

were accompanied by the application of æsthetic influences, and by expressions of endearment calculated to awaken dormant affections. Another person, more callous, more defiant, or less gushing, might require years of severe treatment for his reformation. Now, it might happen, as has often been the case, that the sensitive and gushing defendant is a murderer; while one whose offence is limited to assault and battery, committed in defence of his rights, may be the obdurate and intractable person, who declines to be reformed at anything less than a long term of years. The consequence would be that the murderer would be let off after a few weeks' detention, solaced by music and painting, or whatever else was likely to develop his moral tone, while ten or twenty years might be a light punishment to him guilty of the assault and battery.

Another enquiry remains: What is to be done with the incorrigible offender? When the sole object of punishment is reformation, then, when there can be no reformation, there can be no punishment. The Pomeroy boy (now a full-grown man), who was convicted in Massachusetts some few years ago of at least one cruel murder, has been pronounced by competent specialists to be so desperate a case that no hope of his reformation could be indulged; and, if this be so, he should at once, on the reasoning now before us, be discharged. More than half of those on the trial lists of our criminal courts are marked as old convicts; and, by recent statutes in almost all our states, such old convicts, when reconvicted, are to have cumulative sentences, proportioned to the degree of their former conviction. Our penal system, therefore, goes on the hypothesis that the more incorrigible a man, by the record of his former convictions, appears to be, the longer should be his imprisonment when convicted. The theory we here contest is that the more incorrigible he is, the less he is to be punished. In other words, the criminal is to be punished severely for a first and comparatively light offence, and relieved in proportion to his obduracy and his persistency in crime.

After all, we have to fall back upon what has already been glanced at as the final and fatal objection to the Reformatory theory, and that is that it is not only immoral in principle in its ignoring ethical rule as the proper basis of

punishment, but that it is immoral in practice, increasing, instead of extirpating, crime. No man forcibly punished by the state, not because he is convicted of crime, but because the state conceives forcible punishment would be good for him, but must nourish a sullen resentment to the state which thus capriciously and arbitrarily maltreats him. He may become a hypocrite—he may pretend reformation—but it is very unlikely that any moral change could be effected in him by what he must consider an atrocious outrage. And, as to others, it is not likely that they will be deterred from crime by witnessing the infliction of punishments which are not the logical consequences of crime. When it is said, "crime is to meet with punishment because it is crime," this is a strong argument to avoid crime. But when punishment as a usual sequence is not assigned to crime, then crime will not be avoided for the purpose of avoiding punishment.

To the terroristic system, as held by Fenerbach, by Bentham, and by Livingston, the objections stated by President Woolsey are conclusive. According to this theory, men are to be scared from crime, and, hence, punishment is to be made shocking and ghastly. Terrorism treats the offender, not as a *person*, but as a *thing*; not as a responsible being entitled to have justice meted out to him according to his deserts, but as a lay figure on whom punishment is to be inflicted in such a way as to affect the sensibilities of others. Example to others is right enough, when incident to a just punishment; when it is inflicted as a primary object, it is in itself, not only cruel and wanton, but it stimulates crime by destroying respect for the justice and candor of the government. A feeling that punishment is a subterfuge, whose object is to frighten, will have no moral effect on those to frighten whom this punishment is applied.

In closing this very inadequate survey of the topics discussed by President Woolsey in his admirable chapter on punishment, it may not be out of place to notice the views maintained in this relation by two great German thinkers, whose influence on juridical philosophy it is impossible to ignore. According to Kant, whose views have been partially reproduced by Sir W. Hamilton and Mr. Austin, judicial punishment cannot be employed as a means to ob-