea what he was talking about and remained silent. He blushed. Indians do blush, though less obviously, of course, than Englishmen. "Enuresis, isn't it, I believe? Flogged for what you did not know how to avoid, I think you said." And I knew that I, too, suddenly was blushing, the lobes of my ears scarlet, the guilt of my childhood bed-wetting still upon me.

Dr. Veraswami was sure he had offended me; his agitation increased. He got up, fussing about with bottles of beer, now warming as the bits of ice he had somewhere found melted to fragments.

He was, of course, quite right. In a sense I had been where the brothel boy found himself. I had been beaten for my sins, sins that were clearly both wicked and outside my control, yet nevertheless sins, or so they seemed to me and to Bingo and Sim, who wielded the cane and broke the riding crop on me.

It was possible, therefore, to commit a sin without knowing you committed it and without being able to avoid it. So it had seemed then, and the feeling of guilt undeniably remained, and strong. Sin was thus, sometimes, something that happened—to me as to the brothel boy. You did not, properly speaking, do the deed; you merely woke up in the morning to find in anguish that the sheets were wringing wet.

I tried to calm Dr. Veraswami, to assure him that he had not offended me, that I appreciated his directness, that I needed his help. This led me to an excessive confession, one I had made to no one else, and probably no one else knew about it, not even Sim. The last time Sim had flogged me for bed-wetting, I remember with great pain a further loss of control of my bladder and a warm flow inside my short pants, down the inside of my left knee, onto my long socks, and into my left shoe. Sim had me bent over a desk, posterior protruding, but I hoped most desperately, and still now in misery believe, that the desk shielded his eyes from my pants and the pool which may have formed at my feet. The shame, had the puddle been seen and almost surely commented on, would have been beyond bearing. But I still don't know if it was.

Dr. Veraswami's hands were flying about in near frenzy. I tried hurriedly to make the link to the case of the brothel boy, straining thus to calm him. I thought he feared a breach in our friendship, but that is unfair; on reflection I think his only anxiety was that he was troubling me too deeply. Perhaps he was.

Were my feelings then, and the brothel boy's now, at all comparable? Had I become a ponderous, unfeeling mixture of Bingo and Sim, punishing the boy by death because of the harshness of the environment into which he had been flung, compared to which my trials at St. Cyprian's were trivial?

Dr. Veraswami would have none of it. "But, Mr. Blair, bed-wetting and rape which kills . . . how can you compare them at all? Misplaced guilt. . .

childish fears and adversities loom ever large, but no, not at all, not in any way like the brothel boy's guilt."

Perhaps gallows humour would reassure Veraswami that he had not wounded me. "At all events, Dr. Veraswami, after that beating, when I wet my sock and shoe, i did not wet my bed again. I was cured. Sim cured me. The hangman will surely cure any lack of control our brothel boy may have over his burgeoning sexual instincts."

But Dr. Veraswami was hardty listening, "No, no, no, dear Sir. . . . Enuresis while asleep, sexual attack while awake; nothing similar."

So I pressed the analogy, suggesting that precautions might be taken: Drink little late, empty the bladder before retiring; one might even arrange to be awakened during the night if others would help. What were the precautions the brothel boy should have taken against copying what he had seen, and seen as acceptable behaviour, to be purchased when the flesh engorged? The brothel boy could hardly be justly punished for the desire. Obviously he had nothing to do with it; less than I had with the springs of enuresis. And whence was he to find the wisdom and control, in unsought and unexpected heat, not to do what probably seemed to him an obvious and acceptable act? He had observed in the brothel apparent gratitude by both parties, simulation and true appreciation being indistinguishable by him—and often by others more intelligent and perceptive than he. Where were the differences between him and me in our sinning? The distinctions seemed to favour him.

Dr. Veraswami's intensity increased. "No, you are verry wrong; forgive me contradicting you, but you are off a lot. The boy must have known he wass hurting her, dull though he iss. The girls in the brothel fear and complain of violence, they talk to each other about it often, the boy must have known. Once he came close upon her, he knew, he knew; believe me, my friend. The cases are quite different. You do yourself too much injustice. You did not sin; he did, and most grievously. Your comparison with your bed-wetting misses the essential difference, issn't it? He wass conscious of what he was doing; you were not. And being conscious, backward and confused though he iss, mistreated and bewildered though he wass, he must be held responsible. You must convict him, punish him, hang him! He is a citizen of Burma, a subject of your Imperial Majesty; you must treat him ass a responsible adult and punish him. That iss what citizenship iss."

I had never before heard such a lengthy, passionately sibilant speech from Dr. Veraswami. It seemed to have calmed him. Again, it didn't help me.

It seemed to me that the discussion had tilted crazily against the brothel hoy. Responsibility . . . citizenship . . . consciousness of what he was doing. . . . Were these sensible standards for a youth of his darkly clouded intelligence and blighted situation? And, if not, what standard should be applied, to what end, with what results?

An all-wise God could by definition draw these fine distinctions, but it

was hard to think of the brothel boy and an omniscient God (and even less an omnibenevolent God) as in any way related. And I knew that I was no plenipotentiary of such a divinity; being a minor agent of the Raj was enough for me. My employers had never distinguished themselves in drawing delicately generous moral distinctions; indeed, they seemed to judge entirely by the results and not by the intentions, which surely must inhibit any fine gradations in attributing guilt.

Did this mean that there was no room at all in my jurisdiction for mercy, for clemency? I decided to put the question to Dr. Veraswami.

Unlike my fellow members of the Club, Dr. Veraswami enjoyed my skill in rolling cigarettes. He rarely smoked but occasionally would accept one of my own home-grown cigarettes. He preferred to moisten the paper himself, I holding the enfolded tobacco out to him; but he also cheerfully accepted those that were the product of my own hands and tongue.

When talking with Dr. Veraswami I found I sometimes rolled a cigarette to give me time to phrase a point of delicacy or difficulty, as many who smoke a pipe use the ritual of filling, lighting, and tamping as time for reflection. On this occasion, the cigarette rolling was a preamble to an effort to seek Dr. Veraswami's views on the moral aspects of the problem of the brothel boy. And, if he agreed that the boy was less culpable, to press him why he was so adamant about the hanging.

"Do you know a painting by Peter Paul Rubens of the Last Judgment?" I asked Dr. Veraswami. "It is a huge painting with lovely, though overweight, naked ladies and gentlemen ascending to unclothed inactivity above the right hand of Christ. Just below His left hand there is an interesting Prince of Darkness in control of a lecherous team of demons dragging the damned off to undepicted horrors, with a face at the bottom of the Devil's side of the painting screaming in agony."

Dr. Veraswami said he had seen a poor print of it once, he thought, but in any event he plunged ahead of my circumlocution to the heart of the question. "You ask, I suppose, my friend, where will the boy be if the admirable Mr. Rubens paints truth? Of course, I don't know. I am not a Christian but, if I were, I would guess he will not be among those damned."

"Well then, how can you tell me to hang him?" I asked, pressing Dr. Veraswami for reconciliation of his apparently conflicting positions.

Dr. Veraswami yielded to no difficulty in the reconciliation. Mercy, a full and forgiving understanding of behaviour, was the prerogative of God, if there was one, and if he had so little to do that he interested himself in us after we died—which Dr. Veraswami doubted. Nor did he believe, as did some Hindus and all Buddhists, that we came back in some other form; but if we did the boy was as likely to ascend as to descend in the hierarchy—whatever it was. All in all, if God had made the boy as he was and put him where he was, it was hard to believe that the boy had behaved any better or worse than God must have expected. But all that, he argued most vigorously, had nothing to do with Assistant Police Magistrate Blair, who admirable though Dr. Veraswami knew he was, educated and wise beyond

his years, could not now help the boy. "Justice, Mr. Blair, iss your job. Justice, not mercy." And his gesturing hand fell and was still, simulating the fall of the gallows.

"Surely, Doctor, mercy can be a part of justice. They are hardly in opposition. Cannot mercy infuse justice, shape it, direct it?"

"Sometimes, sometimes, but often it iss beyond our competence." And he launched again into a lengthy speech, his plump, white-clad behind balanced against the verandah rail, his black thumb and forefinger nipping at the air as if to capture ideas as they floated by. The tenor of his argument was, so far as I followed it, Freudian. If we knew all we could about any murderer, including the brothel boy, all about his inherited capacities and all his life experiences, we would find more than sufficient explanation for all his actions, including the rape which killed. Conduct was apparently "overdetermined," once you included the unconscious and the subconscious. And for most of these pressures, which collectively and inexorably determine everyone's behaviour, it would seem unfair to hold anyone responsible. "But, Mr. Blair, fair or not, it is essential to do so! Within justice there may be room for clemency, for mercy, for human understanding, providing only that the essential purposes of punishment under law are not frustrated. Here they would be. He hass killed while deliberately doing what iss a verry serious crime. There iss no room for mercy, no room at all." And then, as if he thought it would clinch the matter: "Why, even the good Viennese doctor himself, Sigmund Freud, said you are responsible for your unconscious. There it iss!"

"But surely, Doctor, if we can distinguish degrees of fault, or think we can, sufficiently to reduce or increase the punishment of the guilty, to be merciful or to be severe, why can't we—why can't I—by the same means reduce guilt itself? After all, sometimes we do that. When people kill accidentally, we call it manslaughter if they have been very careless indeed; and if they have not been careless and yet have killed it is usually no crime, and never murder. We may not be very good at judging moral fault, but in a rough-and-ready way we can. And surely the boy is nearer innocence than guilt."

"No, no, my magistrate friend, you make the same mistake, forgive me, pleass. We are talking only of intentional acts, not of acts of carelessness—they are quite different. That iss what distinguishes the boy's acts from your enuresis, issn't it? And for such acts . . . and here Dr. Veraswami grabbed two handfuls of ideas from the air around him, ". . . the boy iss either to be treated ass a responsible man or he issn't. There iss no half-man for guilt in the eyes of the law. If there were a choice of punishments for what he hass done, perhaps you could be merciful, because he hass been much abused and iss of weak mind. But there issn't, there issn't. It iss circular, you see."

I didn't see at all, but he pressed on, now almost skipping about with the released energy of uninhibited talk, which I suddenly realised was an even more cherished luxury for him than for me. "Man iss defined by hiss capacity for moral choice. That iss what man iss, nothing else, otherwise

an animal.” And then, chuckling at the cruel pointedness of the joke: “Dr. Freud and the law agree, you see. For his unconscious mind and for his conscious mind, such as they are, the brothel boy is twice responsible. Otherwise, you would have to excuse everyone, certainly everyone you took the trouble to understand.”

Though a painful conclusion, the point was strong. Justice cannot excuse everyone, obviously. And if our judgement of moral guilt reflects mainly our degree of ignorance of the relevant moral facts, then all we would do in a mercy-controlled system of punishment would, in effect, be to excuse or be merciful towards those we know a lot about or decided to find out about—and not towards the others. To my dismay it seemed to me, therefore, that if Justice stands in opposition to Mercy, we are damned (or, certainly, this Assistant Police Magistrate is); and if Mercy is to infuse Justice, to be a part of it, we probably claim beyond our competence.

Dr. Veraswami understood my difficulty in this whole matter, my search for some principle to guide me. “I think a lot about it, Mr. Blair, since it is such a worry to you. And, if I may, please, I hope you agree, here is my conclusion.” And after a pause, a thumb-and-forefinger, tweezer-like nip in the air to catch his words, “There is no steady principle to guide you, none at all. You must be a man of principles, not of principle.”

Dr. Veraswami seemed to be becoming more elliptic than before, and in annoyance I told him so. “No, you misunderstand me,” he replied; “I mean there is no moral principle to guide you, moral, moral. There are, of course, other guides, other principles. The main one is that you English should use the executioner as little as you can—rarely, if you use him at all. And how to know how little is ‘as little as you can’?” Here he paused again, hands still, achieving impressive rhetorical effect. “I have it! If the British do not wish him killed, there is no problem unless the natives want him killed very much, and the British think they should let them have their way. If it is a native to be executed they will not care too much. But if the British and the natives *both* want him killed, as with the brothel boy, unless he is so very mad as to be obviously mad to all, natives and British alike, you can do nothing unless you also wish to leave the service of the Raj and be seen by all as a treasonable fool.”

Hesitantly, regretting the force of “treasonable fool,” he added: “I would like to help you, but I can’t. Perhaps you should leave here. ... I would miss you. You would be happier in England, I think, but is this the way? Is this the way to go? And even if you do save the boy, what can we do with him? As I said, the gaol? The madhouse?”

It appalled me to realise that I was in Pilate’s role, at least as Pilate may have seen it, though otherwise the comparison made no sense. Nor, increasingly it seemed to me, did I. Perhaps it was for me the madhouse that Dr. Veraswami saw as useless for the boy. No, I understood the issue all too well; it was now clear and I was not confused. Dr. Veraswami was right. As a moral issue, the boy was nearer to innocence than most of us; at the

Last Judgment I would back his chances over most. But as a legal and political matter, what a weak reed he had in me to sustain his life!

I recalled another recent occasion in Moulmetn when I had failed to stand for the right against public pressures. Was it to become a "habit? A recidivist Pilate indeed! A few months ago, very much against my better judgement and every inclination, I had shot a working elephant that had recovered from a period of "must" in which he had damaged some property and killed a native. As soon as I saw the elephant, I knew with perfect certainty that I ought not to shoot him; but the natives expected it of me and I had to do it. I could feel their dark, sweaty wills pressing me forward, irresistibly. If I did nothing, it was quite probable that some of them would laugh. So I shot the elephant.

I had to contend then only with native opinion; the Europeans would have divided on the question, some holding it to be a damn shame to shoot an elephant for killing a coolie, because an elephant was worth more than any damn Coringhee coolie. Now, with the brothel boy, the forces pressing on me were different, and greater. No one would laugh if I did not hang the boy, but European and native opinion were agreed and vehement—that is what I ought to do, what I must do.

Memories of St. Cyprian's again swept in. I remembered how Latin was beaten into me, and I still doubted that a classical education could be successfully carried on without corporal punishment. Bingo, Sim, and the boys all believed in its efficacy; as in Moulmein, public opinion was unanimous about the value of physical punishment. I recalled Beacham, a boy with a dull mind—not as dull as the brothel boy's, but certainly not bright—whom Sim flogged towards their joint goal of a scholarship for Beacham, as the heartless might flog a foundered horse. And when Beacham was severely beaten yet again for his failure in the scholarship exam, his words of poignant regret came back to me: "I wish I'd had that caning before I went up for the exam."

As I walked with Dr. Veraswami into the gaol yard I caught sight of him. Six guards were getting him ready for the gallows. He stood, surrounded by the guards, slim and muscular, with shaven head and vague, liquid eyes. He seemed genuinely bewildered, uncomprehending though deeply fearful. The guards crowded close to him, with their hands always on him in a careful, caressing grip, as though all the while feeling him to make sure he was there. He seemed hardly to notice what was happening. His eyes caught mine and paused while it dawned on him that he knew me and that I had been gentle with him. The vague eyes shaped a semblance of communication.

No marks remained of the beating. His body had repaired itself, but the intervening weeks had not helped my mind to repair its anguish. I

walked behind him to the gallows, Though his arms were bound, he walked quite steadily. And once, in spite of the men who gripped him by each shoulder, he stepped lightly aside to avoid a puddle on the path. The puddle—and I understood why—brought me back to the unreasoning St. Cyprian's guilt. That I should be destroying a healthy, conscious man, dull and dangerous though he may be—the unspeakable wrongness of cutting short a life in full tide! The struggle for rational judgment came as a minor anodyne. How can I refashion the world of the just and the unjust, of the forgiving and the prejudiced, myself an uncertain observer rather than a shaper of justice, a player without influence on the rules? Only by my own death would I escape the pain of these cruel games if I stayed long in the magistracy.

So that when he was dead, and the superintendent of the gaol asked Dr. Veraswami and me and the rest of the little procession to join him in a drink—"I've got a bottle of whisky inside. We could do with it."—I found myself drinking and laughing with the rest of them, quite amicably, but perhaps too loudly.

Commentary to "THE BROTHEL BOY"

Few now favour the execution of all murderers; but if not all, then how to choose? Abolitionists have a simple answer, but for those who wish to retain the death penalty the question has powerful force.

There are now more than 23,000 murders per year in the United States of America, of which at least 10,000 are "capital murders," that is to say, killings where the murderer faces the death penalty as the law stands. Yet, in no year in this country have there ever been two hundred executions, and the present rate runs below twenty a year. How is that 0.2% to be chosen? And even if the percentage be substantially increased, as some retentionists advocate, the problem remains fundamentally the same, since most reject a lottery and few wish for the bloodbath of the execution of all such killers.

Traditionally, two broad philosophic concepts have interacted to help different people at different times decide which convicted murderers should be executed. The interaction is between the concepts of guilt and blame.

These words, "blame" and "guilt," have no agreed technical meaning. I use them because they make sense to me and help me to understand the thought and feeling processes that move people when they seek to determine an appropriate punishment for a crime, to distinguish the grave offence from the venial. They talk of the gravity of the injury to the victim and of the evil intent or recklessness of the criminal, of blame and guilt. They talk of what the criminal "deserved," of the talionic law of an eye for an eye, a tooth for a tooth.

Both concepts, blame and guilt, look backwards. They are based on what has happened and what is deserved by way of punishment. The discussion proceeds to forward-looking concepts, to utilitarian ideas, to the belief that what is done to the criminal as punishment may deter others who are like-minded, may deter the criminal himself from future criminality or teach him conforming ways, and may be used to separate him temporarily or permanently from the community in whose name the punishment is to be imposed.

The story of the brothel boy explores these issues in sharp form. His *blame* is great; without justification or valid excuse he has taken the life of an innocent young girl in a brutal way. His *guilt* is very doubtful; given what he is and what the world has made him, he may well not, when he comes to divine judgement, stand among the damned. Then there are the utilitarian considerations facing District Officer Blair as he comes to exercise his several discretions which may save the life of the boy or send him to his execution.

If we can sort out which considerations properly weigh, and how heavily, in determining what should be the punishment of the brothel boy, we will have gone far in understanding the legitimate purposes of criminal punishments.

One must not be too hopeful. Consensus is unlikely to emerge, and indeed "The Brothel Boy" is deliberately fashioned to tease out issues on which thoughtful people have differed for centuries.

Here, then, are some of the ideas, and some of the decisions and studies, that have weighed with philosophers, lawyers, psychiatrists, and social scientists as they have tried to fit the punishment to the crime, to the criminal, and to the legitimate needs of social safety. Far from all that is relevant to District Officer Blair's decision is explored, only a few of the major issues to launch reflection and discussion.

There are two broad and sharply different patterns of discourse about capital punishment, as about other punishments—deontological and utilitarian. The former does not treat questions of social advantage or disadvantage; it focuses on the moral deservedness of the punishment, on issues of blame and guilt. The latter treats questions of the social cost-benefit of capital punishment—questions of deterrence, of prison administration, of alternative punishments—and it takes into consideration the views of the public. A few comments on each will link this ongoing debate to "The Brothel Boy."

The Deserved Punishment: Blame and Guilt

Blame and guilt interact, I have suggested, to produce the deserved punishment. This does not mean that the deserved punishment should in all cases be

imposed—it is a great mercy for all of us that we don't always receive our just deserts. What it does mean is that the punishment imposed should never exceed that which is deserved. Blame and guilt together define the upper limit of a just punishment; reasons of penal policy should set the punishment within that limit.

Blame is related to the harm done or risked—the injury; guilt is related to the mind of the criminal, or what the lawyers call *mens rea*. Blame is objective, guilt subjective. It is the product of the interaction between blame and guilt that primarily distinguishes those murderers who will be selected for execution from the mass of available candidates.

There is no serious crime without *both* blame and guilt, each to some degree. No matter the extent of the injury that your actions caused, unless you intended it, or were reckless as to some risk of injury related to what you did, you are not a criminal. Likewise, no matter the depravity of your wicked intentions, unless you expressed them in actions or words, you are not a criminal.

The blame in "The Brothel Boy" is great, the guilt slight. But, as Veraswami insists, guilt is there to some degree; the brothel boy's behaviour is not the same as Blair's childhood enuresis—or so Veraswami argues.

Many of the nicest issues in the substantive criminal law revolve around this relationship between blame and guilt. "The Brothel Boy" raises it in sharp form, but it has troubled men and women for centuries. For example, a Creek infant of royal blood is given to a poor peasant to rear. Entirely ignorant of his true parentage, the infant grows to lusty manhood, kills his father in a chance roadside encounter and then weds and beds his mother. As a result of these events—in the opinion of the general populace and also of the wisest seer—plague descends on the land. Oedipus would seem entirely to lack guilt, though if the populace and the seer are correct he is properly to be blamed. The story of the brothel boy is another example of the popular tendency to seek a scapegoat for a grievous injury and to press for his punishment. But whatever the pressures of popular opinion, the law and the lawyers have insisted on the need for some showing of guilt, of mindful wrongdoing, before punishment may be imposed. Does the brothel boy qualify?

The Law and the Lawyers

The original definition of a felony in the Common Law was an offence punishable capitally. For centuries all felons risked execution. Gradually the range of capital offences was reduced. Gentler manners, a doubt of the efficacy of this punishment for lesser offences, the refusal of juries to convict when they thought the punishment excessive, the development of alternative, less severe punishments, and many other factors led to the present situation where, in practice, only the most blameworthy and most wicked of murderers are thought to be properly subject to the death penalty. Legislation in all states of the Union has tried to achieve this result, but there is substantial diversity in

(he legislative definitions of the principles to be applied by judges and juries to reach this end. And the judges and the juries differ widely in their interpretations of the legislative mandates.

In the United States the matter is further complicated by the Bill of Rights, with its insistence on equal protection under the law (by which, for example, it is prohibited to impose the death penalty on a racial basis—though every study reveals that it is so imposed), on due process of law in the trial of those to be selected for this punishment, and on the prohibition of cruel and unusual punishments. A substantial jurisprudence of death has been developed to narrow the constitutional range of the death penalty, a jurisprudence you do not wish to examine unless you are a lawyer or a convicted murderer. But this at least may be said—and here I irresponsibly lapse into the dogmatic: it is presumptuous for eight men and one woman to think that they have moral calipers of such precision that they can in advance define that delicate balance between guilt and harm which alone can justify such a selection, I am sure St. Peter finds it quite difficult; for the rest of us it is impossible.

By that statement I mean, of course, no personal criticism of the Justices of the Supreme Court. They do their best with this impossible task; but it would be refreshing if there were a clearer recognition on their part that they, like us, lack the sensitivity, the knowledge, and the purity of heart to make such fine distinctions.

Deterrence

Is capital punishment a uniquely effective deterrent punishment? Does it save innocent lives? Affirmative answers to these questions are the most frequently advanced justifications for the death penalty. What, then, are the answers?

The retentionist argument is not the superficially false proposition that other criminals like the brothel boy, far from a rationally planning offender, will be deterred from killing by the brothel boy's execution. Rather it is that the existence of the death penalty, and its application to what are seen as the gravest crimes, will give a signal to all who may contemplate killing another that this may be their fate too, and will thereby cause at least some of those who are rationally motivated to desist. Thus the lives of some potential victims will be saved.

Cardinal Newman expressed the skeptic's view of the above argument: "As well try to bind the rage, pride, and passion of man by threat of punishment as try to guide the ship in a storm by strands of silk."

So much for speculating about the efficacy of a rational motivation basis for the deterrent effects of capital punishment. What do we know, as distinct from what we speculate about? Surely, this question of general deterrence, of the brothel boy being executed to reduce the incidence of murder, is responsive to empirical analysis. Is it?

Dogmatism should be avoided on both sides of this argument. The best available evidence is not decisive.

Since the 1950s, with Thorsten Sellin's finding that the death penalty appeared to exercise "no influence on the extent or fluctuating rates of capital crimes," platoons of scholars have studied this question, applying a diversity of research techniques, some of them quite sophisticated. Sellin came to what he called "the inevitable conclusion that executions have no discernible effect on homicide death rates." Later scholars have been unable to refute his conclusion, although they have modified it toward caution.

The latest scholarly assessment of the available evidence on the deterrent effect of capital punishment is that by Roger Hood in his study for the United Nations, cited below. His conclusion was: "Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. The evidence as a whole still gives no positive support to the deterrent hypothesis" {Hood, *infra*, at 167}.

It is not as though scholars have been remiss in searching for such evidence. Careers are to be made if it is found. And the United States of America, where most of this intensive research has been pursued, is a natural laboratory for finding such deterrent effects if they exist, since the laws and practices vary profoundly between the states, from abolitionist to retentionist, and from retentionist states that never or rarely execute murderers to those with bulging death rows and regular executions.

Perhaps more troublesome for the retentionist who seeks evidence of the uniquely powerful deterrent effect of the death penalty is the conclusion of a panel of the National Research Council of the National Academy of Sciences that "the available studies provide no useful evidence on the deterrent effect of capital punishment" (Blumstein et al., *infra*, at 9). The panel further advised that "any policy use of scientific evidence on capital punishment will require extremely severe standards of proof. The non-experimental research to which the study of the deterrent effects of capital punishment is necessarily limited will almost certainly be unable to meet those standards of proof" {*Id.*, at 62-63}. So, in terms of scientific knowledge, as distinct from reasonable speculation, we are unlikely ever to *know* that capital punishment saves innocent lives.

How, then, stated as objectively as an abolitionist can, does the deterrence argument stand? Capital punishment may or may not have a deterrent effect on the murder rate greater than that possessed by the alternative punishments. Capital punishment may or may not save innocent lives. But it certainly does not save a sufficient number of lives to be detected or measured by our present research methods. At best, it can be uniquely effective as a deterrent only at the margins of the homicide rate, certainly less significant in its life-saving effect than a variety of other social processes that could reduce that rate.

This does not, of course, dispose of the retentionist position. As we have seen, there are deontological reasons to be advanced in favour of capital punishment, and the retentionist can validly argue that in a situation of extreme blame and guilt, with the life-saving capacity of capital punishment in doubt, it is better to err on the safe side and to retain the death penalty for its possibly marginally greater deterrent effect.

Incapacitation, Cost, and Prison Administration

One thing is clear about the death penalty; the murderer will not kill again. The brothel boy will rape no other young girl. And there are cases, though they are rare indeed, of a convicted murderer serving a prison term, being released, and then killing again.

Of course, if life-saving is the overriding concern of punishment, then it is not the murderers who should not be released; their post-punishment homicide rate is miniscule compared with that of released robbers and of other felons who have used a gun in the commission of their last crime.

Nevertheless, it is true that holding convicted murderers in prison for protracted periods is expensive, and it is further true that exceptional mistakes are made and a rare released murderer kills again. Should, therefore, all be executed?

The facts on the question of the costs of protracted imprisonment and of capital punishment are reasonably clear, though they are counterintuitive and not well known. Our present capital punishment regime, with its crowded death rows, frequent appeals, and excessive media attention is clearly more expensive than the alternative punishments favoured by abolitionists. Comparisons between countries and between abolitionist and retentionist states in this country confirm that fact.

As to the prison regime for convicted murderers: they turn out, as a group, to be an entirely manageable segment of the prison population. There are exceptions, of course—turbulent and intractable convicted murderers—but not nearly as many as there are turbulent and intractable robbers and burglars. Long acquaintance with prison regimes in abolitionist countries and in states of this country, and many years of wandering the yards and cell-houses of our prisons holding those convicted of the major felonies, have convinced me that the correctional authorities have no more difficulty with this category of convicted offenders than with any other; indeed, the contrary is the case.

Public Opinion

Among western industrialised nations, only the United States of America still retains capital punishment. Worldwide the situation is different, with a majority of countries remaining retentionist. Studies supported by the United Nations over the past two decades have established, however, that the steady trend is towards abolition.

An interesting aspect of this movement, one which confronted District Officer Blair in pointed and personal form, is the force of public opinion. Blair did not want to shoot the elephant; he knew its "must" was past, knew it not now to be a threat to person or property, yet he shot it under the pressure of public opinion. In every country that has abolished capital punishment in the past fifty years, public opinion has favoured the retention of that punishment; yet the movement toward abolition continues, with legislatures—not generally

regarded as palaces of independent judgement—recognizing and acting upon the force of the abolitionist case even at the risk of thereby losing votes. The issue thus compels consideration of the role of the elected representative in a democratic legislature. The United Nations study by Roger Hood concludes on that question: "popular sentiment alone should not determine penal policy, that task being the responsibility of elected representatives exercising their own judgment."

There is, as you see, almost as heated an argument about the determinative role of "the popular will" on the capital punishment debate as there is about deterrence. It was clearly the popular will and the vacillation of District Officer Blair that disposed of the brothel boy.

Selected References

The following references will assist those who wish further to pursue the issues raised in "The Brothel Boy":

- Bedau, Hugo Adam. *A Capitol Punishment Reader*. New York: Anchor Books, 1967.
- Blumstein, A., et al. *Deterrence and Incapacitation*. National Academy of Sciences, National Research Council, 1978.
- Hart, H. L. A. *Punishment and Responsibility*. Oxford: Clarendon Press, 1968.
- Hood, Roger. *The Death Penalty: A World-Wide Perspective*. Oxford: Clarendon Press, 1989.
- Zimring, Franklin E., and Hawkins, Gordon. *Capital Punishment and the American Agenda*. Cambridge: Cambridge University Press, 1986.

This is, of course, a very brief bibliographic guide. The justification for its brevity, despite the libraries of books and articles on this topic, is that four of the books cited above encompass the most recent worldwide and American studies on capital punishment and contain comprehensive bibliographic guidance to the scholarly literature on that topic. The fifth, the H.L.A. Hart book, is the definitive statement of the punishment philosophy that influences this commentary to "The Brothel Boy."