

capitally, the most scandalous embezzlements were regarded as out of the line of penal prosecution. And, as it is one of the incidents of embezzlement that the embezzled property should be secreted, this laxity enabled embezzlements to be carried on with comparative impunity.

We have next brought before us the important distinction between punishment and chastisement. "Correction," in its origin, is the act of "making completely straight, of bringing into a condition of rectitude;" chastisement is the act "of making the subject morally pure or innocent." These are acts of education, to be applied by a parent to a child, by a teacher to a pupil, by the head of a house of refuge or reformatory institution for children to his wards. Very different is the punitive function of the State. The reasons for the exercise of this function President Woolsey thus states:

"The principal reasons for the State's being invested with this power, that have been brought forward, are the following:

"1. That, by visiting the transgressor with some deprivation of something desirable, the State brings him to reflection and makes him better. The main end is *correction*.

"2. That it is *necessary for the State's own existence* to punish, in order to strike its subjects with awe, and deter them from evil-doing.

"3. That to do this is necessary for the security and protection of the members of the State. These two reasons are, in principle, one and the same.

"4. That the penalty is an *expiation* for the crime.

"5. That the State receives a *satisfaction*, by penalty, from the wrong-doer, or is *put in as good a situation as before*.

"6. That in punishment the State renders to evil-doers their *deserts*.

"The theory that correction is the main end of punishment will not bear examination. In the first place, the State is not mainly a humane institution; to administer justice and protect the society are more obvious and much higher ends, and the corrective power of State punishments has hardly been noticed by legislators, until quite modern times, as a thing of prime importance. In the second place, the theory makes no distinction between crimes.

If a murderer is apparently reformed in a week, the ends of detention in a reformatory home are accomplished, and he should be set free while the petty offender against order and property must stay for months or years in the moral hospital, till the inoculation of good principles become manifest. And, again, What if an offender should prove incurable? Should he not be set at large, as being beyond the influences of the place? Still further, What kind of correction is to be aimed at? Is it such as will ensure society against his repeating the crime? In that case it is society, and not the person himself, who is to be benefited by the corrective process. Or, must a thorough cure, a recovery from selfishness and covetousness, an awakening of the highest principle of the soul, be aimed at—an established church, in short, be set up in the house of detention?

"2. The explanation that the State *protects its own existence* by striking its subjects with awe and deterring them from evil-doing doing through punishment is met by admitting that, while this effect is real and important, it is not as yet made out that the State has a right to do this. Crime and desert of punishment must be presupposed before the moral sense can be satisfied with the infliction of evil. And the measure of the amount of punishment, supplied by the public good for the time, is most fluctuating and tyrannical; moreover, mere awe, unaccompanied by an awakening of the sense of justice, is as much a source of hatred as a motive to obedience.

"3. The same objection lies against the reason for punishment—that it is needed to *protect the innocent inhabitants of a country* by the terrors which penal law presents to evil-doers. The end is important, but certainly great wrong may be done in attempting to reach it. The enquiry still remains, "Why, for this end, should pain or loss be visited on an evil-doer?" Vol. I, pp. 330, 331.

The next theory noticed is that of expiation. Punishment is "to be regarded as an expiation of the crime, made in order that divine wrath or punitive justice may not fall on society. The solidarity of a nation involves the whole in the guilt of an individual member, and it is necessary by an expression of common feeling, which shows that the body does not sympathise with the sinful member, to clear itself of defile-