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Sect. V. Laws respecting Rewards and Punishments.

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S E C T. V.

Laws respecting REWARDS *and* PUNISHMENTS.

REflecting on the moral branch of our nature, qualifying us for society in a manner suited to our capacity, we cannot overlook the hand of our Maker; for means so finely adjusted to an important end, never happen by chance. It must however be acknowledged, that in many individuals, the principle of duty has not vigour nor authority sufficient to stem every tide of unruly passion: by the vigilance of some passions, we are taken unguarded; deluded by the sly insinuations of others; or overwhelmed with the stormy impetuosity of a third sort. Moral evil is thus introduced, and much wrong is done. This new scene suggests to us, that there must be some article still wanting, to complete the moral system. The means provided for directing us in the road of duty have been explained: but as in deviating from the road wrongs are committed, nothing hitherto has been said, about redressing such wrongs, nor about preventing the reiteration of them. To accomplish these important ends, there are added to the moral system, laws relative to rewards and punishments, and to reparation; of which in their order.

Many animals are qualified for society by instinct merely; such as beavers, sheep, monkeys, bees, rooks. But men are seldom led by instinct: their actions are commonly prompted by passions; of which there is an endless variety, social and selfish, benevolent and malevolent. And were every passion equally intitled to gratification,

fication, man would be utterly unqualified for society: he would be a ship without a rudder, obedient to every wind, and moving at random, without any ultimate destination. The faculty of reason would make no opposition: for were there no sense of wrong, it would be reasonable to gratify every desire that harms not ourselves: and to talk of punishment would be absurd; for punishment, in its very idea, implies some wrong that ought to be redressed. Hence the necessity of the moral sense, to qualify us for society: by instructing us in our duty, it renders us accountable for our conduct, and makes us susceptible of rewards and punishments. The moral sense fulfils another valuable purpose: it erects in man an unerring standard for the application and measure of rewards and punishments.

To complete the system of rewards and punishments, it is necessary that a provision be made, both of power and of willingness to reward and punish. The author of our nature hath provided amply for the former, by intitling every man to reward and punish as his native privilege. And he has provided for the latter, by a noted principle in our nature, prompting us to exercise the power. Impelled by that principle, we reward the virtuous with approbation and esteem, and punish the vicious with disapprobation and contempt. So prevalent is the principle, that we have great satisfaction in rewarding, and no less in punishing.

As to punishment in particular, an action done intentionally to produce mischief, is criminal, and merits punishment. Such an action, being disagreeable, raises my resentment, even where I have no connection with the person injured; and the principle under consideration impells me to chastise the delinquent with indignation and hatred. An injury done to myself raises my resentment to a higher tone: I am not satisfied with so slight a punishment as indignation and hatred: the author must by my hand suffer mischief, as great as he has made me suffer.

EVER



Even the most secret crime escapes not punishment. The delinquent is tortured with remorse: he even desires to be punished; sometimes so ardently, as himself to be the executioner. There cannot be imagined a contrivance more effectual, to deter one from vice; for remorse is itself a grievous punishment. Self-punishment goes still farther: every criminal, sensible that he ought to be punished, dreads punishment from others; and this dread, however smothered during prosperity, breaks out in adversity, or in depression of mind: his crime stares him in the face, and every accidental misfortune is in his disturbed imagination interpreted to be a punishment: “ And they said one to another, We are verily guilty concerning our brother, in that we saw the anguish of his soul, when he besought us; and we would not hear: therefore is this distress come upon us. And Reuben answered them, saying, Spake I not unto you, saying, Do not sin against the child; and ye would not hear? therefore behold also his blood is required (a) ” *

No

(a) Genesis xlii. 21.

* John Duke of Britany, commonly termed *the Good Duke*, illustrious for generosity, clemency, and piety, reigned forty-three years, wholly employ'd about the good of his subjects. He was succeeded by his eldest son Francis, a prince weak and suspicious, and consequently fit to be governed. Arthur of Montauban, in love with the wife of Gilles, brother to the Duke, persuaded the Duke that his brother was laying plots to dethrone him. Gilles being imprisoned, the Duke's best friends conjured him to pity his unhappy brother, who might be imprudent, but assuredly was innocent; but in vain. Gilles being prosecuted before the three estates of the province for high treason, was unanimously absolved; which irritated the Duke more and more. Arthur of Montauban artfully suggested to his master to try poison; which having miscarried, they next resolved to starve the prisoner to death. The unfortunate prince, through the bars of a window, cried aloud for bread; but the passengers durst not supply him. One poor woman only had courage more than once to slip some bread within the window. He charged

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No transgression of self-duty escapes punishment, more than transgression of duty to others. The punishments, tho' not the same, differ in degree more than in kind. Injustice is punished with remorse: impropriety with shame, which is remorse in a lower degree. Injustice raises indignation in the beholder, and so doth every flagrant impropriety: slighter improprieties receive a milder punishment, being rebuked with some degree of contempt, and commonly with derision (a).

So far we have been led in a beaten track; but in attempting to proceed, we are entangled in mazes and intricacies. An action well intended, may happen to produce no good; and an action ill intended, may happen to produce no mischief: a man overawed by fear, may be led to do mischief against his will; and a person, mistaking the standard of right and wrong, may be innocently led to do acts of injustice. By what rule, in such cases, are rewards and punishments to be apply'd? Ought a man to be rewarded when he does no good, or punished when he does no mischief: ought he to be punished for doing mischief against his will,

a priest, who had received his confession, to declare to the Duke, "That seeing justice was refused him in this world, he appealed to Heaven, and called upon the Duke to appear before the judgement-seat of God in forty days." The Duke and his favourite, amazed that the prince lived so long without nourishment, employ'd assassins to smother him with his bed-cloaths. The priest, in obedience to the orders he had received, presented himself before the Duke, and with a loud voice cited him in name of the deceased Lord Gilles to appear before God in forty days. Shame and remorse verified the prediction. The Duke was seized with a sudden terror; and the image of his brother, expiring by his orders, haunted him day and night. He decay'd daily without any marks of a regular disease, and died within the forty days in frightful agony.

See this subject further illustrated in the *Sketch Principles and Progress of Theology*, chap. 1.

(a) See *Elements of Criticism*, chap. 10.



or for doing mischief when he thinks he is acting innocently? These questions suggest a doubt, whether the standard of right and wrong be applicable to rewards and punishments.

We have seen that there is an invariable standard of right and wrong, which depends not in any degree on private opinion or conviction. By that standard, all pecuniary claims are judged, all claims of property, and, in a word, every demand founded on interest, not excepting reparation, as will afterward appear. But with respect to the moral characters of men, and with respect to rewards and punishments, a different standard is erected in the common sense of mankind, neither rigid nor inflexible; which is, the opinion that men have of their own actions. It is mentioned above, that a man is esteemed innocent in doing what he himself thinks right, and guilty in doing what he himself thinks wrong. In applying this standard to rewards and punishments, we reward those who in doing wrong are however convinced that they are innocent; and punish those who in doing right are however convinced that they are guilty*. Some, it is true, are so perverted by bad education, or by superstition, as to espouse numberless absurd tenets, contradictory to the standard of right and wrong; and yet such men are no exception from the general rule: if they act according to conscience, they are innocent, and safe against punishment, however wrong the action may be; and if they act against conscience, they are guilty and punishable, however right the action may be: it is abhorrent to every moral perception, that a guilty person be rewarded, or an innocent person punished. Further, if mischief be done contrary to Will, as where a man is

* Virtuous and vicious, innocent and guilty, signify qualities both of men and of their actions. Approbation and disapprobation, praise and blame, signify certain emotions or sentiments of those who see or contemplate men and their actions.

compelled



Sk. II. i. 5. compelled by fear, or by torture, to reveal the secrets of his party; he may be grieved for yielding to the weakness of his nature, contrary to his firmest resolves; but he has no check of conscience, and upon that account is not liable to punishment. And, lastly, in order that personal merit and demerit may not in any measure depend on chance, we are so constituted as to place innocence and guilt, not on the event, but on the intention of doing right or wrong; and accordingly, whatever be the event, a man is praised for an action well intended, and condemned for an action ill intended.

But what if a man intending a certain wrong, happen by accident to do a wrong he did not intend; as, for example, intending to rob a warren by shooting the rabbits, he accidentally wounds a child unseen behind a bush? The delinquent ought to be punished for intending to rob; and he is also subjected to repair the hurt done to the child: but he cannot be punished for the accidental wound; because our nature regulates punishment by the intention, and not by the event*.

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* During the infancy of nations, pecuniary compositions for crimes were universal; and during that long period, very little weight was laid upon intention. This proceeded from the cloudiness and obscurity of moral perceptions among barbarians, joined with the resemblance of pecuniary punishment to reparation. Where a man does mischief intentionally, or is *versans in illicito*, as expressed in the Roman law, he is justly bound to repair all the harm that ensues, however accidentally; and from the resemblance of pecuniary punishment to reparation, the rule was childishly extended to punishment. But this rule, so little consistent with moral principles, could not long subsist after pecuniary compositions gave place to corporal punishment; and accordingly, among civilized nations, the law of nature is restored, which prohibits punishment for any mischief that is not intentional. The English must be excepted, who, remarkably tenacious of their original laws and customs, preserve in force, even as to capital punishment, the above-mentioned rule that obtained among barbarians, when pecuniary compositions

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A crime against any primary virtue is attended with severe and never-failing punishment, more efficacious than any that have been invented to enforce municipal laws: on the other hand, the preserving primary virtues inviolate, is attended with little merit. The secondary virtues are directly opposite: the neglecting them is not attended with any punishment; but the practice of them is attended with illustrious rewards. Offices of undeserved kindness, returns of good for ill, generous toils and sufferings for our friends or for our country, are attended with consciousness of self-merit, and with universal praise and admiration; the highest rewards human nature is susceptible of.

From what is said, the following observation will occur: The pain of transgressing justice, fidelity, or any duty, is much greater than the pleasure of performing; but the pain of neglecting a generous action, or any secondary virtue, is as nothing, compared with the pleasure of performing. Among the vices opposite to the primary virtues, the most striking moral deformity is found; among the secondary virtues, the most striking moral beauty.

tions were in vigour. The following passage is from Hales (Pleas of the Crown, chap. 39.) "Regularly he that voluntarily and knowingly intends hurt to the person of a man, as for example to beat him, tho' he intend not death, yet if death ensues, it excuseth not from the guilt of murder, or manslaughter at least, as the circumstances of the case happen." And Foster, in his Crown-law, teaches the same doctrine, never once suspecting in it the least deviation from moral principles. "A shooteth at the poultry of B, and by accident killeth a man: if his intention was to steal the poultry, which must be collected from circumstances, it will be murder by reason of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manslaughter." (p. 259.)

S E C T.

