



Hegel's Theory of Punishment

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Source: *International Journal of Ethics*, Vol. 6, No. 4 (Jul., 1896), pp. 479-502

Published by: [The University of Chicago Press](#)

Stable URL: <http://www.jstor.org/stable/2375419>

Accessed: 15/12/2014 00:29

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gospel of humanity as taught by Jesus, to protest against wrong, injustice, and discriminations of any kind against any body of individuals. As for the future, let both Jews and Christians learn to regard it with that calmness which characterized the ancient prophets of Israel, who, true to their name, which means "proclaim," felt that their duty was ended when they spoke out the convictions of their hearts, irrespective of criticism or consequences, and then acted according to those convictions. It did not lay within their province, and it does not lie within ours, to shape the future. Not policy but conviction should be our guiding star. This is the great lesson of the past for all of us.

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HEGEL'S THEORY OF PUNISHMENT.

WE may define punishment as the infliction of pain on a person because he has done wrong. That it must be painful, and that it must be inflicted on a person who has done, or is thought to have done, wrong, will be generally admitted. But we must also remember that it is essential that it should be inflicted *because* of the wrong-doing. In the little books written by the authors who educated our parents, the boy who went out without his mother's leave was struck by lightning. This cannot, unless theology is introduced, be considered as a punishment. For the lightning would have struck with equal readiness any boy in the same spot, although provided with the most ample parental authority. And the little books written by the moralists who are anxious to educate our children, although less amusing than their predecessors, are often not more accurate. They delight in talking of the rewards and punishments which Nature herself distributes among us. But Nature, though she often destroys, never punishes. For the moral value of an action makes no difference to her. She takes no account of intention or purpose. She destroys, with

a magnificent indifference, alike the man who has injured his body by self-indulgence, and the man who has injured his body in his work for others. Her typhoid fever is shed abroad equally on the man who let the drains go wrong, on the man who is trying to put them right, and on the child who was not consulted in the matter. Some people assert Nature to be above morality, but, whether above or below, she is certainly regardless of it. And so, to get a proper use of the idea of punishment, we must go beyond her, in the one direction, to God, or, in the other direction, to man.

Punishment, then, is pain, and to inflict pain on any person obviously needs a justification. There are four ways in which punishment is usually justified,—not by any means incompatible. One punishment might be defended under all of them. The first is what is called the vindictive theory. It asserts that, if a man has done wrong, it is right and just that he should suffer for it, even if the pain does no good, either to himself or others. He is said to deserve it, for the punishment is looked on as a satisfaction of abstract justice. The second way in which a punishment may be defended is that it is deterrent. It is desirable to suppress all wrong-doing. And so we try to attach to a fault a punishment so certain, and so severe, that the remembrance of it will prevent the offender committing it again, while the fear of a similar one will prevent others from following his example.

We must mark here an important distinction. In these two cases the object which justified our action could only be obtained by punishment. In the first, abstract justice was supposed to require that the man should be made unhappy. In the second case, it is clear that you can only deter—that is, frighten—men from crime by making its consequences painful. But now we come to two other uses of punishment in which it is useful, not because it is painful, but for other qualities which the particular punishment happens to have. The first of these is that it may deprive the criminal under punishment of the chance of committing fresh crimes. A man cannot steal while he is in prison, or commit murder—in this life—after he is hanged. But this effect does not come because

the man has been punished. If he welcomed imprisonment or death gladly, they would cease to be a punishment, but they would be equally preventive of crime.

The second of these further advantages of punishment is the reformation of the criminal. This does not mean that the punishment frightens him from offending again. That is the deterrent effect of which we spoke before. But a punishment may sometimes really cure a man of vicious tendencies. The solitude which it gives him for reflection, or the religious influences which may be brought to bear on him in prison, or the instruction which he may receive there, may give him a horror of vice or a love of virtue which he had not before. But if his punishment does this, it is not *as* a punishment. If, while he is in prison, his character is changed for the better, that change is not made because he was unhappy. To be unhappy may convince a man that vice does not pay, but will not teach him to reject it on moral grounds. Thus, for reformation, as well as for prevention, punishment may be a useful means, but only incidentally; while we can only avenge a crime, or deter men from repeating it, by means of punishment.

Of late years we have almost given up the defence of vindictive punishment, both in law and education, though it is still retained in theology by those who accept the doctrine that punishment may be eternal. The ordinary view of the use of punishment in law is, I take it, that its main object is deterrent—to prevent crime by making the possible criminal frightened at the punishment which will follow. Its preventive use—of checking crime by restraining or removing persons who have already proved themselves criminals—is also considered important, but in a lesser degree. Finally, if the state *can* reform the criminal while punishing him, it considers itself bound to try; but the primary object of criminal justice, I think, is held to be the protection of the innocent rather than the improvement of the guilty, and therefore the discouragement of crime is taken as of more importance than the reform of the criminal.

Capital punishment, indeed, is still sometimes defended on the ground of vindictive justice, but more often as being

deterrent of crime on the part of others, and a safeguard against its repetition by the particular criminal executed. And in other cases vindictive punishment has dropped out of law, and, perhaps, still more out of education.

There is no tendency to the contrary in Sir James Stephen's ingenious defence of the vindictive pleasure that men feel in punishing atrocious criminals. He defends that pleasure on the ground that it renders their punishment more certain. But he does not recommend that a man should be punished merely because he has done wrong. He only says that, in cases where punishment is desirable for the good of society, it is advisable to cultivate any feelings, which will lead people to exert themselves to bring that punishment about.

We have now seen what the ordinary view of punishment is. My object is to consider what relation to this ordinary view is held by Hegel's theory of punishment, as expressed in his "Philosophy of Law." It has often been said that he supports vindictive punishment. And, at first sight, it looks very much as if he did. He deals with this subject in the ninety-ninth and subsequent paragraphs of his book on the "Philosophy of Law," and there he expressly says that it is superficial to regard punishment as protective to society, or as deterring, or as improving the criminal. If it is not protective or threatening, we must surrender the theories which we have called the preventive and the deterrent. If it is not improving, we must give up the reformatory theory. Hegel does not deny that punishment may deter, prevent, or improve, and he does not deny that this will be an additional advantage. But he says that none of these are the chief object of punishment, and none of them express its real nature. It would seem, therefore, that he must intend to advocate vindictive punishment. And this is confirmed by the fact that he expressly says the object of punishment is not to do "this or that" good.

Nevertheless, I believe that Hegel had not the slightest intention of advocating what we have called vindictive punishment. For he says, beyond the possibility of a doubt, that in punishment the criminal is to be treated as a moral being,—

that is, one who is potentially moral, however immoral he may be in fact, and one in whom this potential morality must be called into actual existence. He complains that in the deterrent theory we treat a man like a dog to whom his master shows a whip, and not as a free being. He says that the criminal has a right to be punished, which indicates that the punishment is in a sense for his sake. And, still more emphatically, "in punishment the offender is honored as a rational being, since the punishment is looked on as his right."*

Now this is incompatible with the view that Hegel is here approving of vindictive punishment. For he says that a man is only to be punished because he is a moral being, and that it would be an injury to him not to punish him. The vindictive theory knows nothing of all this. It inflicts pain on a man, not for his ultimate good, but because, as it says, he has deserved to suffer pain. And, on Hegel's theory, punishment depends on the recognition of the criminal's rational and moral nature, so that, in his phrase, it is an honor as well as a disgrace. Nothing of the sort exists for vindictive punishment. It does not care whether the sinner can or will do good in the future. It punishes him because he has done wrong in the past. If we look at the doctrine of hell,—which is a pure case of vindictive punishment,—we see that it is possible to conceive punishment of this sort when the element of a potential moral character has entirely disappeared, for I conceive that the supporters of this doctrine would deny the possibility of repentance, since they deny the possibility of pardon.

What, then, is Hegel's theory? It is, I think, briefly this. In sin, man rejects and defies the moral law. Punishment is pain inflicted on him because he has done this, and in order that he may, by the fact of his punishment, be forced into recognizing as valid the law which he rejected in sinning, and so repent of his sin—really repent, and not merely be frightened out of doing it again.

* "Philosophy of Law." Sections 99 and 100.

Thus the object of punishment is that the criminal should repent of his crime, and by so doing realize the moral character, which has been temporarily obscured by his wrong action, but which is, as Hegel asserts, really his truest and deepest nature. At first sight this looks very much like the reformatory theory of punishment, which Hegel has rejected. But there is a great deal of difference between them. The reformatory theory says that we ought to reform our criminals *while* we are punishing them. Hegel says that punishment itself tends to reform them. The reformatory theory wishes to pain criminals as little as possible, and improve them as much as possible. Hegel's theory says that it is the pain which will improve them, and therefore, although it looks on pain in itself as an evil, is by no means particularly anxious to spare it, since it holds that through the pain the criminals will be raised, and that we have therefore no right to deny it to them.

When Hegel says, therefore, as we saw above, that the object of punishment is not to effect "this or that good," we must not, I think, take him to mean that we do not look for a good result from punishment. We must rather interpret him to mean that it is not in consequence of some *accidental* good result that punishment is to be defended, but that, for the criminal, punishment is inherently good. This use of "this or that" to express an accidental or contingent good seems in accordance with Hegel's usual style. And we must also remember that Hegel, who hated many things, hated nothing more bitterly than sentimental humanitarianism, and that he was in consequence more inclined to emphasize his divergence from a reformatory theory of punishment, than his agreement with it.

We have thus reached a theory quite different from any of the four which we started this paper by considering. It is not impossible that we may find out that the world has been acting on the Hegelian view for many ages, but as an explicit theory it has found little support. We all recognize that a man can be frightened into or out of a course of action by punishment. We all recognize that a man can sometimes be reformed by

influences applied while he is being punished. But can he ever be reformed simply by punishment? Reform and repentance involve that he should either see that something was wrong which before he thought was right, or else that the intensity of his moral feelings should be so strengthened that he is enabled to resist a temptation, to which before he yielded. And why should punishment help him to do either of these things?

There is a certain class of people in the present day who look on all punishment as essentially degrading. They do not, in their saner moods, deny that there may be people for whom it is necessary. But they think that, if any one requires punishment, he proves himself to be uninfluenced by moral motives, and only to be governed by fear, which they declare to be degrading. (It is curious, by the way, that this school is rather fond of the idea that people should be governed by rewards rather than punishments. It does not seem easy to understand why it is less degrading to be bribed into virtue than to be frightened away from vice.) They look on all punishment as implying deep degradation in some one,—if it is justified, the sufferer must be little better than a brute; if it is not justified, the brutality is in the person who inflicts it.

This argument appears to travel in a circle. Punishment, they say, is degrading, therefore it can work no moral improvement. But this begs the question. For if punishment could work a moral improvement, it would not degrade but elevate. The humanitarian argument alternately proves that punishment can only intimidate because it is brutalizing, and that it is brutalizing because it can only intimidate. The real reason, apparently, of the foregone conviction which tries to justify itself by this confusion, is an unreasoning horror of the infliction of pain which has seized on many very excellent and disinterested people. That pain is an evil cannot be denied. It may, perhaps, be reasonably asserted that it is the ultimate evil. But to assert that it is always wrong to inflict it is equivalent to a declaration that there is no moral difference between a dentist and a wife-beater. No one can deny that the infliction of pain may in the long run increase happi-

ness—as in the extraction of an aching tooth. If pain, in spite of its being evil *per se*, can thus be desirable as a means, the general objection to pain as a moral agent would seem to disappear also.

Of course, there is nothing in simple pain, as such, which can lead to repentance. If I get into a particular train, and break my leg in a collision, that cannot make me repent my action in going by the train, though it will very possibly make me regret it. For the pain in this case was not a punishment. It came, indeed, because I got into the train, but not because I had done wrong in getting in to the train.

Hegel's theory is that punishment, that is, pain inflicted because the sufferer had previously done wrong, may lead to repentance for the crime which caused the punishment. We have now to consider whether this is true. Our thesis is not that it always produces repentance—which, of course, is not the case—but that there is something in its nature as punishment which tends to produce repentance. And this, as we have seen, is not a common theory of punishment. "Men do not," says George Eliot in "Felix Holt," (Chap. 41),—"men do not become penitent and learn to abhor themselves by having their backs cut open with the lash; rather, they learn to abhor the lash." That the principle expressed here is one which often operates, cannot be denied. Can we so far limit its application that Hegel's theory shall also be valid?

We have so far defined punishment as pain inflicted because the sufferer has done wrong. But, looking at it more closely, we should have to alter this definition, which is too narrow, and does not include cases of unjust or mistaken punishment. To bring these in we must say that it is pain inflicted because the person who inflicts it thinks that the person who suffers it has done wrong. Repentance, again, is the realization by the criminal, with sufficient vividness to govern future action, that he has done wrong. Now is there anything in the nature of punishment to cause the conviction in the mind of the judge to be reproduced in the mind of the culprit? If so, punishment will tend to produce repentance.

I submit that this is the case under certain conditions.

When the culprit recognizes the punishing authority as one which embodies the moral law, and which has a right to enforce it, then punishment may lead to repentance, but not otherwise.

Let us examine this a little more closely. A person who suffers punishment may conceive the authority which inflicts it as distinctly immoral in its tendencies. In this case, of course, he will not be moved to repent of his action. The punishment will appear to him unjust, the incurring of the punishment will present itself in the light of a duty, and he will consider himself not as a criminal, but as a martyr. On the other hand, if the punishment causes him to change his line of action, this, his convictions being as we have supposed, will not be repentance, but cowardice.

Or again, he may not regard it as distinctly immoral—as punishing him for what it is his duty to do, but he may regard it as non-moral—as punishing him for what he had a right, though not a duty, to do. In this case, too, punishment will not lead to repentance. He will not regard himself as a martyr, but he will be justified in regarding himself as a very badly-treated individual. If the punishment does cause him to abstain from such action in future, it will not be the result of repentance, but of prudence. He will not have come to think it wrong, but he may think it not worth the pain it will bring on him.

If, however, he regards the authority which punishes him as one which expresses, and which has a right to express, the moral law, his attitude will be very different. He will no longer regard his punishment either as a martyrdom or as an injury. On the contrary, he will feel that it is the proper consequence of his fault. And to feel this, and to be able to accept it as such, is surely repentance.

But it may be objected that this will lead to a dilemma. The punishment cannot have this moral effect on us unless it comes from an authority which we recognize as expressing the moral law, and therefore valid for us. But if we recognize this, how did we ever come to commit the sin, which consists in a defiance of the moral law? Does not the existence of the

sin itself prove that we are not in that submissive position to the moral law, and to the power which is enforcing it, which alone can make the punishment a purification ?

I do not think this is the case. It is, in the first place, quite possible for a recognition of the moral law to exist which is not sufficiently strong to prevent our violating it at the suggestion of our passions or our impulses, but which is yet strong enough, when the punishment follows, to make us recognize the justice of the sentence. After all, most cases of wrong-doing, which can be treated as criminal, are cases of this description, in which a man defies a moral law which he knows to be binding, because the temptations to violate it are at that moment too strong for his desire to do what he knows to be right. In these cases the moral law is, indeed, recognized,—for the offender knows he is doing wrong,—but not recognized with sufficient strength ; for, if it was, he would abstain from doing wrong. And, therefore, the moral consciousness is strong enough to accept the punishment as justly incurred, though it was not strong enough to prevent the offender from incurring it. In this case, the significance of the punishment is that it tends to produce that vividness in the recognition of the moral law, which the occurrence of the offence shows to have been previously wanting. The pain and coercion involved in punishment present the law with much greater impressiveness than can, for the mass of people, be gained from a mere admission that the law is binding. On the other hand, the fact that the pain coincides with that intellectual recognition, on the part of the offender, that the law is binding, prevents the punishment having a merely intimidating effect, and makes it a possible stage in a moral advance.

Besides these cases of conscious violation of a moral law, there are others where men sincerely believe in a certain principle, and yet systematically fail to see that it applies in certain cases, not because they really think these cases are exceptions, but because indolence or prejudice has prevented them from ever applying their general principle to those particular instances. Thus there have been nations who conscientiously believed murder to be sinful, and yet fought duels with a good

conscience. If pressed, they would have admitted duels to be attempts to murder. But no one ever did press them, and they never pressed themselves. As soon as a set of reformers arose, who did press the question, duels were found to be indefensible, and disappeared. So for many years the United States solemnly affirmed the right of all men to liberty, while slavery was legally recognized. Yet they would not have denied that slaves were men.

When such cases occur with a single individual, punishment might here, also, lead to repentance. For it was only possible to accept the general law, and reject the particular application, by ignoring the unanswerable question, Why do not you in this case practise what you preach? Now, you *can* ignore a question, but you cannot ignore a punishment, if it is severe enough. You cannot put it on one side; you must either assert that it is unjust, or admit that it is just. And in the class of cases we have now been considering, we have seen that when the question is once asked, it must condemn the previous line of action. Here, therefore, punishment may lead to repentance.

A third case is that in which the authority is recognized, but in which it is not known beforehand that it disapproved of the act for which the punishment is awarded. Here, therefore, there is no difficulty in seeing that recognition of the authority is compatible with transgression of the law, because the law is not known till after it has been transgressed. It may, perhaps, be doubted whether it is strictly correct to say in this case that punishment may lead to repentance, since there is no wilful fault to repent, as the law was, by the hypothesis, not known, at the time it was broken. The question is, however, merely verbal. There is no doubt that in such cases the punishment, coming from an authority accepted as moral, may lead a man to see that he has done wrong, though not intentionally, may lead him to regret it and to avoid it in future. Thus, at any rate, a moral advance comes from the punishment, and it is of no great importance whether we grant or deny it the name of repentance.

It may be objected, however, that punishment in the two

last cases we have mentioned would be totally unjust. We ought to punish, it may be said, only those acts which were known by their perpetrators at the time when they did them to be wrong. And therefore we have no right to punish a man for any offence, which he did not know to be an offence, whether because he did not know of the existence of the law, or because he did not apply it to the particular case.

I do not think, however, that on examination we can limit the proper application of punishment to cases of conscious wrong-doing, plausible as such a restriction may appear at first sight. We must remember, in the first place, that not to know a moral law may be a sign of greater moral degradation than would be implied in its conscious violation. If a man really believed that he was morally justified in treating the lower animals without any consideration, he would not be consciously doing wrong by torturing them. But we should, I think, regard him as in a lower moral state than a man who was conscious of his duty to animals, though he occasionally disregarded it in moments of passion. Yet the latter in these moments would be consciously doing wrong. A man who could see nothing wrong in cowardice would be surely more degraded than a man who recognized the duty of courage, though he sometimes failed to carry it out. Thus, I submit, even if punishment were limited to cases of desert, there would be no reason to limit it to cases of conscious wrong-doing, since the absence of the consciousness of wrong-doing may itself be a mark of moral defect.

But we may, I think, go further. There seems no reason why we should inquire about any punishment, whether the criminal deserved it or not. For such a question really brings us, if we press it far enough, back to the old theory of vindictive punishment, which few of us, I suppose, would be prepared to advocate. On any other theory a man is to be punished, not to avenge the past evil, but to secure some future good. Of course, a punishment is only to be inflicted for a fault, for the effect of all punishment is to discourage the repetition of the action punished, and that would not be desirable unless

the action was wrong. But to inquire into how far the criminal is to be blamed for his action seems irrelevant. If he has done wrong, and if the punishment will cure him, he has, as Hegel expresses it, a right to his punishment. If a dentist is asked to take out an aching tooth, he does not refuse to do so, on the ground that the patient did not deliberately cause the toothache, and that therefore it would be unjust to subject him to the pain of the extraction. And to refuse a man the chance of a moral advance—when the punishment appears to afford one—seems equally unreasonable.

Indeed, any attempt to measure punishment by desert gets us into hopeless difficulties. If we suppose that every man is equally responsible for every action which is not done under physical compulsion, we ignore the effect of inherited character, of difference of education, of difference of temptation, and, in fact, most of the important circumstances. Punishments measured out on such a system may, perhaps, be defended on the ground of utility, but certainly not on the ground of desert. On the other hand, if we endeavored to allow for different circumstances in fixing punishments, we should have no punishments at all. That a man commits an offence in given circumstances is due to his character, and, even if we allowed a certain amount of indeterminate free-will, we could never know that a change in the circumstances would not have saved him from the crime, so that we could never say that it was his own fault.

The only alternative seems to be to admit that we punish, not to avenge evil, but to restore or produce good, whether for society or the criminal. And on this principle we very often explicitly act. For example, we do not punish high treason because we condemn the traitors, who are often moved by sincere, though perhaps mistaken, patriotism. We punish it because we believe that they would, in fact, though with the best intentions, do harm to the state. Nor do parents, I suppose, punish young children for disobedience, on the ground that it is their own fault that they were not born with the habit of obedience developed. They do it, I should imagine, because punishment is the most effective way of teaching them

obedience, and because it is desirable, for their own sakes, that they should learn it.

We must now return to the cases in which punishment can possibly produce repentance, from which we have been diverted by the question as to whether the punishment inflicted in the second and third cases could be considered just. There is a fourth and last case. In this the authority which inflicts the punishment was, before its infliction, recognized, indeed, theoretically and vaguely, as embodying the moral law, and therefore as being a valid authority. But the recognition was so languid and vague that it was not sufficient to prevent disobedience to the authority's commands. This, it will be seen, is rather analogous to the second case. There the law was held so vaguely that the logical applications of it were never made. Here the authority is recognized, but not actively enough to influence conduct. It is scarcely so much that the criminal recognizes it, as that he is not prepared to deny it.

Here the effect of punishment may again be repentance. For punishment renders it impossible any longer to ignore the authority, and it is, by the hypothesis, only by ignoring it that it can be disobeyed. The punishment clearly proves that the authority is in possession of the power. If it is pressed far enough, there are only two alternatives—to definitely rebel, and declare the punishment to be unjust, or to definitely submit and to acknowledge it to be righteous. The first is here impossible, for the criminal, by the hypothesis, is not prepared definitely to reject the authority. There remains therefore only the second.

Perhaps the best example of this state of things may be found in the attitude of the lower boys of a public school towards the authority of the masters. Their conviction that this is a lawful and valid authority does not influence them to so great an extent as to produce spontaneous and invariable obedience. But it is, I think, sufficient to prevent them from considering the enforcement of obedience by punishment unjust, except in the cases where their own code of morality comes explicitly in conflict with the official code—cases which are not very frequent. In fact, almost all English school sys-

tems would break down completely, if they trusted to their punishments being severe enough to produce obedience by fear. That they do not break down would seem important evidence that punishment can produce other effects than intimidation, unless, indeed, any ingenious person should suggest that they could get on without punishment altogether.

We have now seen that when punishment is able to fulfil the office which Hegel declares to be its highest function,—that of producing repentance,—it does so by emphasizing some moral tie which the offender was all along prepared to admit, although it was too faint or incomplete to prevent the fault. Thus it essentially works on him as, at any rate potentially, a moral agent, and thus, as Hegel expresses it, does him honor. It is no contradiction of this, though it may appear so at first sight, to say that a punishment has such an effect only by the element of disgrace which all deserved punishment contains. Here it differs from deterrent punishment. A punishment deters from the repetition of the offence, not because it is a punishment, but because it is painful. An unpleasant consequence which followed the act, not as the result of moral condemnation, but as a merely natural effect, would have the same deterrent result. A man is equally frightened by pain, whether he recognizes it as just or not. And so a punishment may deter from crime quite as effectually when it is not recognised as just, and consequently produces no feeling of disgrace. But a punishment cannot lead to repentance unless it is recognized as the fitting consequence of a moral fault, and it is this recognition which makes a punishment appear disgraceful.

It seems to be a fashionable theory at present that it is both cruel and degrading to attempt to emphasize the element of disgrace in punishment, especially in the education of children. We are recommended to trust principally to rewards, and, if we should be unhappily forced to inflict pain, we must represent it rather as an inconvenience which it would be well to avoid for the future, than as a punishment for an offence which deserved it. And for this reason all punishments, which proclaim themselves to be such, are to be avoided.

I must confess that it is the modern theory which seems to me the degrading one. To attempt to influence by the pleasures of rewards and by the pain element in punishment, implies that the person to be influenced is governed by pleasure and pain. On the other hand, to trust to the fact that his punishment will appear to him a disgrace implies that he is to some degree influenced by a desire to do right; for, if not, he would feel no disgrace in a punishment for doing wrong. And on the whole it would seem that the latter view of a child's nature is the more hopeful and the less degrading of the two.

There seems to be in this argument a confusion between degradation and disgrace. A man is degraded by anything which lowers his moral nature. A punishment which did this would of course stand condemned. But he is disgraced by being made conscious of a moral defect. And to become conscious of a defect is not to incur a new one. It is rather the most hopeful chance of escaping from the old one. It can scarcely be seriously maintained that, if a fault has been committed, the offender is further degraded by being ashamed of it.

This confusion seems to be at the root of the discussion as to whether the corporal punishment of children is degrading. There is no doubt that it expresses, more unmistakably and emphatically than any substitute that has been proposed for it, the fact that it is a punishment. It follows that, unless the offender is entirely regardless of the opinions of the authority above him, that it is more calculated than other punishments to cause a feeling of disgrace. But, supposing it to be inflicted on the right occasions, this is surely the end of punishment. That it produces any degradation is entirely a separate assertion, which demands a separate proof—a demand which it would be difficult to gratify.

But although a punishment must, to fulfil its highest end, be disgraceful, it does not follow that we can safely trust to the disgrace involved in the offence itself as a punishment,—a course which is sometimes recommended. The aim of punishment is rather to produce repentance, and, as a means to it,

disgrace. If we contented ourselves with using as a punishment whatever feeling of disgrace arose independently in the culprit's mind, the result would be that we should only affect those who were already conscious of their fault, and so required punishment least, while those who were impenitent, and so required it most, would escape altogether. We require, therefore, a punishment which will produce disgrace where it is not, not merely utilize it where it is. Otherwise we should not only distribute our punishments precisely in the wrong fashion, but we should also offer a premium on callousness and impenitence. As a matter of prudence, it is as well to make sure that the offender, even if he refuses to allow his punishment to be profitable to him, shall, at any rate, find it painful.

And in this connection we must also remember that the feeling of disgrace which ensues on punishment need be nothing more introspective or morbid than a simple recognition that the punishment was deserved. On the other hand, an attempt to influence any one—especially children—by causing them to reflect on the disgrace involved in the fault itself, must lead to a habitual self-contemplation, the results of which are not unlikely to be both unwholesome to the penitent and offensive to his friends.

I have thus endeavored to show that there are certain conditions under which punishment can perform the work which Hegel assigns to it. The question then arises, When are these conditions realized? We find the question of punishment prominent in jurisprudence and in education. It is found also in theology, in so far as the course of the world is so ordered as to punish sin. Now it seems to me that Hegel's view of punishment cannot properly be applied in jurisprudence, and that his chief mistake regarding it lay in supposing that it could.

In the first place, the paramount object of punishment from the point of view of the state ought, I conceive, to be the prevention of crime and not the reformation of the criminal. The interests of the innocent are to be preferred to those of the guilty—for there are more of them, and they have on the whole a better claim to be considered. And the deterrent

effect of punishment is far more certain than its purifying effect. (I use the word purifying to describe the effect of which Hegel treats. It is, I fear, rather stilted, but the word reformatory, which would be more suitable, has by common consent been appropriated to a different theory.) We cannot, indeed, eradicate crime, but experience has shown that by severe and judicious punishment we can diminish it to an enormous extent. On the other hand, punishment can only purify by appealing to the moral nature of the criminal. This may be always latent, but is sometimes far too latent for us to succeed in arousing it. Moreover, the deterrent effect of a punishment acts not only on the criminal who suffers it, but on all who realize that they will suffer it if they commit a similar offence. The purifying influence can act only on those who suffer the punishment. For these reasons it would appear that if the state allows its attention to be distracted from the humble task of frightening criminals from crime, by the higher ambition of converting them to virtue, it is likely to fail in both, and so in its fundamental object of diminishing crime.

And in addition there seems grave reason to doubt whether, in a modern state, the crimes dealt with and the attitude of the criminal to the state are such that punishment can be expected to lead to repentance. The crimes which a state has to deal with may be divided into two classes. The first and smaller class is that in which the state, for its own welfare, endeavors to suppress by punishment conduct which is actuated by conscientious convictions of duty. Examples may be found in high treason and breaches of the law relating to vaccination. Now in these cases the criminal has deliberately adopted a different view of his duty to that entertained by the state. He is not likely, therefore, to be induced to repent of his act by a punishment which can teach him nothing except that he and the state disagree in their views of his duty—which he knew before. His punishment may appear to him to be unjust persecution, or may be accepted as the inevitable result of difference of opinion, but can never be admitted by him as justly deserved by his

action, and cannot therefore change the way in which he regards that action.

In the second, and much larger, class of criminal offences, the same result happens, though from very different reasons. The average criminal, convicted of theft or violence, is, no doubt, like all of us, in his essential nature, a distinctly moral being. And, even in action, the vast majority of such criminals are far from being totally depraved. But, by the time a man has become subject to the criminal law for any offence, he has generally become so far callous, with regard to that particular crime, that his punishment will not bring about his repentance. The average burglar may clearly learn from his sentence that the state objects to burglary. He might even, if pressed, admit that the state was from an objective point of view more likely to be right than he was. But, although he may have a sincere abhorrence of murder, he is probably in a condition when the disapproval of the state of his offences with regard to property will rouse no moral remorse in him. In such a case repentance is not possible. Punishment can, under the circumstances I have mentioned above, convince us that we have done wrong. But it cannot inspire us with the desire to do right. The existence of this is assumed when we punish with a view to the purification of an offender, and it is for this reason that the punishment, as Hegel says, honors him. Where the desire to do right is, at any rate as regards one field of action, hopelessly dormant, punishment must fall back on its lower office of intimidation. And this would happen with a large proportion of those offences which are dealt with by the criminal law.

Many offences, no doubt,—especially those committed in a moment of passion, or by persons till then innocent,—are not of this sort, but do coexist with a general desire to do right, which has been overpowered by a particular temptation. Yet I doubt if, at the present day, repentance in such cases would be often the result of punishment by the state. If the criminal's independent moral will was sufficiently strong, he would, when the particular temptation was removed, repent without the aid of punishment. If it was not sufficiently strong, I

doubt if the punishment would much aid it. The function of punishment, as we have seen, in this respect, was to enforce on the offender the disapproval with which his action was considered by an authority, whom he regarded as expressing the moral law. But why should the modern citizen regard the state as expressing the moral law? He does not regard it as something above and superior to himself, as the ancient citizen regarded his city, as the child regards his parent, or the religious man his God. The development of individual conscience and responsibility has been too great for such an attitude. The state is now for him an aggregate of men like himself. He regards obedience to it, within certain limits, as a duty. But this is because matters which concern the whole community are matters on which the whole community is entitled to speak. It does not rest on any belief that the state can become for the individual the interpreter of the moral law, so that his moral duty lies in conforming his views to its precepts. Not only does he not feel bound, but he does not feel entitled, to surrender in this way his moral independence. He must determine for himself what he is himself to hold as right and wrong. The result of this is that if he sees for himself that his action was wrong, he will repent without waiting for the state to tell him so, and, if he does not see it for himself, the opinion of the state will not convince him. I do not assert that there are no cases in which a man finds himself in the same child-like relation to the state as was possible in classical times, but they are too few to be of material importance. And except in such cases we cannot expect the punishments of jurisprudence to have a purifying effect.

Hegel's mistake, in applying his conception of punishment to criminal law, resulted from his high opinion of the state as against the individual citizen. The most significant feature of all his writings on the metaphysics of society is the low place that he gives to the conscience and opinions of the individual. He was irritated—not without cause, though with far less cause than we have to-day—at the follies of the writers who see nothing in morality but conscientious convictions, or

“the good will.” It would almost seem, according to some exponents of these views, that it is entirely unimportant, from a moral point of view, what you do, if only you can manage to persuade yourself that you are doing right. But he did not lay enough emphasis on the fact that, though the approval of conscience does not carry you very far, by itself, towards a satisfactory system of morality, yet that *without* the approval of the individual conscience no modern system of morality can be satisfactory. As between adult human beings, it has become in modern times impossible for one man to yield up his conscience into the hands of any other man or body of men. A child, while it is young enough to be treated entirely as a child, can and ought to find its morality in the commands of others. And those who believe in a divine revelation, will naturally endeavor to place themselves in an attitude of entire submission to what appears to them to be the divine will, whether manifested through books or through some specially favored organization of men. But a man is not a child, and the state is not God, and the surrender of our consciences to the control of others has become impossible. A man may indeed accept the direction of a teacher whom he has chosen,—even accept it implicitly. But then this is by virtue of his own act of choice. We cannot now accept any purely outward authority as having, of its own right, the power of deciding for us on matters of right and wrong.

Hegel, indeed, in the “*Phänomenologie des Geistes*,” points out that the highest realization of the state—that in which it is the universal which completely sums up the individuals which compose it—may be considered as being in the past or the future, but not in the present. But when he comes to deal with the state in detail he seems to forget this. Sometimes he appears to think of the classical state as not yet passed away. The ancient state did indeed endeavor to stand in the same relation to its citizens as the father to the child, or even as God to man, as is indicated by the very close connection which existed in the ancient world between religion and patriotism. But to attempt to bring this idea into the modern world is to ignore the enormous development of the idea of

individuality, which accompanied, whether as cause or effect, the rise of Christianity, and was marked by the increasing prominence of the ideas of immortality and conscience. The individual began then to claim the right of relating himself directly to the highest realities of the universe—and, among others, to duty. He insisted on judging for himself. The state could be no longer the unquestioned judge of right and wrong; it could now itself be judged and condemned by the individual on moral grounds. It had still a claim to obedience, but not to unquestioning veneration. Nor is there anything inconsistent with this in the authority—perhaps as strong as that of the classical state—which the church exercised during the middle ages. For the church was regarded as a supernaturally commissioned authority. It could never have held its position, if it had been looked on as an assembly of mere men. And in the course of years it became evident that even the church's claim to unquestioning veneration could not stand before the demand of the individual, to have everything justified at the tribunal of his own spirit.

From another point of view, Hegel may be said to have supposed that the ideal state had already come, when it was still far in the future. Indeed, we may go farther and say that, by the time the state had become ideal, it would have long ceased to be a state. No doubt Hegel looked forward, and by his philosophical system was justified in looking forward, to an ultimate ideal unity which should realize all, and far more than all, that the classical state had ever aimed at. He contemplated a universal so thoroughly realized in every individual that the most complete unity of the whole should be compatible with the most complete self-development of the parts. But before this last and highest development of reality could be reached, we should have to leave behind us altogether the world of matter and time, which would be incompatible with such a complete perfection of spirit. Still more would it be impossible in a stage of development in which external government and criminal justice still existed. And to encourage the actual state, as we see it in the world to-day, to assume functions justified only in the far past or in the

indefinitely remote future, is disastrous both in theory and practice. No part of Hegel's teaching has been productive of more confusion than his persistent attempt to identify the kingdom of Prussia with the kingdom of Heaven.

The result, then, to which we have come is as follows. Hegel's view of the operation of punishment is one which is correct under certain circumstances. And when punishment has this function, it is fulfilling its highest end, since only in this manner does it succeed in really eradicating the fault which caused it. But this function is one which it scarcely ever succeeds in performing at present, when administered in the course of criminal law, and which it is not more likely to succeed in performing in the future.

This does not, however, render it unimportant. For, although it is disappearing in jurisprudence, it is persistent and important in education. There is not the same need in education as in law that punishment shall be deterrent at all cost. The ordinary offences of children are not very dangerous to the structure of society, and we can therefore turn our attention, without much risk, rather to curing them than to suppressing them. And, as a general rule, the decisions of the elder world are tacitly accepted by the younger as righteous. In cases where the authority who inflicts the punishment, or the law upon which it is inflicted, are explicitly rejected as unjust by the offender, we cannot hope that punishment will be more than deterrent. But such cases are infrequent, and, in spite of the efforts of reformers, there is good reason to hope they will remain so. For it is a fact, which, though often forgotten, cannot well be denied, that children are born young, and remain so for some years,—a fact which has some significance.

So, too, in theology. In so far as any person conceives the universe as arranged by a virtue-loving God with a view, among other things, to the promotion of virtue, the effect of any event which he looks on as a divinely inflicted punishment may be, for him, purifying.

If one had the time—and the courage—some interesting, though not, I think, revolutionary, conclusions with regard to

practice, and particularly to education, might be deduced from these premises. We might point out, for example, that rewards and punishments cannot properly be considered, as they often are, to be purely correlative methods of exerting influence, but that, under certain circumstances, punishment may have a moral effect to which there is nothing analogous in reward.

Again, it is not uncommonly held that "men may rise on stepping-stones of their dead selves to higher things," and that a repented sin may sometimes place the sinner on a higher level than that of his original innocence. And if we are to hold, also, that punishment may produce repentance, we might even be led to the conclusion that a fault and its punishment, taken together, may not only cancel one another, but, in some circumstances, be a positive good. And this might lead us to see some justification for institutions and practices which have been prospering lately without much theoretical defence. We might, for example, believe that it was not a reproach to a system of education that it rested largely on punishment. We might believe that it was not to be regretted that a child should require punishment—provided, of course, that there was a reasonable chance of his getting it. We might believe that it was not desirable, either to try to turn boys into jelly-fish, for fear they should break rules, or to abolish all discipline, that there might be no rules to break. We might even deny that we should gain much by reconstituting the public schools of England on the model either of a Jesuit seminary or a kindergarten.—But I perceive that at this point I have become hopelessly reactionary, and I wish that I could think that it was only at this point that I had become hopelessly tedious.

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