

are both contrary to our nature (!) ought to go together, and that, in consequence, we naturally desire to bring about an association of the two where it does not already exist. Whence do we derive this principle? Not from the outer world; for, as we have seen, the world responds to it only imperfectly, and by reason of the very imperfection drives us to efforts to realize by punishment that association which otherwise would not exist in fact. *Punishment, in short, is an effort of man to find a more exact relation between sin and suffering than the world affords us.* . . . In a word, then, it seems to me that men have a sense of the fitness of suffering to sin, of a fitness both in the gross and in proportion; that so far as the world is arranged to realize in fact this fitness in thought, it is right; and that so far as it fails of such arrangement, it is wrong, except so far as it is a place of trial or probation; and, consequently, 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. This is the moral root of the whole doctrine of punishment. If this be the true view, some things become clear to us. First, we see that in the apportionment of penalties, we have to regard primarily and directly the moral nature of the crime, and to assign pain and suffering as nearly as we can to the enormity of the sin. . . . On the theory I present, the evil consequences of an act are important so far, and so far only, as they were known, or ought to have been known, to the actor, and so ought to have acted on his conscience, and are an element in the magnitude of his sin. It follows again, from what I have said, that reformation, repression, example, however important they may be in themselves, are only secondary and collateral to the main idea of punishment; and I stand in hopeless antagonism to those philanthropic minds who seek to make our punishments solely reformatory, and to eliminate from our penal institutions every trace of moral reprobation."

The learned judge has the courage of his opinions and follows them to their logical conclusion: "The gun has been loaded, the victim has been tracked, the watch has