

very old testament course that he should "be punished as a murderer." We go further and contend that, had the murder been accomplished, acquittal must, from a merely moral standpoint, follow contrition; and that as contrition is an illusive state of mind or heart, frequently deceiving the subject himself, and wholly outside the possibility of judicial investigation, its absence or presence can in no case be certainly predicated, even when the lips continue to glory in the crime of the hands, or the flesh to waste away in tears. Consider for one moment the public consternation that would attend upon a decision of the judges of the Court of Probate and Divorce to the effect that "he who looketh upon a woman to lust after her, hath committed adultery with her in his heart," and that such an one should be treated and branded as an adulterer. Harem concealment of beauty would become a necessity, or politeness and gallantry would have to be abandoned, if one would save himself from malicious charges.

Bentham and Beccaria agree that crimes are punishable not for their immorality, but because of their effect upon society, and our jurisprudence adopts the principle, and punishes those acts only that are injurious to society. Mr. Justice Fry argues "that a duty is laid upon us to make this relationship of sin to suffering as real and as actual and as exact in proportion as it is possible to be made," and upon this principle legislators and judges must become penance-prescribers, and award the heaviest punishments for breaches of the positive commandments, among which are: "Honor thy father and thy mother," "Thou shalt not covet," "Thou shalt have no other gods before me," "Thou shalt not take the name of the Lord thy God in vain," "Remember the Sabbath to keep it holy," and the requirement of the New Testament, "Love one another." When a sin has been found, Mr. Justice Fry will permit consideration for society to weigh in the awarding of punishment, but only as a secondary and subsidiary consideration. If, therefore, there could be a wrong to society without sin, there would be no punishable crime. It would be *damno sine injuria*. But sin