

Punishment

INTRODUCTION

THE problem of punishment divides into a number of questions. In what does punishment consist? What purpose should punishment serve, or what should be its principle or reason? Who has the authority to punish and under what conditions shall this authority be exercised? Who shall be punished and who shall be exempt from punishment? What are the forms or kinds of punishment? Are any of these reprehensible either in principle or for their consequences? Should there be a proportion between the severity of punishment and the gravity of the offense? Can a person punish himself? Do men desire to be punished?

These questions apply, though not with equal emphasis, to the three major types of wrongdoing in relation to which men discuss the nature and the need of punishment, its justice or its expediency. Punishment is traditionally considered in relation to vice, to crime, and to sin. According to the type of wrongdoing being considered, the punitive agent may be the wrongful individual himself or his family, his state, his church or God.

The lines which separate these areas of the problem of punishment cannot be sharply drawn in all cases, for as certain acts simultaneously violate the moral, the civil, and the divine law, they may also cause a person to be simultaneously subject to punishment from diverse sources. The wrong or injury which punishment is supposed to redress may in some cases fall under none of these headings, as, for example, acts of war or rebellion. It is sometimes questioned whether the theory of punishment remains the same when punitive steps are taken by one state against some or all the people of another; or again, when a government applies penalties for a

rebellion engaged in by members of its own community.

In this chapter, we shall deal with the problem of punishment in its most general terms, for the most part, considering the foregoing questions without regard to the distinction of sin, crime, and vice; or to the differences between divine and human punishment, or between punishment by the state and in the family (*i.e.*, punishment as involved in the enforcement of law and punishment as an instrument of education or training). These more specialized topics belong to other chapters: *e.g.*, punishment as affecting the formation of character to the chapters on EDUCATION and VIRTUE AND VICE; punishment as administered by parents to the chapter on FAMILY; divine rewards and punishments to the chapters on IMMORTALITY and SIN.

The basic ideas in terms of which any discussion of punishment proceeds are, of course, the subjects of the chapters on JUSTICE and LAW. One other chapter—PLEASURE AND PAIN—is of peculiar relevance to the question about the nature of punishment. Concerning the nature of punishment there seems to be no great difference of opinion in the tradition of western thought. Punishment is generally conceived as the infliction of pain, though some writers distinguish between corporeal and spiritual punishment according as the pain inflicted is the pain of sense or the pain of deprivation and loss. Imprisonment, for example, always entails the pain of loss—the loss of freedom—but it may also carry with it the suffering of physical hardships or even tortures. The torment of the damned is, according to some theologians, both corporeal and spiritual—the agony of hellfire and the

anguish of the soul deprived of God's love and presence.

IF THERE IS LITTLE DISPUTE about the nature of punishment, the opposite situation prevails concerning its purpose. Why men should be punished is one of the most controversial questions in the field of moral and political thought, and in psychology and theology as well.

The major opposition in the tradition of the great books is between those who think that punishment need only be inherently just, and those who think it cannot be justified without reference to its utility or expediency. While this debate goes on, for more than twenty centuries, punishments in actual practice—whether in accordance with the law or uncontrolled by it—tend generally to be severe and often fiendish or ferocious. Huizinga writes of the Middle Ages that "Man at that time is convinced that right is absolutely fixed and certain. Justice should prosecute the unjust everywhere and to the end. Reparation and retribution have to be extreme, and assume the character of revenge . . . That the criminal deserved his punishment was not doubted for a moment. The popular sense of justice always sanctioned the most rigorous penalties . . . Torture and executions are enjoyed by the spectators like an entertainment at a fair."

Not until Cesare Beccaria in the 18th, and Jeremy Bentham in the 19th century, does the discussion of punishment lead to major reforms in the spirit and provisions of the penal codes. But the opposite positions in the debate across the centuries are never without practical significance for penal institutions and punitive measures, even when theory is not immediately reflected in practice. The speculative significance of the issue is, however, always immediately apparent. Although justice and law are more fundamental and comprehensive ideas than punishment, this one problem of punishment—the question of its purpose—critically tests the meaning of anyone's theory of law and justice.

It may be that the issue cannot be fairly stated in terms of *purpose*. To use that word may beg the question, since one of the basic

positions in the controversy appears to be that punishment has no purpose in the sense of *-serving some end beyond itself*, or producing some desired consequence *in the future*. This is the theory—shared by Kant and Hegel—that punishment should be purely retributive.

According to this view the effect of the punishment upon the wrongdoer, or upon others whose conduct may be affected by punishments meted out or threatened, must not be taken into account at all. Nothing should be sought except the preservation of the balance sheet of justice, by seeing that every wrong is duly requited by a proportionate measure of punishment. Nor is the requital purely retributive if it considers any person except the wrongdoer himself. That punishment of the transgressor may assuage the feelings of those he has injured, or even satisfy a desire for revenge, should have no motivating force. The only pleasure the spectacle of punishment should yield, the only desire it should satisfy, is that of seeing the moral law upheld. We should punish only because we have, under the moral law, a duty to do so.

Kant castigates as utilitarian every theory of punishment which directs it to the service of anything besides strict justice—such as the reformation of the criminal, the deterrence of others, the welfare of society, or the slaking of the thirst for vengeance. "Juridical punishment," he says, "can never be administered merely as a means for promoting another good, either with regard to the Criminal himself, or to Civil Society, but must in all cases be imposed only because the individual on whom it is inflicted *has committed a Crime* . . . The Penal Law is a Categorical Imperative; and woe to him who creeps through the serpent-windings of Utilitarianism to discover some advantage that may discharge him from the Justice of Punishment, or even from the due measure of it."

What shall determine the mode and measure of punishment? Kant answers: "It is just the Principle of Equality by which the pointer of the Scale of Justice is made to incline no more to one side than the other. It may be rendered by saying that the undeserved evil which anyone commits on another, is to be regarded

as perpetrated on himself . . . This is the Right of Retaliation (*ius talionis*); and properly understood it is the only Principle which . . . can definitely assign both the quality and the quantity of a just penalty. All other standards are wavering and uncertain; and on account of other considerations involved in them, they contain no principle conformable to the sentence of pure and strict Justice."

RETRIBUTIVE PUNISHMENT OF retaliation seems to express the principle of justice or fairness in exchange. The Mosaic injunction that "thou shalt give life for life, eye for eye, tooth for tooth, burning for burning, wound for wound, stripe for stripe," occurs in the context of other passages which declare the compensation in goods which an injured party shall receive for the loss of or damage to his chattel. But it is also accompanied by ordinances which impose the death penalty for wrongs other than the taking of a life.

"You have heard," Christ declares in the Sermon on the Mount, "that it hath been said, An eye for an eye, and a tooth for a tooth. But I say unto you, That ye shall resist not evil; but whosoever shall smite thee on thy right cheek, turn to him the other also. And if any man will sue thee at the law, and take away thy coat, let him have thy cloak also." This passage has sometimes been taken to mean that all punishment is simply vengeance; and that instead of returning injury for injury, the Christian should love his enemies and forgive them. "If you think someone has wronged you," Princess Mary says to Prince Andrew in *War and Peace*, "forget it and forgive! We have no right to punish."

But the Christian view of punishment may not be the same when the punishment of the evildoer is a question for the state rather than for the individual. "Avenge not yourselves," Saint Paul commands; "for it is written, Vengeance is mine, I will repay, saith the Lord." The individual need not avenge himself, for God punishes the wicked; not only God, but the ruler of the earthly state who, Saint Paul says, "is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain;

for he is the minister of God, a revenger to execute wrath upon him that doeth evil."

A life for a life appears to be the symbolic statement of the *lex talionis* in the Greek as well as the biblical tradition. "The spirit of Right cries out aloud and extracts atonement," the Chorus explains in *The Libation Bearers* of Aeschylus. "Blood stroke for the stroke of blood shall be paid." This warning parallels the words of Saint Matthew: "Whoso'er shall take the sword, shall perish by the sword." But as Aristotle points out—and similarly Aquinas in his comment on the *lex talionis* of the Old Testament—simple reciprocity does not determine the mode of retribution. "People *want* even the justice of Rhadamanthus to mean this: Should a man suffer what he did, right justice would be done." Yet, Aristotle points out, "in many cases, reciprocity and rectificatory justice are not in accord, e.g., if an official has inflicted a wound, he should not be wounded in return, and if someone has wounded an official, he ought not to be wounded only but punished in addition." Retaliation consists in reciprocity only if it is "in accordance with a proportion, and not on the basis of a precisely equal return."

Punishment as retaliation may seem to be inseparable from revenge. Yet, according to Lucretius, the surrender of primitive freedom for the restrictions of civilized life is motivated by the desire to substitute equitable retribution for unlimited vengeance. The ancient kings were, according to Lucretius,

Sick of their feuds and weary to exhaustion
Of violence piled on violence, where each man,
If he is judge, exacts in vengeance more
Than any decent law would ever inflict.
So men, being utterly tired of violence,
Are willing enough to suffer and submit
To legal codes.

Hegel tries to clarify what he regards as a popular confusion of retribution with revenge. "In that condition of society," he writes, "when there are neither magistrates nor laws, punishment always takes the form of revenge; revenge remains defective inasmuch as it is the act of a subjective will." It is understandable that retribution should be objected to on the

ground that "it looks like something immoral, *i.e.*, like revenge, and that thus it may pass for something personal. Yet it is not something personal but the concept itself which carries out retribution. 'Vengeance is mine, saith the Lord,' as the Bible says . . . The Eumenides sleep, but crime awakens them, and hence it is the very act of crime itself which vindicates itself."

The apparent contradiction in the identity and difference of retribution and revenge can, in Hegel's opinion, be resolved. On the one hand, it can be said that "the annulment of crime is retribution insofar as retribution in *conception* is an 'injury of the injury.'" On the other hand, it can be said that "the annulling of crime in this sphere where right is immediate is principally revenge, which is just in its content insofar as it is retributive." The demand that this contradiction be resolved "is the demand for justice not as revenge but as punishment."

Hegel's resolution seems to be in terms of a distinction between the particular and the universal. "When the right against crime has the form of revenge, it is only right implicit, not right in the form of right, *i.e.*, no *act* of revenge is justified. Instead of the injured party, the injured *universal* now comes on the scene, and this has its proper actuality in the court of law. It takes over the pursuit and the avenging of crime, and this pursuit consequently ceases to be the subjective and contingent retribution of revenge, and is transformed into the genuine reconciliation of right with itself, *i.e.*, into punishment."

On this conception of punishment, Hegel like Kant decries every utilitarian purpose for punishment. Such misconceptions of punishment arise, he says, from the supposition that both crime and its annulment are "unqualified evils," which makes it seem "quite unreasonable to will an evil merely because 'another evil is there already.' To give punishment this superficial character of an evil is, amongst the various theories of punishment, the fundamental presupposition of those which regard it as a preventive, a deterrent, a threat, as reformatory, etc., and what on these theories is supposed to result from punishment is characterized equally superficially as a good. But . . .

the precise point at issue is wrong and the righting of it. If you adopt that superficial attitude toward punishment, you brush aside the objective treatment of the righting of wrong."

THE ISSUE WOULD SEEM to be a conflict between justice and expediency, with the utilitarians identifying retribution with revenge and demanding that punishment serve some good or mitigate some evil. But sometimes the question is whether justice and expediency are compatible.

In the debate on the treatment of the Mitylenians, which Thucydides reports, Cleon calls upon the Athenians to show no mercy to their rebellious subjects. "Their offence," he says, "was not involuntary, but of malice and deliberate," and they deserve to be punished. "If you follow my advice you will do what is just towards the Mitylenians, and at the same time expedient . . . For if they were right in rebelling, you must be wrong in ruling. However, if, right or wrong, you determine to rule, you must carry out your principle and punish the Mitylenians as your interest requires."

Diodotus objects to the policy of putting the Mitylenians to death on the ground that it is not a question of justice but of expediency. "We are not in a court of justice," he says, "but in a political assembly; and the question is not justice, but how to make the Mitylenians useful to Athens . . . I consider it far more useful for the preservation of our empire voluntarily to put up with injustice, than to put to death, however justly, those whom it is our interest to keep alive. As for Cleon's idea that in punishment the claims of justice and expediency can both be satisfied, facts do not confirm the possibility of such a combination."

In the chapter on justice in *Utilitarianism*, J. S. Mill seems to place justice above expediency, but he also seems to reduce retribution to revenge and call it just. "The sentiment of justice," which includes as "one of its elements . . . the desire to punish," Mill identifies with "the natural feeling of retaliation or vengeance." Retribution, or the giving of "evil for evil," he says, "becomes closely connected with the sentiment of justice and is universally included in the idea." The principle of "giving

to each what they deserve," he adds, "that is, good for good as well as evil for evil, is not only included within the idea of justice as we have defined it, but is a proper object of that intensity of sentiment, which places the Just, in human estimation, above the simply Expedient."

Other writers seem to think that the utility of punishment is not incompatible with its retributive justice. The great theologians, for example, considering the difference between the eternal punishment of the damned in hell, and the cleansing punishment of the repentant in purgatory, do not find it impossible for divine justice to include both absolute retribution and punishment which may be remedial as well as retributive. Purely retributive punishment seems justifiable to them, but they do not think that punishment can ever be justified simply by its utility—by the good it achieves—without any reference to the retaliation of evil for evil.

In the context of saying that the institution of slavery among men is a just punishment for Adam's sin, and that "God knows how to award fit punishments for every variety of offence," Augustine observes that "we must not only do harm to no man, but also restrain him from sin or punish his sin, so that either the man himself who is punished may profit by his experience or others be warned of his example." Here there seems to be no thought that retribution excludes a reformative or deterrent use of punishment. Aquinas even more explicitly combines the remedial and the deterrent utility of punishment with the function of punishment to preserve the order of justice by meting out an equitable retribution.

In willing justice, God wills punishment, according to Aquinas. "The order of justice belongs to the order of the universe; and this requires that penalty should be dealt out to sinners." But just retribution is not the only reason for punishment. Sometimes it is "for the good of those who are punished," sometimes "for the amendment of others." These reasons for punishment apply to human as well as to divine law. "When a thief is hanged, this is not for his own amendment, but for the sake of others, who at least may be deterred

from crime through fear of punishment." Punishment is a proper effect of human law, not merely because justice requires it, but because "the law makes use of the fear of punishment in order to ensure obedience."

In discussing the proportion between the severity of the penalty and the gravity of the fault in the punishment of sin under the Mosaic law, Aquinas explains that in addition to the reason of justice (that "a greater sin, other things being equal, deserves a greater punishment"), there is the purpose of reformation ("since men are not easily cured of habitual sin except by severe punishments") and the purpose of prevention ("for men are not easily deterred from such sins unless they be severely punished"). Here three reasons for punishment are stated side by side. But in the opinion of Aquinas retribution is more than the primary, it is the one indispensable reason; for punishment cannot be justified except as doing the work of justice.

THE VIEW OF KANT AND Hegel that retribution or retaliation is *the only basis* for punishment—not merely the primary or the indispensable reason—meets its exact opposite in what appears to be the completely utilitarian theory of punishment to be found in the writings of Plato, Hobbes, Locke, and Rousseau.

In the *Protagoras*, arguing for the proposition that virtue can be taught, Protagoras insists that "no one punishes the evil-doer for the reason that he has done wrong—only the unreasonable fury of a beast acts in that manner. But he who desires to inflict rational punishment does not retaliate for a past wrong which cannot be undone. He has regard to the future, and is desirous that the man who is punished, and he who sees him punished, may be deterred from doing wrong again. He punishes for the sake of prevention, thus clearly implying that virtue is capable of being taught."

Plato himself seems to adopt the opinion of Protagoras. In the *Laws*—wherein he sets forth the provisions of a penal code in a detail equaled, in the tradition of the great books, only by the proposals of Hobbes—Plato says no man is to be punished "because he did

wrong, for that which is done can never be undone, but in order that, in the future times, he, and those who see him corrected, may utterly hate injustice, or at any rate abate much of their evil doing." Yet he also goes on to say that the law "should aim at the right measure of punishment, and in all cases at the deserved punishment." This qualification seems, in turn, to be balanced by his remarks on the death penalty which he thinks should be imposed only on the incurable who cannot profit from punishment and whose execution "would be an example to other men not to offend."

The notion of desert in Plato's theory of punishment appeals to justice without implying any separation between retribution and reform. In the *Gorgias*, Socrates says that "to suffer punishment is another name for being justly corrected when you do wrong." A wrongdoer who escapes punishment suffers a greater evil than one who is punished, for he "who is punished and suffers retribution, suffers justly." Thereby justice is restored to his soul. The judge who prescribes just punishments cures the soul, as the physician who prescribes the right remedies cures the body. The criminal who, having been unjust, goes unpunished "has no deliverance from injustice."

The fact that just punishments are deserved does not seem to be the reason why men should be punished. Considering the penalties imposed by gods and men, in the next world or in this, Socrates summarizes his argument by saying that "the proper office of punishment is twofold: he who is rightly punished ought either to become better and profit by it, or he ought to be made an example to his fellows, that they may see what he suffers, and fear and become better. Those who are improved when they are punished by gods and men, are those whose sins are curable; and they are improved, as in this world so also in another, by pain and suffering."

Like Plato, Hobbes places the reason for punishment in the future rather than in the past—in its utility to procure certain effects rather than in its effecting retaliation. He states it as a law of nature that "in revenges (that is, retribution of evil for evil), *men look*

not at the greatness of the evil past, but the greatness of the good to follow. Whereby we are forbidden to inflict punishment with any other design than for the correction of the offender, or the direction of others." Anything else he calls "an act of hostility."

In *The Prince*, Machiavelli takes the idea of deterring wrongdoing one step further: "in seizing a state, the usurper ought to examine closely into all those injuries which it is necessary for him to inflict, and to do them all at one stroke so as not to have to repeat them daily . . . He who does otherwise, either from timidity or evil advice, is always compelled to keep the knife in his hand; neither can he rely on his subjects, nor can they attach themselves to him."

The chief aim of punishment, in securing the reformation and the deterrence of criminals, Hobbes thinks, is to maintain public peace. "A punishment is an evil inflicted by public authority" on those who have transgressed the law, "to the end that the will of men may thereby the better be disposed to obedience." A law, without a penalty attached, is "not a law, but vain words." It fails to achieve the end of law, which is the same as the end of punishment. The worst offenses—those to be prevented by the most severe penalties—are crimes, not against individuals, but those that "are of most danger to the public."

Locke also derives from natural law the right to punish those who transgress that law, "for restraint and preventing the like offence," to which he adds that "each transgression may be punished to that degree, and with so much severity as to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like." This theory of punishment applies not only to man living in a state of nature, but in civil society as well.

Though Rousseau describes the wise statesman as one who knows how, by punishing crimes, to prevent them, he lays greater emphasis on the other motive for punishment—the reformation of the criminal. "There is not a single ill-doer who could not be turned to some good. The State has no right to put to death, even for the sake of making an example, anyone whom it can leave alive without dan-

ger." Or, as Fetyukovitch says in his address to the jury in *The Brothers Karamazov*: "The Russian court does not exist for punishment only, but also for the salvation of the criminal. Let other nations think of retribution and the letter of the law, we will cling to the spirit and the meaning—the salvation and the reformation of the lost."

THIS GREAT ISSUE CONCERNING the reason for or purpose of punishment seems to affect most of the other questions which men raise about the penalties to be imposed for wrongdoing—whether the wrong is a sin, a crime, or a vicious act, and whether it is God or the state, nature or the individual himself, who inflicts the pain. The reverse also seems to be true. These other questions raise difficulties or issues which test the conflicting theories that punishment should be a just retaliation *exclusively*, or should be justified *only* by its consequences, or should somehow be a *combination* of awarding just deserts and securing good effects.

For example, the question of how the various modes and measures of punishment should be determined and assigned to diverse acts of wrongdoing does not seem to be answerable in the same way when the principle is simply retribution and when the purpose of punishment is reformation and deterrence. On the principle of retribution the gravity of the offense appears to be the only determinant of the severity of the punishment. The punishment should fit the crime, not the nature of the criminal as someone capable of being benefited by punishment.

Kant and Hegel do not think that the justification of the death penalty, for example, depends on the curability or incurability of the offender. Nor do they think that the taking of the criminal's life should be motivated, as Aquinas and Locke seem to suggest, by the desire to protect society from his future depredations. It is sufficient that he has taken a life, or committed some equally serious injury, which ought to be repaid by a proportionate requital.

"What is involved in the action of the criminal," Hegel writes, "is not only the concept of crime, the rational aspect in crime as such

whether the individual wills it or not, the aspect which the state has to vindicate, but also the abstract rationality of the individual's *volition*. Since that is so," Hegel argues, "punishment is regarded as containing the criminal's right and hence by being punished he is as honored as a rational being. He does not receive this due of honor unless the concept and measure of his punishment are derived from his own act. Still less does he receive it if he is treated either as a harmful animal who has to be made harmless, or with a view to deterring or reforming him."

On these grounds, Hegel criticizes Beccaria's unqualified opposition to the death penalty. In addition, he rejects Beccaria's theory that "it could not be presumed that the readiness of individuals to allow themselves to be executed was included in the social contract." Rousseau takes the diametrically opposite view. He argues for the death penalty on the ground that "we consent to die if we ourselves turn assassins" in order to protect ourselves from falling victims to assassins. In making this consent a part of the social contract, Rousseau holds that "we think only of securing [our own lives], and it is not to be assumed that any of the parties then expects to get hanged."

Hegel disagrees with both Beccaria and Rousseau. According to him, the state is not based upon a social contract; nor does he admit that "its fundamental essence [involves] the unconditional protection and guarantee of the life and property of members of the public as individuals. On the contrary," he holds, "it is that higher entity"—the state—"which even lays claim to this very life and property and demands its sacrifice."

The state, therefore, according to Hegel, cannot be denied the right of inflicting capital punishment. Hegel admits that "Beccaria's requirement that men should give their consent to being punished is right enough," but he adds that "the criminal gives his consent already by his very act. The nature of the crime, no less than the private will of the individual, requires that the injury initiated by the criminal should be annulled. However that may be," he continues, "Beccaria's endeavor to have

capital punishment abolished has had beneficial effects." Because of the efforts made by Joseph II and Napoleon to abolish it, "we have begun to see," Hegel thinks, "which crimes deserve the death penalty and which do not. Capital punishment has in consequence become rare, as in fact should be the case with this most extreme punishment."

The attitude toward the death penalty as well as toward all other punishments is different when the *only* purpose of punishment is the welfare of society and the improvement of individuals, whether they are actual or potential offenders. The modes and degrees of punishment must then be determined by considering their effectiveness as means to the ends in view. Montesquieu discusses the penal codes in various systems of law entirely in terms of their success in preventing crime. Though he does not seem to think that punishment can improve the character of the individual, he believes that a certain proportion between the penalty and the offense may tend to reduce the extent and gravity of crimes. "In Russia," he says, "where the punishment of robbery and murder is the same, they always murder."

In general, Montesquieu is opposed to unduly severe punishments, and especially to cruel and unusual punishments, not so much on the grounds of injustice as for the protection of liberty and public morals. Hobbes, Locke, and Rousseau similarly discuss the severity of punishment with reference to its utility, and like Montesquieu, they face the problem that the same measure or degree of punishment may not be equally effective for the purposes of reformation and deterrence. Severe penalties, for example, may have a greater deterrent effect upon potential offenders than milder forms of punishment, but they may also tend to harden criminals instead of reforming them.

There have always been cruel and unusual punishments—in modern times as well as in antiquity and the Middle Ages. As the historian Huizinga points out, "The Middle Ages knew but the two extremes: the fulness of cruel punishment, and mercy." In his Preface to *Saint Joan*, Shaw calls our attention to the

fact that "the penalty of hanging, drawing, and quartering, unmentionable in its details, was abolished so recently that there are men living who have been sentenced to it. We are still flogging criminals, and clamoring for more flogging. Not even the most sensation-ally frightful of these atrocities inflicted on its victim the misery, degradation, and conscious waste and loss of life suffered in our modern prisons, especially the model ones, without, as far as I can see, rousing any more compunction than the burning of heretics did in the Middle Ages. We have not even the excuse of getting some fun out of our prisons as the Middle Ages did out of their stakes and wheels and gibbets."

The conflict of principles in the determination of punishments seems to be even more marked in the case of those who try to combine retribution with utility. If, for example, the death penalty is the just desert for murder, should it be applied on the grounds of retribution, even though a particular murderer can be reformed by milder treatment? If heavy penalties were to prove highly effective as deterrents, should they be applied to minor offenses, which deserve less severe retaliations, in order to reduce the amount of crime?

THERE SEEMS TO BE AGREEMENT for the most part on who shall have the authority to punish and who shall be subject to punishment, in the relation of men to one another, to the state, and to God. Punishment seems to be annexed to law, as indispensable for its enforcement, so that whoever has the authority to set rules of conduct for another also has the authority to impose penalties for their violation. Yet the notion that punishment is a necessary sanction for law—which is apparently shared by those who take the retributive and those who take the utilitarian view of punishment—does not seem to fit both views equally well, at least not to the extent that the end of law and its enforcement is the common good or the public welfare.

Again, it seems to be generally agreed that moral responsibility on the part of offenders is an indispensable condition of just punishment for their misdeeds. Unless the sinful or

the criminal act is voluntary, unless it is intentional rather than accidental—or if negligent, capable of being attributed to a willful error of judgment—the act is without fault and the agent without guilt. But although those who make punishment retributive and those who make it reformatory or deterrent seem to agree upon responsibility as prerequisite, this principle does not seem to be equally consistent with both theories—at least not to the extent that the exemplary punishment may deter others quite apart from the responsibility of the person punished.

The question of responsibility raises other difficulties, *e.g.*, the metaphysical issue about personal identity, on which Locke takes the stand that unless the human individual is an enduring substance, he cannot deserve subsequent punishment for his prior acts; and the issue of free will and causality, on which Hume's position seems to be that unless human actions are subject to causal necessity, a man cannot be blamed for his acts or "become the object of punishment or vengeance."

Finally, there is the problem of a natural need for punishment and of the penalties which nature itself imposes for wrongdoing to fulfill this need. The familiar statement that virtue is its own reward and vice its own punishment, is sometimes interpreted to mean that virtue and vice are intrinsically good and evil, and sometimes to mean that through their natural consequences they heap benefit or injury on their possessor. This view appears to be Dickens' in *Little Dorrit*. The villain, Rigaud, escapes from prison, which has done nothing to reform his evil ways, while Little Dorrit's sense of duty allows her to live her entire childhood by the side of her father, who is jailed in debtor's prison (as was Dickens' own father).

Augustine, for example, says that by the sins which he committed God did justly punish him, for "every soul that sins brings its own punishment upon itself"; and Kant distinguishes juridical from natural punishment

"in which Crime as Vice punishes itself, and does not as such come within the cognizance of the Legislator." The other interpretation seems to be represented by Hobbes's theory that "intemperance is naturally punished with diseases . . . injustice with the violence of enemies . . . cowardice with oppression." In the chain of consequences started by any action, he discerns the pains which are "the natural punishments of those actions that are the beginning of more harm than good."

But according to Freud it is the craving for punishment rather than the punishment which is natural, *i.e.*, psychologically determined. Individuals punish themselves or seek to be punished for what is either real or fancied guilt. "The unconscious need for punishment plays a part in every neurotic disease," Freud writes. "It behaves like a part of the conscience, like the prolongation of conscience into the unconscious; and it must have the same origin as conscience; that is to say, it will correspond to a piece of aggressiveness which has been internalized and taken over by the super-ego. If only the words were less incongruous, we should be justified . . . in calling it 'an unconscious sense of guilt.'"

Whatever its psychological validity, Freud's theory does not resolve the moral issue concerning the justice or utility of punishment. Nor does it eliminate the possibility of other motives for submitting to punishment voluntarily. Socrates in the *Crito* explains that he refuses to escape from the death penalty he thinks he does not deserve, in order to uphold the law which is itself just even though in his own case it has been unjustly applied by men. Henry David Thoreau, Mohandas K. Gandhi, and Martin Luther King, Jr. refuse to obey laws their consciences cannot approve, but do not resist the state's demand that they be punished for the law's infraction. In an unjust society, going to prison is for them the necessary fulfillment of the revolution begun by civil disobedience.