The Morality of Punishment. By A. C. EWING. London: Kegan Paul, Trench, Trubner & Co., Ltd., 1929. Pp. xiv + 233.

THIS book is based on a thesis which gained for the author the Green Prize in Moral Philosophy at the University of Oxford. It is introduced by a short foreword from the pen of Dr. W. D. Ross, and it seems to me to be a most able and interesting contribution to Ethics.

In the Introduction and in Chapter VI., on "The Bearing of Our Moral Theory on Practice," Dr. Ewing states and defends his general view of Ethics; in the remaining chapters he deals with the ethics of punishment and reward. Much of what the author says about the special problem is independent of his view on the general nature of ethical cognition. But the latter is of considerable interest and importance, and readers of the book would be well advised to study the two chapters which contain it before they embark on the more special enquiry from which the essay takes its title. I propose to follow this course in the present review.

The Introduction states the general propositions about ethics which will be assumed in the discussion of the morality of reward and punishment. It is assumed that ethics is concerned, among other things, with the goodness or badness both of acts themselves and of their consequences. It is further assumed that ethical hedonism is false. Pleasure is good and pain is evil, but pleasantness and painfulness are not the only factors which are relevant to the intrinsic value of a total state of affairs. Next, it is assumed that there is well-grounded belief, if not genuine knowledge, of what is good and right in certain cases. Not all moral judgments can be proved, and none can be proved from wholly non-ethical premises. There must then be some ethical intuitions, though we need not suppose that any of them are infallible. But reflexion and reasoning are also needed, especially to analyse complex situations and to distinguish and estimate the various good and bad features in them. Ethical judgments, like all other judgments, are true or false independently of the opinions, desires, and emotions of those who make them; and those who deny this are deceived by certain confusions of thought. No doubt, *e.g.*, the right action for A may differ from the right action for B in the same situation S. But, when this is so, the difference will depend on some assignable qualitative difference between A and B. Again, it may happen that the agent is the only person who is in a position to know what is the right action for him to do in a certain situation. But this does not affect the objectivity of right and wrong. There is of course much apparent diversity of opinion about moral questions. But most of it is *only* apparent. And, even where it is real, it does not prove that there is no objective truth or falsity about right and wrong, any more than the disagreements between historians about the motives of statesmen prove that there is no objective truth or falsity in history. There is, indeed, a sense in which it is always right to

do what one honestly believes to be right, and wrong to do what one honestly believes to be wrong. Nevertheless, a conscientious action may be objectively wrong even for that agent in that situation, though the agent must be blamed if he acts against his conscience and cannot be blamed if he acts in accordance with it. Lastly, it is true that the subject of a moral judgment is always "subjective," in the sense that ethical predicates apply only to minds, their experiences or dispositions, and wholes in which these are essential constituents. But this does not make moral judgments themselves "subjective," in the sense of expressing merely the personal feelings or opinions of those who make them. All this seems to me to be plainly true, and to be put with admirable clearness.

The problem which Dr. Ewing discusses in Chapter VI. is primarily epistemological. How do we reach knowledge or rational belief about the right course of action in a given concrete situation? He begins by trying to refute a certain answer to this question, and then he goes on to develop his own solution. The theory which he tries to overthrow is that such knowledge or rational belief could in all cases be reached by inference. There are two extreme forms of this theory, which I will call respectively the *Purely Deontological* and the *Purely Teleological*. The former holds that there is one, or a set of, self-evident propositions of the form: "Any act having the characteristics C, if done in a situation which has the characteristics Γ, will be right no matter what its consequences may be." We have merely to analyse the given situation, and satisfy ourselves that it certainly or probably has such characteristics. We can then in every case infer from our axioms that an act of such and such a kind will certainly or probably be right in this situation. Dr. Ewing denies that we either do or could thus determine in every case what is the right act to perform. It is quite certain that *some* weight must be attached to the goodness or badness of the probable consequences of a proposed action in deciding whether it would be right or wrong in a given situation.

The purely teleological theory holds it to be self-evident that the right act in a given situation is that which will produce the best state of affairs on the whole. On this view we must take account of the goodness or badness of the consequences, and we may take account of the goodness or badness of the act itself. (As Dr. Ewing points out, it would be circular for this theory to take account of the goodness of the act so far as this depends on its rightness. But the goodness of an act depends on other factors beside its rightness, and a purely teleological theory may properly take account of them.) On such a view as this, if the right action in a given situation can be discovered by inference at all, the inference must take the following form. We must work out the probable consequences of each possible course of action. We must then analyse each total alternative to discover the good and the bad factors in it. Then we must infer the nett value of each total alternative from the values of the

various factors in it by using some general principle of "summation." And finally we must compare the nett results, and choose that alternative which has the greatest nett value.

Dr. Ewing begins by mentioning and dismissing a number of common objections to this type of theory. As we have seen, it need not deny that acts themselves have some intrinsic value. Nor need it be hedonistic; though, if it is not, it will involve the balancing of different kinds of intrinsic good and evil against each other. It is true that, even if the inferences can be made, the conclusions will never be more than probable owing to the impossibility of getting adequate knowledge of the very remote consequences of our proposed actions. Still, this kind of uncertainty attaches even to astronomical predictions. And the very remote consequences of our actions will depend on so many cause-factors beside the action itself that our responsibility for them will be very much diluted. Lastly, although we certainly do not in fact reach our judgments about the rightness of acts in this way as a rule, it remains possible that we *could have* done so, if we had chosen to, in all cases.

The objection which Dr. Ewing thinks fatal to the theory consists of two closely connected propositions. In the first place, even if the simpler components of valuable wholes have fixed intrinsic values which they carry unchanged from one whole to another, we have no means of discovering these values. Secondly, the Principle of Organic Unities assures us that there is no general rule by which the value of a whole composed of such and such components can be inferred from the values of these components. Algebraical summation is plainly not a safe rule, and no alternative rule has been suggested or seems likely to be discoverable. It seems clear that Dr. Ewing is right on both counts. If, as seems likely, the rightness of an act depends on its fittingness to the initial situation and its subsequent developments, as well as on its intrinsic value and the intrinsic value of its consequences, Dr. Ewing's case is merely strengthened.

We come now to Dr. Ewing's own view. According to him the final judgment as to what action is right *is* based on a comparison of the nett values of the various total alternatives. And our estimate of the nett value of each total alternative *does* depend on a previous analysis of it into various factors and an estimate of the value of each of these factors. But our estimate of the nett value of the whole is not *inferred*, in accordance with any general principle, from our analysis and estimation of the values of the components. He compares the process to marking examination-papers. It might also be compared to the kind of dependence which subsists between our judgments of distance and sensations of accommodation and convergence in our eyes. It might be called *Mediated Non-inferential Cognition*. He does not deny that in certain favourable cases actual inference by summation may take place; he only denies that anything like this can be used in all cases where we reach a justifiable belief about rightness.

The only serious criticism which I should be inclined to make on this theory is the following. In arguing against the inferential theory Dr. Ewing contended that we do not know the intrinsic values of the components of valuable wholes. If so, how can our final judgments depend, *even in a non-inferential way*, on our knowledge of such values? And how can we *ever* reach our final judgments by inference from such premises even in favourable cases?

Chapters II. to V. inclusive, and Chapter VII., deal with the morality of punishment and reward. Dr. Ewing begins with the Retributive Theory. This theory cannot be proved; but it seems in accordance with the convictions of common-sense, and it has been held in an extreme form by so great a moralist as Kant. On reflexion we can see that retribution is not *sufficient* to justify punishment; but it might be *necessary*. Even this does not commend itself to careful reflexion, and we are left with the tame proposition that the infliction of the appropriate amount of pain on the guilty has *some* intrinsic value, though not a very great one. Dr. Ewing deals with certain arguments which have been brought against even this attenuated form of the Retributory Theory, and concludes that they could be answered. The main objection is that pain and sin are both evils, and that two evils cannot make a good. Three answers can be made to this. (i) It might be that a certain relation between two evils is intrinsically good. (ii) It might be that the act of punishing is intrinsically good, though the pain which is its inevitable consequence is evil. (iii) In accordance with the principle of Organic Unities it is possible that a whole composed of sin and a certain amount of pain might be better than the sin alone or combined with pleasure. (iv) If we do not accept a purely teleological view of rightness it is possible that the act of punishing sin is *right*, even though the consequence of it is not intrinsically good. Still, the Retributive Theory does seem paradoxical and isolated from our other ethical convictions.

Other objections are that the Retributive Theory is inconsistent with the duty of Forgiveness, and that it is a mere modification of the evil passion of revengefulness. To the first of these Dr. Ewing answers that forgiveness would be a duty on the milder form of the Retributory Theory, though not on the extreme form which we have already rejected on other grounds. To the second he replies that "Righteous Indignation" might be a sublimation of Revengefulness and yet be a quite different and morally higher emotion.

But, if the milder form of the Retributory Theory cannot be positively refuted, retribution cannot be used in practice as a principle of punishment by the state. For it is impossible to know the real degree of guilt involved in a criminal act, or the criminal's susceptibility to painful stimuli, or the exact amount of pain which is appropriate to a given degree and kind of guilt. It is plain that the state cannot punish all moral faults, though on the Retributory Theory they all deserve punishment. And the state cannot determine on

purely retributive principles which faults it shall punish and which it shall ignore. In punishing the guilty the state cannot avoid causing pain to their innocent friends and relations, and thus doing wrong on the retributory principle. And, if it punishes a crime either too much or too little it will be doing wrong on this theory. So, on purely retributory principles, the state would hardly ever be justified in punishing at all, in view of the uncertainty of ever doing right and the certainty of often doing wrong.

At this point it seems to me that Dr. Ewing's arguments become rather wire-drawn. He admits that in many cases we seem to be able to recognise upper and lower limits within which the appropriate amount of pain for a given crime would lie. And surely he has no right to assume that, on the retributory principle, there could not be degrees of appropriateness of punishment to crime. It is fantastic to maintain that, on the retributory principle, it would always be better to leave a crime altogether unpunished than to punish it in the least degree too lightly or too heavily.

In spite of his condemnation of the Retributive Theory, Dr. Ewing concludes that there are important elements of truth in it. It *is* true that punishment ought to be inflicted only for a past offence; that it ought not to be inflicted by the state except for breaches of laws which were in force at the time when the act was done; that a lighter offence should not be punished more heavily than a greater one; and so on. Each of these goods *may* on occasion have to be sacrificed for greater goods; but the sacrifice is always a serious one. The question is whether any other theory of punishment will account for these ethical facts.

In Chapter III. Dr. Ewing is mainly concerned with the defence of punishment as a means of deterring others beside the criminal from breaking the laws. Such punishment does involve treating the criminal as a means, though it is not inconsistent with also treating him as an end. And if we do not punish criminals we treat the innocent as means to their comfort. But if we tried to defend punishment on *purely* deterrent grounds, we should be involved in extreme ethical paradoxes. We might have to punish more severely where the temptation was greater; to punish impulsive crimes more severely than deliberate ones; to punish mere carelessness more severely than actual crime; and to punish people whom we knew to be innocent provided they were popularly believed to be guilty. On the whole, if the degree of punishment were determined on purely deterrent grounds, punishments would tend to be excessively severe; though there are arguments against extremely severe punishments, even on these grounds. The deterrent effect of a punishment is largely due to its being considered disgraceful, and it does not increase proportionally to increases in its severity. Extreme severity turns popular sympathy in favour of the criminal; tends to brutalise both the general public and the officials who have to inflict it; and tends to make the criminal regard himself as a

martyr. But, even if these considerations would in practice mitigate the paradoxes of a purely deterrent system of punishments, the theoretical inadequacy of the theory would remain. It does treat the criminal and the rest of society merely as animals sensitive to pain, and hardly as rational and moral beings. If only the guilty should be punished, and if the more guilty should never be punished less than the less guilty, this fact would be purely derivative and extrinsic, whilst it seems to common-sense to be intrinsic and ultimate.

Dr. Ewing's own positive theory of the essential nature of punishment is contained in Chapter IV. on "Punishment as Moral Education." Punishment may, of course, "reform" the criminal, in the sense of merely frightening him from committing illegal acts in future. Again, it may, if it involves detention and supervision, enable him to be subjected to other influences which will produce a genuine reform in his moral character. But the important questions which are discussed in this chapter are the following: Does punishment itself have any tendency to reform the criminal's moral character? And does it have any tendency to improve the moral characters of other members of society? If it does, these may be called the *Educative* effects of punishment.

Dr. Ewing has little difficulty in answering the objection that, since dislike of present and fear of future pain are not moral motives, punishment could never produce moral reform. A non-moral cause might produce a moral effect; and, in any case, the non-moral motive is only one cause-factor and not the total cause. Again, punishment might at least diminish the obstacles to future right willing; and a habit of externally right conduct which was formed by non-moral causes might come to be appreciated and continued against future temptations on higher grounds. Lastly, the moral motive may first get a chance to act when a strong counteracting motive has itself been neutralised by the fear of pain. And, in point of fact, punishment not only may but sometimes does produce moral improvement in the criminal. For it may enforce on his attention the fact that his action has been wrong by showing him that it is branded as wrong by society. Nevertheless, there are so many ill-effects which punishment can have, and the chance of producing direct reformation is so slight, that the state cannot make the direct moral reform of the criminal its main object in punishing him. In the education of children, however, the motive of moral education by punishment can be allowed to play a larger part. But, even here, the verbal expression of disapproval without punishment would often, though not always, be better on the whole.

We come now to the educative effects of punishment on society at large. When an act is punished by law the public realises that it is seriously wrong. Men tend to divide acts which they believe to be wrong into "wrong" and "very wrong." When the state punishes an act which is really wrong men tend to put it into the second class. Most men, except under extreme provocation, never

seriously contemplate the possibility of doing acts which the state has branded as crimes; and this enables them to reserve their energies for fighting more subtle temptations. Any unpunished crime tends, by example, to undermine morality; and, although punishment cannot "annul" a past crime, it can do something to annul the present evil effects which a crime produces by its bad example.

We come finally to Dr. Ewing's own view of the essential nature of punishment, and of the truth contained in the Retributory Theory. His doctrine is as follows. The infliction of pain is a *natural sign*, recognised as appropriate by everyone, of *moral disapproval;* and the infliction of greater pain is a natural sign, at any given period in any given society, of greater moral disapproval. Pain, as such, is not appropriate to sin, as the Retributionists think; but the infliction of pain is the appropriate expression of disapproval of sin, and the suffering of pain is the appropriate sign of the defeat and the essential worthlessness of sin.

This theory, Dr. Ewing thinks, accounts for all that is true in the Retributory Theory, whilst it enables us to avoid the paradoxes of that view. Disapproval of evil is an intrinsically good state, and it is an intrinsically good thing that this state should have its appropriate external expression. It is an evil that the innocent should be punished or the wicked rewarded or that trifling sins should be more heavily punished than serious ones, because all such injustices are false and misleading expressions of the moral facts. As such, they are both intrinsically evil and evil in their consequences. The advantage of the theory over the Retributive Theory is this. It can recognise that, as men become more intelligent and more sensitive morally, a lighter punishment may express as great moral disapproval as a heavier one did at an earlier period, and therefore may be equally appropriate to the same crime. And it can look forward to an ideal future situation in which, without sacrifice of justice, all special infliction of pain might be replaced by mere censure and the inner pain which is essentially bound up with the experience of being blamed and knowing that the blame is deserved.

In Chapter V. Dr. Ewing deals with the morality of Reward on the same general principles as he has used in dealing with Punishment. There is no need for me to go into the details of this chapter. Like the rest of the book it is full of excellent ethical and psychological observations.

I have, I hope, said enough to show that Dr. Ewing is to be very heartily congratulated on a work which is both sound and illuminating in theory and of considerable importance in its possible practical applications.

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