

is here that the justification of punishment is to be found.

§ 6. THEORIES OF PUNISHMENT.—Three principal theories of the aims of punishment have been put forward. These are generally known as the preventive (or deterrent), the educative (or reformative), and the retributive theories. According to the first view, the aim of punishment is to deter others from committing similar offences. It is expressed in the familiar *dictum* of the judge—“You are not punished for stealing sheep, but in order that sheep may not be stolen.” If this were the sole object of punishment, it seems probable that, with the development of the moral consciousness, it would speedily be abolished : for it could scarcely be regarded as just to inflict pain on one man *merely* for the benefit of others. It would involve treating a man as a *thing*, as a mere means, not an end in himself. The second view is that the aim of punishment is to educate or reform the offender himself. This appears to be the view that is most commonly taken at the present time ;¹ because it is the one which seems to fit in best with the humanitarian sentiments of the age. It is evident that this theory could hardly be used to justify the penalty of death ; and many other

¹ Though perhaps it is most often held in conjunction with the preceding view (the deterrent).

forms of punishment also would have to be regarded from this point of view as ineffective. Indeed it is probable that in many instances kind treatment would have a better effect than punishment. The third view is that the aim of punishment is to allow a man's deed to return on his own head, *i. e.* to make it apparent that the evil consequences of his act are not merely evils to others, but evils in which he is himself involved. This is the view of punishment which appears to accord best with the origin of punishment among early peoples: but in later times, especially in Christian countries, there has been a tendency to reject it in favour of one or other of the two preceding theories, because it seems to rest on the unchristian passion of revenge. In this objection, however, there seems to be a misunderstanding involved. Revenge is condemned by Christianity on account of the feeling of personal malevolence which is involved in it. But retribution inflicted by a court of justice need not involve any such feeling. Such a court simply accords to a man what he has earned. He has done evil, and it is reasonable that the evil should return upon himself as the wages of his sin—the negative value which he has produced. Indeed there would in a sense be an inner self-contradiction in any society which abstained from inflicting punishment upon the guilty. Suppose a society had a law against stealing and yet allowed a thief who was unable to make restitution to escape scot-free.

¹ For an emphatic statement of this view, see Carlyle's *Latter-Day Pamphlets*, No. 2. See also Adam Smith's *Theory of Moral Sentiment*, Part II., sect. I., chap. iv., *note*, Bradley's *Ethical Studies*, Essay I., and Dühring's *Cursus der Philosophie*, sect. IV., chap. ii.

nize in the sane man also a certain part of conduct for which he is not entirely responsible. Ignorance excuses much, unless the ignorance is itself culpable. Any condition in which a man is not fully master of himself removes his responsibility, except when—as in drunkenness—he can be blamed for the condition in which he is. When an act is done impulsively, also, a man has not the same full responsibility as he has for a deliberate action; except in so far as he is to be blamed for having habitually lived in a universe in which impulsive acts are possible.¹

§ 8. REMORSE.—When an evil deed has been done, and when the wickedness of it has been brought home to the actor, it is accompanied by what is known as the pain of conscience. This pain arises from the sense of discord between our deeds and our ideals. It is proportioned, therefore, not to the enormity of our sins, but to the degree of discrepancy between these and our moral aspirations. In the “hardened sinner” it is scarcely felt at all, because he has habituated himself to live within a universe with whose ideals his acts are in perfect harmony. It is only in the rare moments in which he becomes aware of the larger universe beyond, that he is made conscious of any pang. On the other hand, in a sensitive moral nature, habituated to the higher universe of moral purpose, an evil deed is not merely accompanied by a pang of conscience, but, if it is an evil of any considerable magnitude, by a recurrent and persistent sense of having fallen from one’s proper level. This persistent feeling of degradation is known as remorse. In its deepest form, it is not merely a grief for parti-

¹ On this whole subject, see Aristotle’s *Ethics*, Book III., chap. v

cular acts but a sense of degradation in one's whole moral character—a sense that one has offended against the highest law, and that one's whole nature is in need of regeneration. The best expression of this in all literature, is, I suppose, that contained in the 51st Psalm: "Against thee, thee only, have I sinned, and done this evil in thy sight. . . . Behold, I was shapen in iniquity, and in sin did my mother conceive me," etc.

§ 9. REFORMATION.—The natural effect of remorse¹ is to lead to a reformation of character. This effect may be prevented by "stifling the conscience," *i. e.* by persistently withdrawing our attention from the higher moral universe and endeavouring to habituate ourselves to a life in a lower one. This endeavour may easily be successful. There is nothing inevitable about the higher point of view. *Facilis descensus Averni*. But if we do not thus abstract our attention from the voice of conscience, the natural result is that we make an effort to regain the level from which we have fallen, to bring our own actions once more into accord with the ideals of which we are aware. This rise often requires a certain renewal of our whole nature. It requires a process of conversion like that to which we have already referred. Such a process is brought out in the Psalm which we have already quoted.

¹ Some writers limit the application of the term "remorse" to those

“Purge me with hyssop, and I shall be clean. . . . Create in me a clean heart.” What is here figuratively referred to is the process of habituating ourselves to a higher universe, involving a transformation of our whole nature. When such a transformation is effected, it becomes almost impossible to act upon the lower level. Our habits of action become adjusted to the ideal within us, and go on almost without an effort. The will becomes to some extent “holy.” Indeed some religious enthusiasts have even thought that such a process of “sanctification” may go so far as to make sin an impossibility.¹ But this is an exaggeration; “for virtue,” as Hamlet says, “cannot so inoculate our old stock but we shall relish of it.” What actually is possible is that we should definitely identify our wills with the highest point of view, and habituate ourselves by degrees to action that is in accordance with this. In this way we may asymptotically approximate to a state of perfect holiness of will.

§ 10. FORGIVENESS.—The place of punishment has been indicated as the recoil of guilt upon the offender, thereby asserting the majesty of law, and leading on, through this, to repentance and reformation. In this way “the wheel comes full circle”: the crime is wiped out—*i. e.* its essential nullity is exhibited—within the universe occupied by the criminal. It is possible, however, that this revolution may be effected without the intervention of punishment. The guilt may be brought home to the mind, not by the working of it out within the universe in which it has

¹ Cf. *First Epistle of John*, chap. iii., 9: “Whosoever is born of God doth not commit sin; for his seed remaineth in him; and he cannot sin, because he is born of God.”

arisen, but by rising to a higher universe. Education, for instance, may bring about this result. Modern humanitarian sentiment leads us, as far as possible, to seek to deal with criminals—especially young criminals—in this way, rather than by way of punishment. Where this is possible, the offence can be forgiven, because it no longer exists at the higher point of view. It must be remembered, however, that to say this is not to deny the validity of the preceding account of punishment.¹

So far we have been look-