

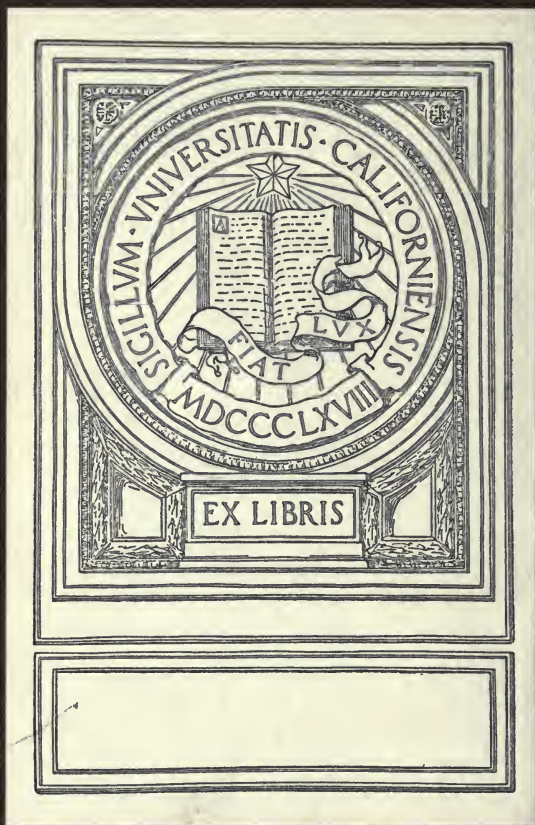
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JUSTICE.

A DISCOURSE TO THE STUDENTS OF THE

LAW DEPARTMENT

OF THE

INDIANA UNIVERSITY,

DELIVERED AT THEIR REQUEST, ON

Conferring upon the Graduating Class their Diplomas,

FEBRUARY 26, 1850.

BY **ANDREW WYLIE, D. D.**
PRESIDENT OF THE UNIVERSITY.

BLOOMINGTON:

PRINTED AT THE INDIANA TRIBUNE OFFICE.

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UNIVERSITY OF INDIANA, February 27th, 1850.

DEAR SIR:—On behalf of our fellow students we would respectfully solicit, for publication, a copy of your Discourse delivered before the Law Department, on the 26th instant, and would tender an acknowledgment of the obligation which you conferred upon us in accepting the invitation to address us on the occasion of our Commencement.

With feelings of the highest regard,

Your obedient servants,

W. S. HILLYER, }
S. K. WOLFE, } *Committee.*
ROBT. H. MILROY, }

Rev. ANDREW WYLIE, D. D.

UNIVERSITY OF INDIANA, February 27th, 1850.

GENTLEMEN:—The kind feelings, on your part, which have construed my consent to deliver to you a Discourse at the close of the past term into an "obligation conferred" upon you, are appreciated and reciprocated on mine. The copy which you ask is at your disposal. Please accept for yourselves, and for the other students whom you represent, assurances of that high regard, with which I am, gentlemen,

Your most obedient humble servant,

ANDREW WYLIE.

Messrs. W. S. HILLYER, }
S. K. WOLFE, } *Committee.*
ROBT. H. MILROY, }

DISCOURSE.

YOUNG GENTLEMEN :

The University is about to reward your diligence in the study of law, by conferring upon each of you a Diploma, certifying your attainments in legal science to be such as to qualify you for the practice of the law, the profession of which you have in view.

I could think of no subject more proper for the occasion than that of justice; for this is the end at which the law aims, and for the attainment of which courts of law and the legal profession have been provided as instruments. But I do not propose, in the following remarks, to discuss the subject of justice, but only to explain it. And, in attempting to do this, I do not expect to offer any thing which will be new to you, any thing which you have not already heard from the lips of the honorable Professors on whose instructions it has been your privilege to attend. But as it is not their province to treat of justice directly, the references to it which they may have made in the course of their lectures, it might not be useless to you, not only as lawyers, but as men and citizens, to have placed under your eye in something like a tabellary view, in language less technical than we naturally look for when subjects are discussed at large and drawn out into a system. To furnish such a representation of the body of justice itself as the references of law, like so many lines, verge towards and terminate in, is what I have had principally in view in the following remarks. Let it, however, be here understood, once for all, that justice reigns in a much wider and higher sphere than the authority of human laws. The exactness of her precepts, human laws may approximate, but they can never reach.

And if, in what I am about to say in reference to this matter, an idea should occur, here or there, which belongs properly to the province of law, and which the honorable Professors of the law have already communicated to you in an abler and better manner, they will not, I trust, charge me with having invaded their province with any felonious intent, but will have the goodness to consider that ideas, like sheep, have naturally a strong propensity to ramble, and that, as the field of morals which it is my official duty to cultivate, lies contiguous to that on which their labors are bestowed, it ought not to seem strange if, on this occasion, some ideas from their side of the dividing line should be found on my side of it. I find, in the Revised Statutes, chap. 53, sec. 22, it has been thus enacted that, "every person who shall alter the mark or brand of horse, mare or gelding, mule, ass, sheep, goat, neat cattle, or hog, of another, or mark and brand the same with intent to steal such horse, mare, gelding, mule, ass, sheep, goat, neat cattle, or hog, shall, if the value of the animal or animals so marked be five dollars or upwards, be subjected to the punishment inflicted on those guilty of GRAND larceny." As this discourse proceeds, its author is somewhat uneasy for fear of the penalty attached to this statute. No animal exhibited in it, can, he thinks, be valued at less than five dollars. His only hope of escape is founded on the plea, that the mark or brand has in no case been altered, but only a label attached shewing of what sort the creature is. So that if the label should not please, it may be detached, and let the thing run.

What, then, is justice? The word has several meanings; and what is true of it in one of these meanings may not be true of it in another. As, if I were speaking of a *file*, a carpenter would think of the instrument which he uses in sharpening his saw; the military captain would think of a number of soldiers stationed in a line; while to the lawyer the word would suggest the idea of some papers placed away in an orderly manner; and to the judge, that of a series of judicial decisions made according to some one principle. Every one sees that what would be true of a file in any one of these four senses, could hardly fail to be false in all the remaining three. Not one in ten of those who

pronounce the word door, several times almost every day of their lives, is aware that, besides its numerous metaphorical meanings, it signifies literally two things, which resemble each other in no respect but one. The opening in the wall and the shutter which closes it, are, in truth, very unlike in every thing, but a similarity of dimensions.

The first distinction we have to point out in the things which the word justice denotes, is that of objective and subjective. The objective is that which the mind contemplates; the subjective is a virtue existing in the mind itself. The objective and the subjective, in Greek, which is the most beautiful and flexible of languages, are denoted by two different names, but cognate. X Dike is objective justice, to which our word right, in one of its many senses, corresponds. Dikaiousune is subjective justice, to which our word righteousness corresponds. But here, unfortunately, our stock of paronymous words, derived from right, runs out, while in Greek the root Dike is found in Judge, (Dikastes;) in To Judge, (Dikadzo;) in Tribunal, (Dikasterion;) and many more.

For the sake of fixing in the mind this very important distinction between the objective and the subjective, think of the word sight, as it occurs in the following sentence: A hunter, coming suddenly upon a herd of deer—a gratifying sight—taking sight at one of them, fired; and the powder happening to flash into one of his eyes, injured it so that, for a while he thought he should lose the sight of it altogether. Here it will be perceived that the word occurs three different times; and in each has a different meaning. In the first place, it is objective; in the second and third it is subjective, with this difference, that, in the third, it denotes the power of sight, and in the second, an exertion of that power.

The definition of justice, so often quoted from Justinian, is a definition of subjective justice. “Constans et perpetua voluntas suum cuique tribuendi,” (*a firm and invariable determination to give to every one his own,*) tells us what the *the virtue* called justice is. But it is a definition which gives us no valuable information as to what *justice itself* is. It is “suum,” one’s own.

But what *is that* which makes any thing mine, or yours, or any one's? Were the definition unexceptionable, the answer to this question would be the same as the answer to the question, what is justice? But it is manifest that the same answer will not suit in both cases. The truth is, that justice gives no man a claim to any thing but one, against God,* and to but very few things as against his fellow-men—much fewer certainly than is generally imagined.

To begin then, as is natural, with objective justice, and with that species of it which is called commutative: this, as the word commutative intimates, takes place in the case when, in the intercourse of human transactions, an exchange of values is made on terms of perfect reciprocity; so that what is given is exactly equal to what is received. All values of things exchangeable may be reduced to labor as the effective element. Let us consider labor as measured by time; and let the equation be, a day's work for a day's work. There are thousands of cases in which men are benefitted alike by such an exchange. Two men can do much more, of some kinds of work, in one day, by uniting their efforts, than either of them could do, by himself, in two days: as, for instance, in sawing timber with a cross-cut saw, piling logs, or the like. And there are some kinds of work which require the joint efforts of many men. I will help you to saw logs to-day, if you will help me to-morrow. It is a fair bargain. But if, after fulfilling my part of it, you refuse to fulfill yours, you have received the value of a day's labor for which you have given nothing at all in exchange. This is a violation of commutative justice. But there is, in the case, an act of injustice of quite a different kind, which will be noticed in its proper connexion. But if you should put off the performance of your part of the bargain, till the days become shorter by an hour, then you have, besides the injustice of the delay, cheated me out of an hour's work. Or, if, in performing your day's work, you do it lazily, or carelessly, watching the sun more than

* On the supposition that man were innocent, he would have a claim on his Maker that his existence should be such as not to be worse than non-existence. This is all the right which an innocent creature can claim of the *justice* of its Maker. Whatever more than this falls to its lot, is a gratuity originating not in justice but goodness.

the business that you seem to be engaged in, or putting into your strokes nothing of that hearty good will and vigor of effort which a man exerts who wishes to do the best he can, you have returned less than you received, and, to that amount, you have been guilty of injustice.

The four cases of contracts distinguished under the formulas, "do ut des, do ut facias, facio ut des, facio ut facias," may all be reduced to this simple principle of work for work. For, when you give a dollar for a day's work, you yourself must have worked a day for that dollar—on the supposition that your work is equal in value to that which you obtain for it. Or, if you work a day and get a dollar for it, the dollar is the same as a day's work; since, on the same supposition, the man for whom you worked did a day's work to procure the dollar. Or, if you go to the store and buy with the dollar ten pounds of coffee, the coffee must have cost a day's labor, expended by different hands in its production and conveyance from the place where it grew to the store where you bought it. The fragments of time spent in furnishing the commodity to your hand, taken together, amount to just one day. If more time had been spent in producing the ten pounds of coffee, you would have had to pay more; and if less, less. Whatever arts in business are resorted to for the purpose of turning the scale from its equipoise either way, are dishonest and in violation of commutative justice.

To simplify the problem, I have supposed labor in all cases to be equal in quality. But this is not the case. A lawyer is paid more for services rendered in one hour, than the day laborer earns in a month. Other cases might be mentioned, in which the inequality is still greater: this arises from a difference in the *quality* of labor. Another element in the problem must also be considered: capital.

He who works with the aid of capital, has a great advantage over one who works without it. His gains go on increasing as his capital increases. This is so well understood that it needs no illustration.

Is the difference in these two cases *just*? It is of no use to conceal what facts declare on this subject, and that is this, that,

in the opinion of that class who have *not* the aid of capital, and who cannot perform any but the lowest kinds of labor—lowest, because they require *the least skill*—the difference is *not* just. And as the difference is against them, they are not satisfied with the present state of things. but are looking for some change which will put them on a level with the highest. And there are not wanting those who, for their own ambitious ends, are ever ministering to the delusion of these simple people.

This is not the place nor the time for shewing that the notions by which they are captivated, are really a delusion; yet, if one of this class were to come up here, and frankly answer me a few simple questions, after the Socratic method, it appears to me he would soon be convinced of his error, or at least silenced.

“Do you do a day’s work for the same wages,” I would ask him, “when you eat at your own table, and when at his for whom you work?” “I have a third more in the first case,” he would say. “Why a third more?” I would ask. “For my boarding,” he would reply. “Well, my good fellow,” I would say, “your boarding, that is to say, the eatables you have laid up, are *your capital*, or a part of it, and here, you see that, by means of it, you earn more, by one third, than without it you could. And, since these eatables cost labor, it is but just that you, who bought them by your labor, should have the benefit of it: is it not just?” “Certainly,” he would reply. “Your answer is right,” I would say, “and it is right on a principle which will apply with equal force to all cases in which the productive power of capital, by union with labor, increases the effectiveness of the labor.”

As to the difference which arises from the difference of one kind of labor compared with another in regard to quality, the rule, that *the higher quality should command the higher price*, may be proved to be just, upon the the principle that a greater amount of labor is always concentrated for the production of the higher quality. The lawyer’s work before referred to, for example, is not only that which he employs through the voice, pen, ink and paper, as the instruments, but that also which he performed through a series of many days, and even years, in

acquiring the skill necessary to enable him to do justice to the cause of his client. His *skill* is, in fact, his capital. And if there be any skill of any useful sort which comes to man in some preternatural way, and not by labor, bodily or mental, with regard to such the maxim holds, which was applied in the case of the Apostles in reference to the exercise of their miraculous gifts, "freely ye have received, freely give." The modern boaster, who claims to be heard, in the exercise of a vocation for which he has been prepared, without learning philosophy, or any thing which implies labor on his part, is unjust, when he receives *any thing* by way of compensation for the exercise of his talent. For compensation supposes two things, one weighed against the other in the even scales of a just balance. But here there is nothing to be compensated.

The time allows me to pursue this part of my subject no further. One very general remark, however, seems necessary to prevent a misunderstanding of what has been said. The remark is this, that commutative justice can never be secured by the strictest adherence to any code of laws which human wisdom can devise. The complexity of law serves often no better purpose than to form a nest, in which the serpent of injustice may hide itself the more securely. Hence the maxim, "The rigor of law is the height of injustice;" "Summum jus summa injuria."

The Schoolmen had a saying, that "of contraries the knowledge is the same." But the task here would be endless. In the fluctuation and uncertainty of human affairs, injustice is ever assuming new forms. The forms that are possible, are innumerable. The history of the world is made up of them, and yet one part in a million has not been recorded. One of these unrecorded instances I shall here mention by way of specimen. A rich landlord, no matter where, rented to a poor man a poor farm. His tenant was bound by contract to pay for the rent so many bushels of grain. The season was unpropitious, and the utmost care and labor of the tenant, expended on the over-worked and ungrateful soil, failed to raise from it the stipulated number of bushels; so that he was compelled to buy grain

to pay his rent. Was this just? It was according to law. And there is no principle in jurisprudence more sacred than that which maintains the inviolability of contracts.

Hence, if we speak of subjective justice, justice as a living virtue, justice in the heart and character of a man, we must suppose him to recognize, with pious faith and reverence, that higher and purer law, of which Hooker pronounced the well known eulogium, "Her seat is the bosom of God; her voice, the harmony of the universe. None so high as to be above her control: none so low as to be beneath her care."

The next species of justice which I shall notice, is in its nature different, essentially different, in my humble judgment, from commutative justice—under which, however, it is sometimes ranked. And this error in classification has, if I am not mistaken, furnished many an occasion for criminal conduct. The justice to which I now refer, is, at some one point or other, always felt as a ligature, which, as men try to break it, galls and frets them the more. They hate it, therefore; and, whenever they can unite in sufficient numbers to effect their purpose, they never fail to break its bands assunder and cast its cords away from them. I speak of the unprincipled. A just man loves justice. *He* is not galled by it, for it fits him. "He puts on righteousness and it clothes him: his judgment is as a robe and diadem."

The end of that justice of which I am now speaking, is to restrict men in their liberty.

If, in the phrase, "*suum cuique*"—what is every one's own—is to be included the right to use it as every one pleases—if a man may do what he will with his own—then I maintain that no man has any thing at all of that sort. No man has any such rights, as against God, to any part of his own individual self; and no man has any such right, unless under due restrictions and limitations, as against his fellow man. The liberty which we prize so dearly, is not the liberty to do what we please with our own. Such liberty is not for man. With reverence I speak it—it is not for God. The Eternal God whom we adore, is bound and restricted in the exercise of his omnipotence by the

holy bands of impartial justice. The liberty which belongs to Him as the sovereign of the universe, respects the exercise of beneficence, not justice.

A man owns his limbs. That machine—made up of a complication of levers, which we call bones; hinges, which we call joints; pullies, which we call muscles—and so forth—that machine which the Creator has formed and put into the hands of the soul—to be moved by it—and by moving which the soul can move other things in the surrounding world of matter; but not otherwise—that machine, a certain soul, burning with the “*auri sacra fames*,” the accursed love of gold, puts in motion—in the darkness of night—and, with it firmly grasping, in that part of it called the hand, an instrument of steel, commits murder—*kills* the sleeping owner of the gold—that being, in this soul’s way of thinking, the shortest way to get at the possession of the gold!

The slanderer moves his tongue—this being a part of himself—or his fingers, with a pen in them, or a printing press, with the view of assailing reputation in the use of detraction, calumny and lies—prompted by envy. Seduction embraces in its serpent folds the victim which it means to devour.

The spirit of error corrupts the moral sentiments of the community, that it may exercise a despotic rule over those whom it seeks to beguile; and thus commits an injury, which goes like a virulent poison to the seat of that which may be truly called the life of life, infecting the spiritual part in man’s nature.

Besides all those exorbitant passions, which prompt men to transgress the bounds of justice, there is what we may call a passion for mischief, a delight in wrong doing; not for the sake of any advantage that may be gained by it, but from a motive which to me is inexplicable. I have seen persons who seemed to take I know not what delight in tormenting little animals, so far below them in the scale of being as to place them in a region where the human sympathies do not act with very great force. But suppose the case of the laborious ox patiently toiling at the plough, set upon by dogs urged on by some instigators, men or boys, to worry him, to tear his sides, to fix their fangs in his nostrils, exerting all their force to bring him down, w^{ill}

at the same time the owner, indifferent to his sufferings, is goading him on from behind—could you account for the behavior of such wretches on any known principles of human nature? They do it for sport, they say. Hard as that is to believe, we must believe it; since there is no other imaginable motive for such conduct. And if this be so, then there is such a thing as wanton mischief—gratuitous wickedness—injustice done for the love of the thing. But, if, instead of the ox in this picture, we suppose human beings, men and women, especially women—are there in human shape beings who could be guilty of such cruelty and injustice!

Now, what I have principally in view in these remarks, is to show that, in all that large and multifarious class of cases in which liberty of action is carried beyond the limits of justice by a criminal invasion of the rights of others, to which class belong the instances I have adduced, and, for brevity's sake, represented in figure, the offender is to be judged on other principles than those which belong to commutative justice. And when we transfer the maxims which obtain in cases coming under the head of commutative justice to cases which belong to that species of justice which we are now considering, we introduce confusion into our ideas; and are in danger also of introducing immorality into our conduct. If it is a crime in me to shoot at you with an intent to kill, how does it mend the matter, I would ask, if from the sphere of commutative justice I introduce into the case the principle of reciprocity, and allow you at the same time to shoot at me with the intent to kill?

If a man does me a wrong to a certain amount, and I injure him as much in return, does the reciprocity do away the injustice, the acts destroying each other, like opposite signs in Algebra, or equal weights in opposite scales? Or, are there not rather two acts of injustice in the case, each of which is to be estimated by itself? No one, I suppose, would contend that if a man propagates a lie to my injury, I would be doing justly to propagate another lie which should do him an injury to the same amount. If an angry man strikes me a blow, does that give me the right to give back the blow with equal force? Not,

unless, by so doing, I could save myself the infliction of another blow; which is a consideration of expediency, not of justice.

In short, the whole doctrine of retaliation, which was almost universally received and practiced in the world before the Advent of Christ, could hardly have been sanctioned by the gravest philosophers, both of ancient and modern times, had they not confounded together these two kinds of justice, which it is the object of these remarks to distinguish. In the one, a perfect reciprocity is the rule of justice; in the other it is not. The one concerns the rights of property. The other, personal rights. Violations of the one may produce no pain. Violations of the other do inflict pain and suffering. Acts of injustice in cases of the one sort, may proceed from ignorance. The cases which fall under the other, proceed from some malignant passion, such as envy, or revenge, jealousy, or suspicion; or from some exorbitant desire, such as ambition, or avarice; or from some corrupt moral principle, such as fanaticism, or atheism. The one commands; the the other prohibits. The one has for its basis the laws of trade and the frame of society, both of which are founded on expediency. The other is nothing else than that portion of the unwritten eternal law of right, which bounds the freedom of human action by the obligation to respect the rights of others. Injuries against the one may be valued in money; those against the other, money does not measure. It may, therefore, be called inhibitory justice. In your law books the one is called civil, the other criminal.

There is another species of justice, which deserves to be mentioned by itself, (for to mention it is all that I can now do,) because it does not, like commutative justice, suppose the exchange of one thing for another, nor are its requisitions fulfilled by merely abstaining from injury, as is the case with those of inhibitory justice. It is this species of justice by which parents are bound to take care of their children. The children do nothing to bring the parents under obligations to them. The obligations begin with the existence of the children, and cease not till the children are able to take care of themselves.

This may be called natural justice. In the philosophy of

Greece and Rome its claims were extended so as to include all which in modern systems come under the head of imperfect rights, and which we refer, not to justice, but to benevolence and mercy. Under the head of justice, they comprehended *all* the duties that man owes to his fellow man. Benevolence was not reckoned among the cardinal virtues; not because, as some have supposed, they took no account of it, but because they included it under the head of justice.

The only other species of justice which remains to be noticed, is what may be denominated rectoral justice. It is that which belongs to government. One way of considering it, is to regard it as belonging, originally, and exclusively, and inalienably, to the Supreme Ruler of the universe, and as being derived from Him to "the powers that be" on earth, to whom he has been pleased to delegate such portion of it as is necessary for the management of the affairs belonging to their office. The other way of considering it, is as originating with the people, by whom such portion of it is committed to their representatives as may be necessary for the purposes of carrying into effect the will of the people.

Whether either, or neither of these theories be the true one, or whether both may not contain a mixture of truth and error, it would be foreign from the purpose now to enquire.

Whatever theory of government men may choose, all I suppose, would agree in this, that every government must have the power to reward and to punish. All, it is likely, would agree, further, that, in rewarding and punishing, every government ought to regard justice as the measure.

But in going further than these two points, we meet with a great diversity in men's opinions, which, I am inclined to think, is made to seem still greater by their different ways of expressing their opinions in words and actions.

In these cases, also, as in many others, it sometimes happens that the opinions which people express in words, in actions they deny.

As to that part of justice which consists in rewarding, governments have differed exceedingly.

The ancient Athenians, instead of rewarding their most distinguished citizens, banished them. The ostracism, by which they drove from among them some who had performed the most illustrious services for the state, can only be accounted for by referring it to the extreme jealousy with which they guarded their liberties. To punish a man, not for any thing actually done by him, or even intended to be done, but for something which possibly he may do hereafter, is so flagrant a violation of every principle of justice, that we can have no very exalted opinion of the moral virtue of the people who could admit it into their policy.

The government of Great Britain presents an example of what, according to the notions commonly received among us, seems to carry the rewarding power into the opposite extreme, remunerating services done to the state by high offices, honors and emoluments, descending to the posterity of the hero, or the man of science, by whom they are rendered. A small state surrounded by enemies, must stimulate her citizens by high rewards, to excite them to deeds of high achievement. And, if ever the time shall come when the spirit of discord, rending assunder the bands which now unite these States, shall put them, in regard to each other, in relations similar to those which obtained in that condition of things in which the government of Great Britain and the other governments of Europe had their origin, that same policy will of necessity be resorted to on this side the Atlantic.

When the merit of the citizen consists simply in not transgressing the laws, his country rewards him sufficiently in simply not punishing him. His obedience is negative, and so is his recompense. "Non hominem occidi." "Non pasces in cruce corvos."—HORACE, EPIST. XVI.

As to punishments, the nature of that justice by which they are inflicted and the ends at which it aims, determine their character.

Punishments are disciplinary, when they are inflicted with the view of working a reformation on the offender; exemplary, when the intention is to deter others from following his

example; condign, when the punishment is in proportion to the atrocity of his offence; and vindicatory, when this proportion is maintained by the inflicting upon him an amount of suffering adequate to *the moral turpitude* of the offence.

In disciplinary and exemplary punishments, justice is no further concerned than in guarding the culprit against too heavy infliction. If it falls short of the proper measure, that is not a matter for justice to settle, or to care about, but expediency. But, in condign punishment, justice is concerned that the punishment be not *less* than the offence, as well as that it be not greater.

But when we speak of less or greater in this case, the reference is to that in the crime which I have called its atrocity, by which I mean that in the character of a crime by which it produces injury, pain, grief, disturbance to man. To this, which is a moral estimation of a crime *from its effects*, legislators very properly add other considerations drawn from expediency, such as the facility with which the crime may be committed, and the danger of its becoming prevalent, proportioning the punishment to these. But, in vindicatory punishment, justice looks into the heart of the offender, and, on discerning the amount of moral turpitude there, so far forth as that turpitude has gone out and exerted itself in action, measures out to him an answerable amount of punishment, that is, pain which shall be equal, in intensity and duration, to the moral turpitude.

The human judge sees only the atrocity, the outward visage of the crime, and *conjectures* its turpitude, its inward character, from that. The atrocity is that alone which human justice can reach. The turpitude, it is true, is in most cases equal to the atrocity; not always. A hideous face is sometimes seen on a person who is found, on closer acquaintance, not to be what he seems, "a cannibal savage:" and a plausible face often hides a black heart. And it is somewhat so in actions. The omniscient God alone, who cannot be imposed upon by false testimony, or false appearance, is competent to the task of inflicting vindicatory punishment.

If it is asked whether justice requires *Him* to inflict it in all

cases, I promptly answer, no. Reason could not, perhaps, decide the point; but the Gospel decides it in favor of the offender, who repents and truly believes that holy Gospel. But if he should not repent? Ask me not what then! From no quarter of the sky, from no point of the compass on earth, from no intimation of the conscious spirit within, can an omen be drawn in favor of *his* prospects who is unjust.

The rectoral justice of the Most High may not require Him to punish moral turpitude for its own sake; since in that case He must punish it wherever it is found; so that there would be no place for pardon to the penitent; and yet the laws of his moral government may be such as that misery may flow from an infraction of them in a natural way, as we see it does in the case of physical laws—not immediately, for that would be to change the condition of human life from a state of probation into a state of retribution, but in some distant period in the existence of the transgressor.

In opposition to this reasoning I am aware that it will be alledged, that the doctrine of atonement, which lies at the foundation of the Christian's Creed, is constructed on the necessity, that God should punish moral turpitude on its own account, and in all cases, and that we, as transgressors, can look for pardon only on the ground that our moral turpitude has been imputed to another, our blessed Savior, and punished in him.* To which I reply that moral turpitude inheres in the person and cannot be transferred by imputation, or in any other way; and that, as moral turpitude is the ground of punishment, the Savior was not *punished*, and could not in justice be punished for transgression, since he was innocent. Punishment is a correlative term, and refers to moral turpitude. Each supposes each: as a ruler supposes a subject; and a subject, a ruler. The innocent may be *made to suffer* for the guilty; but not *punished*. But here again it is assumed that for the innocent to suffer supposes guilt under the just government of God, and accordingly

*The principle of *sacrificial* substitution, on which the scriptural doctrine of atonement is based, frees that doctrine from the absurd consequences with which the theory of a *moral* substitution is embarrassed:

we are told that the sufferings of infants prove that they are guilty. Original sin I do not deny; but this assumption I am constrained to deny. The justice of God does *not* require that He exempt the innocent from suffering. It only requires that He make existence in some degree a blessing. Now, if to one of his creatures He gives two degrees of enjoyment, filling up to the full its two capacities; and to another gives ten capacities, filling six of them with enjoyment, while four are full of pain: these two creatures are equal in point of happiness, though the one is exempted from suffering and the other not. The doctrine of atonement does not require in its vindication that the teachings of natural religion should be contradicted. "Shall not the Judge of all the earth do right?"

These distinctions of justice into commutative, inhibitory, natural and rectoral, are not, it appears to me, distinctions without a difference. Nor are they useless. No little mischief is done by confounding them; as did time permit, might be easily shown. Take the maxim, for instance, "*Volenti non fit injuria*"—that is, injustice is not done to one who consents—and you will find that it applies only to cases in which commutative justice is concerned, but not at all to cases coming under any of the other sorts of justice which have been specified. If applied to cases of inhibitory justice, it is in fact a most false and pernicious maxim, and justifies the conduct of those, who, for sake of dishonest gain, furnish the intoxicating cup to such as are willing to receive it, and that whole tribe of unjust persons, the very pests and plague of society, who allure to certain ruin all such simple ones as by their plausible arts they can captivate.

On the other hand, it must be observed that the distinctions which have been pointed out, do not cut the great sphere of justice by a sheer division into separate sections, so that nothing shall appear in any two of them which belongs to the same act. Such divisions can rarely be made in moral subjects.—For example, it was remarked under the head of commutative justice, that if I gave to a man a day's work, relying on his promise to give me a day's work in return, and he should not

do it, I would be injured in property to that amount, but that there would be in the case an injury of another kind, which would come under our notice in its proper connexion: and that is here. The injury consists in the pain I should be compelled to feel in looking at the falseness of the man, brought home to me and thrust upon my attention in a way which should force me to look at it for a time. There is in it also a violation of natural justice and the divine law.

Will you, young gentlemen, allow me in concluding these my remarks, to say to you plainly that the profession of the law which you have chosen, though necessary and honorable, will expose you to temptations, from which nothing can so well preserve you as that living sense of justice in the heart, which is the foundation of whatever is estimable in the character of a virtuous man. Plato, in his "Republic," has some noble as well as some curious thoughts on this point, which, did time permit, I should like to present to you. He begins his speculations by inspecting the human constitution, to see if he can discover in it what justice is, but he finds himself at a loss, as a person would be who should try to read a piece of writing in which the letters are so very small as not to be easily traced by the sharpest eye, and throwing it away, turns to another piece of writing in which the words and letters are the same as in the first, but large and full. This is his "Commonwealth," the constitution of which is the exact counterpart of that which nature has established in the individual man.

In the first part of his subject he recites the legend of the shepherd Gyges, which Cicero quotes somewhere in his "Offices." The legend is briefly this: "Gyges goes down into a chasm which an earthquake had opened far under ground, at the bottom of which he finds a dead body of a man, and on one of his fingers a brilliant ring. This he pulls off and puts it on his own finger. On coming out again and joining the company of his fellow-shepherds, he finds that, upon turning inwards the signet of the ring, he becomes invisible. Availing himself of this new power, he makes his way to the throne of the kingdom by debauching the queen and murdering the king."

The moral of the legend is this, that no man is just who would, were he the owner of such a ring, do an unjust action. Plato, however, goes further, and supposes the world to be such, that, by practising injustice, a man should infallibly gain all advantages, wealth and power, and honor, and the reputation of being just, not only among men, but with the gods themselves, whom he supposes to be gained over to favor this unjust man by his show of piety; so that he is, by the gifts of fortune and the favor of men and the gods, put into possession of the greatest happiness here and hereafter; and all this, as the fruits of injustice: while, on the contrary, the just man has to encounter the opposite of all these good things, and in addition to all his sufferings, the hatred of men and of the gods. After stating such an hypothesis, which, as you see, leaves to the just man no other motive to the practice of justice but the love of justice itself, while all conceivable inducements are cast in the opposite scale, Plato was evidently on the point of pronouncing the same decision as before on the hypothesis of the ring. But he disappoints his reader, and starts back at the sight of what his imagination had raised, not finding it in his heart to subject his just man to so severe a test. He shrinks aghast from the monster of his own fancy's creation, and covers his retreat by alledging, as I have before stated, that, in the tablet he is attempting to read, the letters are too minute and the strokes too fine to impress themselves distinctly upon his vision.

Young gentlemen, I will not urge upon you so hard an hypothesis as this of Plato. I will only suppose justice, and weakness, and no fee on the one side—and, if you please, popular odium on the same side:—and on the other, popular favor, applause and a rich fee:—such is often the problem which practically meets us, poor mortals. Happy he who in looking back over his course through life, can point to decision after decision passed in the council chamber of the heart in favor of justice, while interest plead, pleasure solicited, and fear threatened, on the opposite side: still more happy, if no decision whatever, in matters of moment, can be found possessing the contrary character; righteousness within, which is subjective justice, reigning

victorious in all the struggles appointed for the exercise and trial of his virtue on the theatre of life. And here we see the connexion between morals and religion. For human virtue being alone cannot sustain itself; but must call to its aid faith, an auxiliary from heaven; and hope and fear, the children of faith.

In concluding this discourse on the nature of justice, a sense of justice to you, young gentlemen, constrains me to say, that your close application to study and your correct and gentlemanly deportment, which has frequently been the subject of remark privately among the members of the Faculty, and which demands this more public commendation, encourages the expectation that your influence hereafter, in your professional course, will be such as to promote the best interests, not only of those portions of the community where you may respectively reside, but of this commonwealth and the nation at large.

Let not this expectation be disappointed. And remember that to this end it will be necessary for you to devote your whole care and study to improve yourselves in every attribute which belongs to the character of a good man and a good lawyer.

Let no low dishonorable practice of the pettifogger, seeking to promote litigation that he may procure a fee; no dishonest arts of the demagogue, flattering the people that he may rise into office by their votes; no indecencies or licentiousness of the tongue ever disgrace your professional course. Be not wanting in fidelity and zeal in the cause of your client, but let not your zeal transport you beyond the bounds of truth, justice or decorum. And let no irregularities in your habits of private life, draw off your mind from those pursuits of knowledge and virtue which will dignify and adorn your profession, and extend your sphere of usefulness in the world. Above all, cherish in your hearts reverence for the Almighty Ruler of the universe, with whom perfect justice dwells, and let no false shame, nor fear of the sneers of the infidel, nor press of business, prevent you from studying His Book of laws and observing them in practice, remembering that a sense of duty to Him is the best preservative of justice, and the firmest basis of good order among men.

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