

eclipses and swallows up the mischief they produce in virtue of their class-1 properties.

(10) There may be sufficient ground for punishing them without proof that they have caused, or are about to cause, any particular mischief to any particular individual. In this they are unlike private offences, but like semi-public ones. Here, as with semi-public offences, the extent of the mischief makes up for the uncertainty of it.

(11) In no case can satisfaction given to any individual victim be a sufficient ground for remitting punishment. In this they are unlike private offences but like semi-public ones.

66. Class 5, multiform or anomalous offences, containing offences by **falsehood** and offences concerning **trust**.

(1) Taken collectively, in the groups marked out by their

popular labels, they can't be subjected to any systematic classification based on the mischief of the offence.

(2) But they can be put into sub-groups that *can* be further classified in that way.

(3) These sub-groups will naturally and easily rank under the groups of the various preceding classes of this system.

(4) Each of the two great divisions of this class spreads itself in that way over all the preceding classes.

(5) In some kinds of class-5 offence the defining characteristic of the kind is a circumstance of the act, so that if the act occurred without this circumstance it would not have been an offence (e.g. offences by falsehood in the case of defraudment [Bentham's phrase].) In others that same circumstance comes in only as something making the offence worse; the offence would still be an offence without it (e.g. offences by falsehood in the case of simple corporeal injuries).

The section you are to read begins on the next page. Here you can see that it is part of a chapter and Penal Jurisprudence (meaning law that prescribes a penalty).

Chapter 17: The Boundary around Penal Jurisprudence

1. Borderline between private ethics and the art of legislation

1. So much for the classification of offences in general. Now an offence is an act that is prohibited (or an act whose contrary is commanded) by the law; and what role can the law have except prohibiting and commanding? That

might seem to imply that if we settled what it's proper to do regarding offences, we would thereby have settled everything that it's proper to do in the law. But everyone knows that the art of legislation has two branches: •the criminal or penal branch that concerns the method of dealing with offences, and •the civil branch.¹ Between these two branches there has to be a very intimate connection—so intimate that the

¹ What about the constitutional branch? you'll want to ask. I might reply that its content could without much violence be distributed under the two other headings. But my memory tells me that when I wrote this work the constitutional branch—despite its importance and its capacity to stand alone—had scarcely presented itself to my view as a distinct branch; the thread of my inquiries had not yet reached it. This omission is to some extent made good in the supplementary material starting on page 152.

line between them is not easy to draw. The same thing holds, in some degree, for the line marking off the whole business of •legislation (civil and penal branches together) and that of •private ethics. I have to give some idea of these two borderlines, so as to avoid •neglecting topics that I should treat and •treating topics that don't belong in my area.



In the course of enquiring into the boundary between the civil and penal branches of law, I'll have to settle a number of points that might at first sight seem not be connected with the main question:

- What sort of thing is a law?
- What parts does it have?
- What has to be in it for it to be complete?
- How do the laws of procedure connect with the rest of the law?

All these must be answered before any satisfactory answer can be given to the main question of this section.

Nor is this the questions' only use. Obviously, the notion of a complete law must be fixed before the legislator can know what he has to do and when his work is done.



2. Ethics at large may be defined as *the art of directing men's actions to the production of the greatest possible quantity of happiness for those whose interests are in view.*

3. What actions can a man have the power to direct? They must be either his own actions or those of other agents. Ethics, considered as the art of directing a man's own actions, may be called *the art of self-government* or *private ethics*.

4. What other agents are there that •can be affected by man's actions and •are capable of happiness? They are of two sorts:

- Other human beings, 'persons'.
- Other animals, which—because their interests were neglected by the insensibility of the ancient jurists—are downgraded into the class of *things*.



·START OF FOOTNOTE·

The interests of the non-human part of the animal creation seem to have met with some attention in the Hindu and Mahometan religions. Why **haven't** they been attended to as fully as the interests of human creatures (allowance made for differences of sensibility)? Because existing laws have been the work of mutual fear, a feeling which the less rational animals haven't had the same means as man has for turning to account. Why **oughtn't** they? No reason can be given. There is very good reason why we should be allowed to **eat** such non-human animals as we like to eat: we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery that we have; and the death they suffer at our hands usually is and always could be speedier and thus less painful than what would await them in the inevitable course of nature. There is also very good reason why we should be allowed to **kill** ones that attack us: we would be the worse for their living, and they are not the worse of being dead.

But is there any reason why we should be allowed to **torment** them? None that I can see. Are there any reasons why we should *not* be allowed to torment them? Yes, several. Calling people 'slaves' and giving them the legal status that the lower animals are given in England, for example—there was a time when that was the situation of a majority of the human species, and I grieve to say in many places that time is still with us. The day may come when the non-human part of the animal creation will acquire the rights that never could have been withheld from them except by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the whims of a tormentor. Perhaps it will some day be recognised that the number of legs, the hairiness of the skin, or the possession of a tail,

are equally insufficient reasons for abandoning to the same fate a creature that can *feel*? What else could be used to draw the line? Is it the faculty of reason or the possession of language? But a full-grown horse or dog is incomparably more rational and conversable than an infant of a day, or a week, or even a month old. Even if that were not so, what difference would that make? The question is not *Can they reason?* or *Can they talk?* but *Can they suffer?*

·END OF FOOTNOTE·

As for other human beings, the art of directing their actions to the above end is what we mean by ‘the art of government’, or by the principle of utility that’s what we *ought to* mean. The measures taken by government divide into

- legislation—permanent measures, and
- administration—temporary measures determined by the occurrences of the day.

5. . . . The art of government in directing the actions of persons who aren’t yet adult may be called the art of *education*. When this is entrusted to those who are the most willing and best able to take it on, because of some private relationship, it can be called the art of *private education*; when done by those whose role it is to superintend the conduct of the whole community, it can be called the art of *public education*.

6. As for ethics in general, a man’s happiness will depend •first on the parts of his behaviour that affect the interests of himself alone, and •next on the parts of it that may affect the happiness of people around him. Insofar as his happiness depends on that first part, it is said to depend on ‘his duty to himself’; the relevant part of ethics may be called ‘the art of discharging one’s duty to oneself’; and the quality that shows up in the discharge of this branch of duty (if ‘duty’ is the right word) is *prudence*. Insofar as his happiness (and that of anyone else whose interests are considered) depends

on the parts of his behaviour that can affect the happiness of people around him, it can be said to depend on ‘his duty to others’ or—in a now somewhat antiquated phrase—‘his duty to his neighbour’; and the relevant part of ethics may be called ‘the art of discharging one’s duty to one’s neighbour’. This duty is

- partly negative: to avoid lessening one’s neighbour’s happiness, and
- partly positive: to increase one’s neighbour’s happiness.

Discharging the negative duty is *probity*; discharging the positive duty is *beneficence*.

7. You may want to ask:

‘. . . What motives (other than those provided by legislation and religion) can one man have to care about the happiness of another? By what motives—i.e. by what obligations—can he be bound to obey the dictates of probity and beneficence?’

It has to be admitted that the only interests that a man always has •adequate motives for caring about are his own. But he always has •some motives for caring about the happiness of other men. •He has on all occasions the purely social motive of sympathy or benevolence, which will act on him with more or less effect depending on the bias of his sensibility (see chapter 6 3). •He also has on most occasions the semi-social motives of desire for friendship and love of reputation, whose power over him depends on a variety of circumstances—mainly •the strength of his intellectual powers, •the firmness and steadiness of his mind, •the strength of his moral sensibility, and •the characters of the people he has to deal with (see chapter 10 39).

8. Private ethics has happiness for its goal, and legislation can have no other. Private ethics concerns the happiness