

The next enquiry is as to the constitutional power of a state to reform its citizens by force. In answering this question we may waive the provisions in our state as well as Federal constitutions limiting convictions of crime to cases where bills have been lawfully found by grand juries, and where the offender has the right to meet before the petit jury the witnesses against him, face to face. Aside from these restrictions, what power has a constitutional state to attempt to forcibly reform its adult citizens, unless as a mere subsidiary incident to penal justice? What power has it to make penal justice subordinate and auxiliary to ethics? Governments there have undoubtedly been which—sometimes on the paternal theory, sometimes because they were distrustful of the ordinary processes of law—have undertaken ethical reformation; but such governments have never been called constitutional. A prominent Russian officer, for instance, may require, in the opinion of his superiors, "reformation," and he may be sent to Siberia, or imprisoned in a fortress, in order to develop his better, and repress his worse, qualities. A group of leading French politicians may be banished or imprisoned as an incident to a *coup d'état*, in order to "reform" their political views. A vigilance committee may undertake to "reform" an obnoxious citizen by maltreating his person or destroying his property. We can conceive of such things in conditions of despotism or of anarchy; but we cannot conceive how, in a constitutional State, of which it is one of the fundamental sanctions that nothing is to be done by the government that can be properly executed by the voluntary moral power of the community, the reformation of individuals should be attempted by force. Houses of refuge and other asylums, as well as schools for children, we rightfully have. But it is beyond the scope of a constitutional government to open compulsory houses of reform for adults, or to make moral reform by force a primary function of State.

Supposing, however, we should hold that it is within the province of the State, the next question that would arise, in view of the fact that there must be discrimination, is, What persons are we to attempt to reform? To say, "those convicted of crime," is no answer, because this takes us back to the absolute theory that a person is to be punished because he is

guilty, whereas the theory before us is that a person is to be punished because he is to be reformed. In a general sense, as all men are susceptible of reformation, all men, in this view, are to be punished. As this cannot be, we must, as has just been said, make a discrimination; and the interesting question for the advocates of the Reformatory theory remains as to where the line is to be drawn. Now, in view of the fact that it is dogma after all that is the fountain of action, are not those who hold what we conceive to be pernicious dogmas the proper persons to be punished? If they should be reformed, would not the reformation of those who are influenced by them follow? Why should not the State, therefore, undertake the reformation, by means of fine, imprisonment, and the whipping-post, of those teaching pernicious opinions? We have examples enough of this in old times; and, supposing that this mode of education proved effective—admitting for a moment that history shows us that heretics and other unsound teachers are really to be reformed in this way—why not revive the same machinery? Here, for instance, is a bold political swaggerer teaching what we, on the eastern sea-board, hold to be highly immoral principles of inflation; why not catch him, if he happen to be travelling among us, and put him in the stocks? and, if this does not reform him, why not apply severer treatment? Or an eastern hard money man, crammed with Adam Smith and Ricardo, is travelling in the West, promulgating from time to time doctrines whose tendency is to impoverish the community by the shrinkage of its currency; why not arrest him and subject him also to reformation?

Another interesting question will arise as to the distribution of punishment, if susceptibility to reform, and not guilt, is to be the test. Indeed, the only proper course, if we are to formulate the proceeding under such a system, would be to collect a number of persons, proper subjects for reformation, in the court-house, and then, without regard to the crimes of which they are suspected, call testimony to determine what degree of punishment would be necessary to a reformation in each particular case. A person, for instance, of extreme sensitiveness to discipline might be reformed by imprisonment of two or three weeks, if such imprisonment