

TEXTE J.F. STEPHEN

The punishment of common crimes, the gross forms of force and fraud, is no doubt ambiguous. It may be justified on the principle of self-protection, and apart from any question as to their moral character. It is not, however, difficult to show that these acts have in fact been forbidden and subjected to punishment not only because they are dangerous to society, and so ought to be prevented, but also for the sake of gratifying the feeling of hatred—call it revenge, resentment, or what you will—which the contemplation of such conduct excites in healthily constituted minds. If this can be shown, it will follow that criminal law is in the nature of a persecution of the grosser forms of vice, and an emphatic assertion of the principle that the feeling of hatred and the desire of vengeance above-mentioned are important elements of human nature which ought in such cases to be satisfied in a regular public and legal manner.

The strongest of all proofs of this is to be found in the principles universally admitted and acted upon as regulating the amount of punishment. If vengeance affects, and ought to affect, the amount of punishment, every circumstance which aggravates or extenuates the wickedness of an act will operate in aggravation or diminution of punishment. If the object of legal punishment is simply the prevention of specific acts, this will not be the case. Circumstances which extenuate the wickedness of the crime will often operate in aggravation of punishment. If, as I maintain, both objects must be kept in view, such circumstances will operate in different ways according to the nature of the case.

A judge has before him two criminals, one of whom appears, from the circumstances of the case, to be ignorant and depraved, and to have given way to very strong temptation, under the influence of the other, who is a man of rank and education, and who committed the offence of which both are convicted under comparatively slight temptation. I will venture to say that if he made any difference between them at all every judge on the English bench would give the first man a lighter sentence than the second.

James Fitzjames Stephen, *Liberty, Equality, Fraternity*, “The Doctrine of Liberty in its Application to Morals”, 1874.