

$$J \quad a \quad K \quad c \quad c \quad d^*$$

## CONTENTS

INTRODUCTION: THE GREAT DIVERGENCE..	. ..	.1
I. DIVIDED OVER THE MORAL CHARACTER OF CRIMINALS .....		10
A. ....		10
B. : ...		.20
C. :		26
D. ..		34
II. CAUSES: WHY HAVE EUROPE AND AMERICA DIVERGED? ..		....39
CONCLUSION: TWO FORMS OF MORAL FAILURE .		.....48

## INTRODUCTION: THE GREAT DIVERGENCE

F U d S a c d b a a c a c a d  
E .<sup>1</sup> T a a E a d a b e a a d ; B a c  
a d a d a a d c a E a d d E  
a c a [E c ] c a a d c a  
b c a d c a d c a a a c a a  
d c a d c a a a d a b c a a  
d c a a d a a c a a a d  
B e a c a A c a 19 c a b e a a d  
A c a c a 9 c (a d a c a c d a E  
b e a a U d S a a d c a d I c d a  
a c a d S a 1960 a d c e d . B  
ad d a d c a a a E ad d a d  
c , d a a c a d a c a a c d b c  
M c a e T a c ed,



## TWO WAYS OF LOOKING AT A CRIMINAL

c d ad d b d a c , b c b d c c d d c c  
c a c a c a d c c a c a d : b a a c c b c c E . F a , c c  
A c a c a d A c a a d c a E . I a c a ,  
a W c E a d c c a c .<sup>12</sup> c a ad  
T c c c a c c d c c A c a  
c c a B A c a c a a 1% 2% a a  
c d a d A c a a a 2.3 a a  
c c c .<sup>13</sup> B c a , F a c c , I a , a d S a c a a a  
c c c 1%, a d G a a d c c a c c . W a a d b a  
c d d a b 7.3 A c a a d c c a  
d c c c 45 ad .<sup>15</sup> W a a d c c b , a a  
a a a b c a c d a a d c c a d d  
a d E . O d a A c a c h a c A c a a c c a d  
E c a c c d d A d c c c A c a a a d  
a c c c d c a d c c d c , E ,  
c d a , d d a c , c c d c , a d c  
c d .<sup>16</sup>  
T c c c d a d a b c c a c a a a  
a c c c c b c d a d c c . C c a d a a ,  
a d c c ; E d c D c c a c c a d b c , a d  
K a a d a & c a c c a d c a  
a c a a c a c a d d d c , c c c d ,  
a d c a . T c a c c c d a d c c a d  
a c a a c a d a c c c . F c c a d  
c a a c ( c c ), c d c d c d c c  
a d c a c b a a c a a c c a c  
c c . c a c c b a a c c a d c c a c  
W c c c b c c c a d c b c a W c c ,  
c c a d c a d d d c , c c , d , a d c a c .

<sup>12</sup> WHITMAN, 1, a 3.

<sup>13</sup> INTERNATIONAL CENTRE FOR PRISON STUDIES, KING S COLLEGE LONDON, WORLD PRISON BRIEF, :// . d . / / d b c / b\_ a . ( a d A 15, 2014).

<sup>14</sup> .

<sup>15</sup> LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES (2008).

<sup>16</sup> WHITMAN, 1, a 62-64, 71.

## TWO WAYS OF LOOKING AT A CRIMINAL

A da add c a c d c c a a . Re a c c a a a 7  
 T ca d c c c a c c a , b c c a d c c a f  
 d d a (A ca a a c c c a c c b c c b c a  
 a a d ( c a a a a a a a d b a c  
 a c a d c a d c a d c c a c d c a a  
 c a c a b d c a d c c b c c c a d  
 c a c , b c a .  
 T d c a d a b c a d c c a a a , I  
 a c c A c c c a d c a d I a c I C Wa ,  
 c a c c a c a a a a b , a c a a  
 d c c a b c c . I a d a a , I a c c a a  
 c c d d c c b c c a a c , b c c a c  
 a a c a d d a c a a c a c c a  
 c c a a b , a c c a . T a d c c a c c a b  
 . I b c a c c c ( c 1970 ) a d , c a d d c c  
 c a d c a . A - , A c c a c c c a b c c d c  
 b c c 1990 , a d c a c a A c c a d a d  
 a a d c c a a c c c , c c c a a  
 a a d c a .<sup>14</sup> T c a d c c b c c a  
 1990 , b a . A A c a a d E c a a d a  
 b c d .  
 Na a c a a b c c a a a d a a a c c a d c c c .  
 (M c c , c a c a d c a a d a a c A c a  
 a c c E c a d c c a c c d A c a c c ,  
 b a a d c c a c c a b c c a c a d c  
 a c E c a . ) A c c b c a d a d a b c c a c a c a  
 a c a a a a b c c d . T c c c c , d c a c , a c c  
 a d c a , c a c a c c c c a d c c I d c  
 a b c a d d c a d c c a c c c a c c a c c  
 Pa II. W a b c c a a a c a a c c d  
 a A c a a d E c a a a d c a c a c c a d c a  
 a c a . T d c a a a c c c a a d c

<sup>17</sup> FRIEDMAN, *id.* 1, a 74-75.

<sup>18</sup> See, e.g., 4, a 510.

<sup>18</sup> S. 4, a 510. LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES (2008), LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES (2006).

# TWO WAYS OF LOOKING AT A CRIMINAL

a, b d d c a a d d a a  
 d ca. T a A ca a a a b a a d; a  
 d d c A ca C a b, <sup>19</sup> a d d c  
 d d c ac d d b a. Y c a c d d c  
 d c c a a . P a d c a a d  
 c. (W a ac a a c a a ?) T a c  
 c a a : a a a A ca a d E  
 c a d a a c a d c a a d a d  
 a a a c d , b ac d a  
 ac , ( a ) c a a a a , ac ab  
 c d a .  
 T b c E a a d c a E ca c a  
 b c A ca a d c a E d ac c  
 e b d d A ca a d E d a c  
 a d a d a a . A ca a d  
 c d a c a a d b c I  
 a a d a b a a - a ; a  
 c a a a a a a b a .  
 T c ca c ca d: a d a c d  
 c a c b a c c , a a a  
 c a ac a a d d, d . E a c a  
 c a , a c a ab a d d a c a  
 ac a a . T a , E ca d ac A ca  
 c c a ; ac d . O a c a d c c  
 ( c I a ), A ca a c c d  
 a d E ca a d c a a . T a  
 a a W a a a a ac a d  
 a a a c: c d c a a d  
 a . E ca a d A ca c a a c a  
 W a I ca d E a ca a d a a c c  
 .  
 I d a ca ca b d, a d d a d  
 ca ac . S c a ca a d a  
 .  
 F , A ca c a a d c a a d d , a  
 E ca c a a . G e a a d c b  
 b a c ac a , a d . B ca  
 c a c b c c a a ca A ca  
 c a c E ca c a c a a <sup>20</sup> a b . A ca

---

<sup>19</sup> WHITMAN, 1, a 6.  
<sup>20</sup> I a a c a a a a a a I d  
 Da d Ga a d a c c , . , Da d Ga a d,

# TWO WAYS OF LOOKING AT A CRIMINAL

c c c (b c a c a ) c d e a a a ; E c c c  
b C a a c W E a c  
( c a c a a d ), a d b c c ( c a W d  
Wa II), a d c c a b E a U , C c E ,  
a d E e a C H a R , a a a a . G a  
a a c U d S a a a c , a d b a  
c c ( a a c c a ) a d b a  
c d e a a d U.S. C . T a a c A c a a  
a a a c , a d c a W E ( a c ) c a a a d  
a a a c . M a , d e a a c a A c a  
E a c a a a d e b c a a a d e c c ,  
a c c a b c a a a A c a a d d E a  
( , a b a A c a / E a c a ). T c  
a a b d e a I c c a a c A b  
a a c a c d e a A c a a d E c a a a c  
a d a d e , b a c a a a c c  
c a a c c a d c - c a a a c a d d  
a b c a a b c a . C a a a a d d a b c a  
a a a a a a c c a a a a a a a a  
c a a a a a a a a a a a a a a a  
a a a a b e c c M .<sup>21</sup> T a a a  
( c I a c a , c c c , E c ) a d A c a .  
G e a a d e a c c E c a d e a a a a d b  
a c a a a . I c d e U d K d a  
c a a d c a a a E c a A c a d e .  
S e c d , d e c a b c a a a a a  
c a a . T a a a a a a a a a a  
c c c d e a - a a a a a a a a a  
c ; a b c c c b a d a d a a c c .<sup>22</sup> T d e a  
a a c a a a a a a a a a a a a  
a d e d a c c a a c c .<sup>23</sup> I d , W b c a , b  
a d e , d c e , a d c c a a a b c c c d d a

---

a , 74 S c a F c c 433, 437 (2007) ( A c a a a c c c a c ,  
a a E c W . )

<sup>21</sup> WHITMAN, 11, a 17.

<sup>22</sup> R c a d S c d b c , T c Ma W b c D c a 119 (2005)

<sup>23</sup> .



## TWO WAYS OF LOOKING AT A CRIMINAL

[illegible]

ed. & a., F. C. P. (1949).

25. RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 5 (1999).

26. EMILE DURKHEIM, (1906), *SOCIOLOGY AND PHILOSOPHY* 35, 35 (DF. P c c a ., 1953).

27 F d a a a d c b c c a c: T  
c a c a c d, c abbd c a a a c, a b a c bd c c, a bd c  
c a . F d a , c 1, a 10.

# TWO WAYS OF LOOKING AT A CRIMINAL

cc.<sup>28</sup> T ca a ca a ce; ab  
 . T a a , ca a c a  
 c ca d d a d a d  
 bca be . N ca , and ca a a  
 de de . We a a d a d c b d ,  
 a c d a , a d a c c e  
 c c c c a c a ac b acc de b a  
 a b a a d b dea c b , d acc de , a  
 , a a d a a d c dea . T a c  
 a a a a ab cc.<sup>29</sup> , c c c  
 c a d ca a , c a  
 a c a ). I a a a c a a a  
 .<sup>30</sup> S b d a a a a  
 d c , b c a d a - ca c a a  
 d c a d b d. T ca d c c c a  
 S , a a , a a c a a a  
 A ca /E a d c ca a a ? I c a a  
 d a c a d ? O a a ca d  
 A ca a d E a a c c a d,  
 d b d a a c c d a ab  
 c a ? T a , B . T a a E a  
 a a a c a b a d c c b  
 A ca a d E a c a a , a a  
 d c c ca b a a d a a . T a ca  
 a a a ca c ca : c b c a d a  
 c b d d d (b c ) c a d c a d ac c , b  
 a a a a . B a d , I a a a A ca a d  
 E ca a d , -c c , a c a d a d a  
 c a a d d a a a a a  
 c c c a a c c d (ac , ca , c ) ac a A d  
 c c d d a a ac . Ra , a I a a d (a ab a d  
 b ) a A ca c d a a , a -c c a a E d d

---

<sup>28</sup> J C a , , 67 IND. L.J. 349, 349, 379 (2003).  
 O c d a c H W b (1995), a ac , a a  
<sup>29</sup> T a a a b a a a c a ac c a d , a  
 a ac a a d d a c a d.  
<sup>30</sup> T a a ac a a a a b Id a  
 b H c ) a d b d a c a ac c , a b a d  
 a d c a ca a d c . B E a ac add  
 a d c .



## I. DIVIDED OVER THE MORAL CHARACTER OF CRIMINALS

C c a . Ba . T ca ac a a , l d c c c ,  
ca ac a b d ca . T ca ac a a a d c c b , a ,  
a a a d -d c ca ; ba d c Ba a a d b  
a c . Ba , , a -ab d , a a c a c  
a da ab . W a I a a a A ca c a  
c a ba ca ac a E ca , b a : A ca  
d .  
W a a ba ? I da a  
ca a , a d ba c a a ca a d c  
Ga a a ab d a b ca . )<sup>31</sup> H ( J  
[A] , I a a d / b ca I ca a . . . )<sup>32</sup> G ca B a  
c A ca a d A ca a ( c a c o a S a R  
1868)<sup>33</sup> T a a a d a , c ba  
a d c , c , c , a d a , a d a ab c b ,  
ba c c a a a d d a c c . D d a c  
acc c acc a a a d d ? N c d . H a a ca  
ab a d a a c d , c a ac c a a a [ ]  
acc a c c .<sup>34</sup> B a H c a d , c a ac c a a  
c a b c , c d a a c ab a a a , c d  
cc c c c , b c , c c d a ca , a [ b d  
ca c c d .<sup>35</sup> T ca a a d c , a d a  
T c a a c a H : a ac ab c , a  
d c ca , a a c dea a ca b d . O  
dea c - d d d a ba

---

<sup>31</sup> K Ja , G 4:9-12.

<sup>32</sup> HOMER, ODYSSEY, 15:302-04 (R b Fa a , 1996).

<sup>33</sup> SEAN O TOOLE, THE HISTORY OF AUSTRALIAN CORRECTIONS 22 (2006).

<sup>34</sup> , . . , FRIEDMAN, 197, a 77-82.

<sup>35</sup> OLIVER WENDELL HOLMES, JR., THE COMMON LAW, 5 (D P b ca 1991).

# TWO WAYS OF LOOKING AT A CRIMINAL

ba a a a d . A c c a d  
<sup>36</sup> H ? T c b a a c ( LWOP ). E  
 a a a d d c a b a d e a :  
 a d a c , a c a d a b e , a d e a a  
 a c c Ca a c a c a a d :  
 M . B a d d d . T a a . I c a G ,  
 I d a d Ca , Y b b d c . Y a b b d  
 d d c d b b d . Y a b c a d e . I a d a  
 b d d d . T d a a d a a c c a c a d e . T a  
 a c c d c c a c c  
 b a a O b a <sup>37</sup>  
 T a a a c a a a a a c a c a d e c a  
 a a b a . A d a : LWOP c a d e c a  
 Ca . I a c a a  
 d e a d e b a <sup>38</sup>  
 I c , , a LWOP b e a a b a  
 d . I c a a . Ca a a c c a b  
 ba a a a a a a a d c c a b  
 ca a . O c c b a d a d a c c d d a  
 c a a d e G a B a d e d a ( a ) - b d  
 c d I 1660, c d c c c c a c c d  
 a b a d d b . T a a a d  
 d d e c d a a a c a d <sup>39</sup> E c a d  
 ba d , a , b a a , c a d c , c a  
 c d a d a d a b a a d c a :  
 b e d a d a d d e a b a a d c a :  
 a . <sup>40</sup> I d e d , c a c c d e . W e V a ,

<sup>36</sup> DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 12, 14 (2001) ( I a d e c a d e , b e d a a c a c a a . . . [T] a , a a c a c a d e a d b c a a d a b . )

<sup>37</sup> , 14 Ca . 4 1005 (1997).

<sup>38</sup> S a D c d e , 16 259 (2011), a d , : (C a e J . O e c c , J . , & A S a a , d . , NYU P 2012).

<sup>39</sup> JOHN M. BEATTIE, CRIME AND THE COURTS OF ENGLAND: 1660-1800, a 616-621 (1986).

<sup>40</sup> I a . O c , a La c c F d a a , a b a a d e a ; , c a d a . FRIEDMAN,

TWO WAYS OF LOOKING AT A CRIMINAL

Pe a a, a d K c d a ca d ca a a 1795 ( d  
a ca a d b d a d S a ), a  
add a a d a b a ca .<sup>41</sup> P  
a a ba b E da , a a d c a  
dea a a . Ca a a a b d d c c a  
(c a ) a d da c c d a a a c a a  
e a ed. I b c , A ca d d a c a  
b b a a al a d b a a ba d c d a c a  
a a c a c c , c d a c a  
c c b c d a a d c a a a a .<sup>42</sup> A  
ca a a a a ca a a a a a ba ;  
a a d c d a a b .<sup>43</sup> B  
ba ed c ca a a . T ca a  
a a a c d a d e ba .  
T a a ca a ba a . We d a  
ca a c a d e a a d a d a d a d e  
ad , a a d c c d e a d B  
I a a a d c c b c a a d a a  
c a a a d a b a a d a I a I a  
c a a a d a - ca - d a d b a a d a  
, b a a a a d b a d e a d a  
I d b a , T a , b d, ba d. L  
dd e a d a c e ad, c . T  
a a a ba . N , a a a c a  
b c a a a ba , b a , a ca  
b a a a b e a e.

197, a 41 W a a a : I a da c c , a d e dea  
a , e e a a a ca ac a . . . . WHITMAN, 1, a 53.

<sup>41</sup> STUART BANNER, THE

# TWO WAYS OF LOOKING AT A CRIMINAL

F a , d a a c , c a a c a d c a c  
 ca c , c c d a a b a c a c ,  
 a - d ba c a d , ba d c  
 d a ba d A d a a , I d a , a  
 c a -c ba a a . T  
 a bca a b c a d ( a a a  
 a ca ) a d a a c c a , a , a  
 a b d E a a c c a b a d d a a  
 a a , c d c d a . I a ca a a a  
 a ca d c d a . I a a d a ba . B  
 c c a a d A ca a a d ,  
 a a c a a a a a ba .  
 W a a b d a d ba :  
 d a a a a c , a d a d a ( b  
 h a a a d a . T c a a ,<sup>44</sup> b  
 a ba ba c . W a I d d a a  
 A ca ba d a d E , d c , d  
 a a a a .  
 A Ca a a - a c . E b a d  
 a ca a c ac c ca a , a - . S ca c  
 T G a R a G d ( a , a b a d S GB )  
 P a a c a a a a b a  
 a a b c b c d e ( c G a d e  
 d a a a a a a a a a a a  
 d , a a c , b a a a .<sup>45</sup> I  
 d , a a c , b a a a .<sup>46</sup> T c c b

---

<sup>44</sup> a . I a b c a I d a b a c a d a a d a  
 d c a a c d a . T ba c a a b c d b a b a

# TWO WAYS OF LOOKING AT A CRIMINAL

H e , e a c e e c a b e d e c c c ) a e d ,  
 G e a a a e . P d d c a c d ( c d e b e e c ) a e d ,  
 G e a c a a a a a a d a e c e c c e c c a d e d .<sup>48</sup> A a ,  
 e a a b e e d e<sup>47</sup> a e a a a a e a e c e c c e c c e d .<sup>48</sup> A a ,  
 e a e c e c c e c c a e G e a c a c a d a a e . T e  
 e c c e d e a e ( c d e c a e c e c c , a I d c  
 a e ) e e e e -a d-a- a e a . A d a d e ,  
 G e a F e d e a C e a C e d 1977 a e c c a e d  
 a e e e a e a b a a .<sup>49</sup> F e , e S G B e a e d  
 e b e c a e d a e e e d e l e a e a a e c e d  
 , d e [ e ] e e c e c c e c c .<sup>50</sup> I a c c e ,  
 a e a a e c c a e c e . T e , e ,  
 a a a d a e a a a c e , G e a d e , a d e  
 d e . T e a a b a a d a b a  
 d d e .



# TWO WAYS OF LOOKING AT A CRIMINAL

a c, a d e c d e c a .<sup>56</sup> O , a c ( a c )  
a b c c ; c c c d e d , e, b a b a a a ( b a c d d  
a c , a d a c , a a a c a d c a c d c c  
c a d c ( a a d H a c Ca c ? ).<sup>57</sup> F a c c  
a c d a a d : d e a d e a c c a c c  
d e c d e a a d : d e a d e a c c a c c  
b a c , a a c b a b a , a d d e a c c a d b  
c c . H c c c c d d c b c a a a c  
b a .<sup>59</sup> G b a a F a c c a a c  
c c ( c a c ), b a a a c c  
c, a a c a . I a a E a c d c B  
c, a c c d e d a a a c c b c a  
- c d a c a a a a ( a d e d a d

## TWO WAYS OF LOOKING AT A CRIMINAL

a . T dca d d cc J d P c -F d  
c c c c:  
[W] a d ba a c c a a C c a ,  
d , a c c a a c b d a  
I a d c a c a . T d c , c a a  
ab a a d c a c a d . T c c a  
L a d de da a a d ca c ca ac c a e.  
eda, c a a d c c a be, c a c c d. a  
d c a da a a cc a a d, d a, d b d ad .<sup>64</sup>  
M a dca a C d d a  
a dca a d . T d c a a  
a c d a c c a c c da a  
.<sup>65</sup>  
T ECHR a ad ; dca , ECHR a b d  
c b a c .<sup>66</sup> A 2013, E . I d d d, c ECHR a  
a d a b d d a ac c a c ,  
[T] a a ab a a a c c a a a E . A C :  
a . . . c ca E ca a d a a a c a  
ab a a d c ca a ab a ac c d bca  
a d ab a c a a c a ab [ ]  
a d a cc c .<sup>67</sup>  
T c a A ca a d . F - A ca  
a a d c d a d c c ca c c ( ba a a  
ba ), a a c U d d a a , a c d :  
c c a a 32 G d c d :  
d ; a d d a c d d c a c  
ca c b d ; c a ab c , c a  
c d abd c ; d a , abd c , a

<sup>64</sup> . (c c J d e P e -F de).

65 . a 113.

66 A d c dc c bc ca bca (beca d (beca E c a b ECHR beca d), b a

67 . a 113-14.

<sup>68</sup>Ba c. Rec., 533 U.S. 35, 79 (2008).

[illegible][illegible]

70. Federal Board of Probation, *1996*, *1997*, *1998*, *1999*, *2000*, *2001*, *2002*, *2003*, *2004*, *2005*, *2006*, *2007*, *2008*, *2009*, *2010*, *2011*, *2012*, *2013*, *2014*, *2015*, *2016*, *2017*, *2018*, *2019*, *2020*, *2021*, *2022*, *2023*, *2024*, *2025*, *2026*, *2027*, *2028*, *2029*, *2030*, *2031*, *2032*, *2033*, *2034*, *2035*, *2036*, *2037*, *2038*, *2039*, *2040*, *2041*, *2042*, *2043*, *2044*, *2045*, *2046*, *2047*, *2048*, *2049*, *2050*, *2051*, *2052*, *2053*, *2054*, *2055*, *2056*, *2057*, *2058*, *2059*, *2060*, *2061*, *2062*, *2063*, *2064*, *2065*, *2066*, *2067*, *2068*, *2069*, *2070*, *2071*, *2072*, *2073*, *2074*, *2075*, *2076*, *2077*, *2078*, *2079*, *2080*, *2081*, *2082*, *2083*, *2084*, *2085*, *2086*, *2087*, *2088*, *2089*, *2090*, *2091*, *2092*, *2093*, *2094*, *2095*, *2096*, *2097*, *2098*, *2099*, *2100*, *2101*, *2102*, *2103*, *2104*, *2105*, *2106*, *2107*, *2108*, *2109*, *2110*, *2111*, *2112*, *2113*, *2114*, *2115*, *2116*, *2117*, *2118*, *2119*, *2120*, *2121*, *2122*, *2123*, *2124*, *2125*, *2126*, *2127*, *2128*, *2129*, *2130*, *2131*, *2132*, *2133*, *2134*, *2135*, *2136*, *2137*, *2138*, *2139*, *2140*, *2141*, *2142*, *2143*, *2144*, *2145*, *2146*, *2147*, *2148*, *2149*, *2150*, *2151*, *2152*, *2153*, *2154*, *2155*, *2156*, *2157*, *2158*, *2159*, *2160*, *2161*, *2162*, *2163*, *2164*, *2165*, *2166*, *2167*, *2168*, *2169*, *2170*, *2171*, *2172*, *2173*, *2174*, *2175*, *2176*, *2177*, *2178*, *2179*, *2180*, *2181*, *2182*, *2183*, *2184*, *2185*, *2186*, *2187*, *2188*, *2189*, *2190*, *2191*, *2192*, *2193*, *2194*, *2195*, *2196*, *2197*, *2198*, *2199*, *2200*, *2201*, *2202*, *2203*, *2204*, *2205*, *2206*, *2207*, *2208*, *2209*, *2210*, *2211*, *2212*, *2213*, *2214*, *2215*, *2216*, *2217*, *2218*, *2219*, *2220*, *2221*, *2222*, *2223*, *2224*, *2225*, *2226*, *2227*, *2228*, *2229*, *2230*, *2231*, *2232*, *2233*, *2234*, *2235*, *2236*, *2237*, *2238*, *2239*, *2240*, *2241*, *2242*, *2243*, *2244*, *2245*, *2246*, *2247*, *2248*, *2249*, *2250*, *2251*, *2252*, *2253*, *2254*, *2255*, *2256*, *2257*, *2258*, *2259*, *2260*, *2261*, *2262*, *2263*, *2264*, *2265*, *2266*, *2267*, *2268*, *2269*, *2270*, *2271*, *2272*, *2273*, *2274*, *2275*, *2276*, *2277*, *2278*, *2279*, *2280*, *2281*, *2282*, *2283*, *2284*, *2285*, *2286*, *2287*, *2288*, *2289*, *2290*, *2291*, *2292*, *2293*, *2294*, *2295*, *2296*, *2297*, *2298*, *2299*, *2300*, *2301*, *2302*, *2303*, *2304*, *2305*, *2306*, *2307*, *2308*, *2309*, *2310*, *2311*, *2312*, *2313*, *2314*, *2315*, *2316*, *2317*, *2318*, *2319*, *2320*, *2321*, *2322*, *2323*, *2324*, *2325*, *2326*, *2327*, *2328*, *2329*, *2330*, *2331*, *2332*, *2333*, *2334*, *2335*, *2336*, *2337*, *2338*, *2339*, *2340*, *2341*, *2342*, *2343*, *2344*, *2345*, *2346*, *2347*, *2348*, *2349*, *2350*, *2351*, *2352*, *2353*, *2354*, *2355*, *2356*, *2357*, *2358*, *2359*, *2360*, *2361*, *2362*, *2363*, *2364*, *2365*, *2366*, *2367*, *2368*, *2369*, *2370*, *2371*, *2372*, *2373*, *2374*, *2375*, *2376*, *2377*, *2378*, *2379*, *2380*, *2381*, *2382*, *2383*, *2384*, *2385*, *2386*, *2387*, *2388*, *2389*, *2390*, *2391*, *2392*, *2393*, *2394*, *2395*, *2396*, *2397*, *2398*, *2399*, *2400*, *2401*, *2402*, *2403*, *24*

71 C. J. H. A. P. S. c. 108 b.9 (2011).

<sup>72</sup> C. Ac. 1984, P. b. L. N. 98-473; U.S. DEPARTMENT OF JUSTICE UNITED STATES PAROLE COMMISSION, HISTORY OF THE FEDERAL PAROLE SYSTEM (2003).



# TWO WAYS OF LOOKING AT A CRIMINAL

79 T - E a c a a ca ac a d b  
80 A d , A ca  
81 ac  
82  
W a a a a a b  
H a d a d a b ca d a a A ca . T  
c d a c . Re- a a a d ; a a a a c d  
c d a c a a d d. T c c a d c b  
a d d a c a a c a d a d e a d  
c a . E c a c E ca ac c a b , a  
bca a d d , b a a d a c a d a S c  
d a a c , a d a b e-lea . T c a c d  
A ca ac c a c c a ac : a  
c a ; a a c a d c a a ac a a a  
a b ab acc.  
Ta a d ba , d a  
a d ca b c ac c . O d ca a , LWOP, decade  
d decade , a d c d a a a a a c  
ba . O ab c a a c a ca ac a  
a a c , a c c d Y a a a d a  
a a E a c a b a a bad b a . N c a  
a a a . E ab c a A ca b a  
ab c a . I ac , ab  
c a .

<sup>79</sup> C.P. N. 133-14, 133-16.

<sup>80</sup> A . C L p U O S W W d: A A a Fe D a c  
U.S. a d O D c ac 6 b .1 (2006), :// .ac . / - / -  
d.  
<sup>81</sup> P Ra E a Ac 2003, 42 U.S.C. 15601(2) (2011) ([E] a  
c a a d a a ca 13 c ac U ed Sa a a bee c a  
a a d . ); NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 21 (2009),  
:// . c . / d 1/226680. d ( Ma c d a ab a c c d c  
ca c a , a c a a d ba ( . . . . ).

<sup>82</sup> A Ma , - , F P c , J 25, 2011.

# TWO WAYS OF LOOKING AT A CRIMINAL

I a A a :E a d a c a G a a d b c  
 ce a E ca ca c a d a be d c . S c a  
 ca c a d c a ac . T ac E a a ca d  
 S GB a a a a ce a c a c e c d a ca . Γ ca  
 ,

## TWO WAYS OF LOOKING AT A CRIMINAL

[illegible]<sup>83</sup>Gd 4A1.1.

84F c a c a d bb a ca a - c d 57-71  
b a c d- c c d c 63-78 .

85 . 4A1.3(a).

86 . 4A1.3(b).

<sup>87</sup>I a 593.

 $^{88}\text{P}$  184.

<sup>89</sup> WHITMAN, *ibid.*, 1, a 56-57.

<sup>90</sup> CAL. PENAL CODE 667.

# TWO WAYS OF LOOKING AT A CRIMINAL

ed c b a d ad e b e c e d a ac e; d e a , c d  
 a ac a d e da d d a a d ad a e b e c c d  
 c a c a c e: <sup>92</sup> B e S e C e d b e a a  
 Ca a e c e d e a e d a a c e d e  
 a d c e c a e ca ac a d. <sup>93</sup>  
 A e ca , a a a a a a d ba e a  
 c a c d c b d d a c , b d d c a ac e a , a d  
 c a c a c a c a a a a c e B e c e d  
 a a a c c a c e , b c e e d c  
 e a a a d d d c a acc e d e c  
 e d c a e c a a d b e d c a c a c  
 , b e c a a . I A e ca,  
 W a d E e d ab e ca e d e ? R e d a c a a  
 c e d e c a a a a a a c a ac . T e ac / e d c a a  
 e a a e c a d e a b , e a c e d e c e a  
 W a e c e a a c e d e a a a d a c a  
 a , b e d (b e ca e ca ) a e ac e a ab e a e .  
 A e a d ac a e d , a d e a a a c ca b e  
 e , a a a d b e a a b e a d e c  
 e ab ca e . F e c a e ca d b e a a  
 e : a a c ca b e d e a a d e a e a a  
 d e a c e a b a d : e d e a a c a e c a c  
 c e c a ac e . R e d ab e d e  
 c e a d ac ca e .  
 T e d e ac e e a a , e b e c e  
 e e T e e a e c e d . F , E a d c  
 a e . L e a e e a e , a e 1970 (a e a d b e  
 e a d e c e a e d e d ca c e c d . S e d ,  
 H e a d c a e a d e a d d c (a d e a

<sup>91</sup> E . Ca , 538 U.S. 11 (2003).

<sup>92</sup> L c . A d ad , 538 U.S. 63 (2003).

<sup>93</sup> , 538 U.S. a 11.





[illegible]

100 S GB 66.

101 S GB 66.

102 . 61.

<sup>103</sup> HERBERT TRINDLE & THOMAS FISCHER, STRAFGESETZBUCH UND NEBENGESETZE 67d, § (52d (1. 2004)).

104 S GB 167d.

105 . 67c.

106

<sup>107</sup> MEIER, 62, a 227.

# TWO WAYS OF LOOKING AT A CRIMINAL

U.S. <sup>108</sup> H  
G a a d d b S GB  
a ; <sup>109</sup> G a a d d b a d  
a <sup>110</sup> H d d ad ab a U.S.; <sup>111</sup>  
G a a d d ( d a a a d d a  
e). b a a a a a a l d a  
e a d a a a a T a A ca d a  
d b G a c . B c a d c . I  
A ca, d d a a a a a , a d a , b a  
a d ca c a , a a c c a (a d Ca a a  
a a a a). <sup>112</sup> I G a , d c b  
c d a d d . H c d  
a , S d d , A ca  
c a a b c a a a G a ( d  
d Ca a a ).  
L a c a a a c . I a a c  
c c b a a d , c c a c a a d  
ca c b a a d ca c b d  
c a a d a d a c a B c a  
a d a a a a . <sup>113</sup> I G a d ca a  
a d a c a a d c a d , a d  
d c a d c a c a d ac a d  
a d c d b (b a e) B a ca d  
a d c . O a c d c , N Y d c c  
c , a ca a a a c a A II ca  
- ca a d a a c ; a d b

---

<sup>108</sup> G d 2B3.1.  
<sup>109</sup> S GB 38(2), 250(2).  
<sup>110</sup> R ca a a a d a c c . I add ,  
G a ca (a d d , c a c c b d  
d a . GERHARD SCHAEFER, PRAXIS DER STRAFZUMESSUNG 290-92 (3d ed. 2001).  
<sup>111</sup> G d 4A1.1.  
<sup>112</sup> G d 4B1.4; Ca . P a C d 667.  
<sup>113</sup> N.Y. P a C d 70(2)(b), 70(3)(b), 130.35.  
<sup>114</sup> S GB 38(2), 177(2). G a a G a a d  
a d a c a a a a d  
ca c b a a I d a c A c ca  
G a c a d c c b c a b ab  
c A d ac , c a c a a : B G a a ca d , d c a  
d c b d ; ab a , c a ab c a c a a d d a  
c a , c a a a ac d d a a  
S GB 177(1), 177(2).

# TWO WAYS OF LOOKING AT A CRIMINAL

b b e d a d . S a a a d a d e e a d .<sup>115</sup> G a d  
 c c a a a c . S a a a d a d e e a d .<sup>115</sup> G a d  
 A d e a e d e c a d b e d c a d G e , b a a a  
 d b e d a c a a c e a c e .<sup>116</sup> A c a a a a  
 a e a . I a G a a





# TWO WAYS OF LOOKING AT A CRIMINAL

a d d a d a b .<sup>132</sup> Y c a L a d R  
 G a ab d a a ab d b a 369 116.<sup>133</sup> A d,  
 ab a d a a c a 1949 W G a a a d  
 1960 a E ca a d 70% 1960 .<sup>134</sup> I a a d a a  
 c a ab a d .<sup>35</sup> T A ca d a c a c a a  
 . S ca a d c d 1950 a d a 1960 ,  
 ab 60% 1949 a 47% 1966. W S C  
 T d a c a a a a c c , d a b .  
 1966 .<sup>136</sup> S a a c a d c c , b a a  
 c . T a b c c .  
 A d , E ca /A ca d ca a c c  
 a a a a ca a a b a c a d c c  
 E , a d d d , b a a ca d c c  
 E . A a a 1760, ca a a a - c ; c c

(

## TWO WAYS OF LOOKING AT A CRIMINAL

K... c , a d P... a a ... ca a ... d ca ...  
 b-d d d d ... a ... ca a ... d ...  
 b-d ... -d ... a a a d a d -a ... We a ,  
 ca d d, ... a ... a c ... ) B 1793, ... ad b ...  
 c ... d ... a b ... C ... U ... a b ...  
 b c ... ca ... [ ... ]<sup>141</sup> T a a a c a ... I ... decade  
 a d ... ab (a d ... ca a ... , c ca ...  
 b ... d ... ). I ... ca ... c ... ca a ...  
 A ... ca b ... a a ... d a d ...  
 Y ... d ... b ca ... a b ... ca a ... b ...  
 a ... a d ... a ... c ... W ... d ... -a d-a- a ...  
 ca a ... a d ... a ... c ... W ... d? I ... c a ... a ... ab ...  
 c ... a ... ca a ... c ... d b ... c a ba ... d a ...  
 d a ... a ... ca a ... d ...<sup>142</sup> ... c ... a ... d ...  
 T ... b ... a ... a ... a ... a d c ...  
 ca ... d ... a ... a ... a ... a ... W ... a ...  
 a ... a ... a ... a ... a ... a ... a ... a ...  
 a ... a ... M ... a ... ca a ... a ... d b ...  
 ca ab ... cc ...  
 S I d ... a ... a a ... d ... I ... a ... a ...  
 d ... a d ... d ... a d ... M ... : ... a d ...  
 a ... a ... b ... a a ... ca a ... ? A d ... a ... I ...  
 b ... a ... a ... ca a ... ? H d ... a ... ab ...  
 a ... c ... a c ... ?

<sup>140</sup> . a 98.

<sup>141</sup> . a 98.

<sup>142</sup> T ... b ... a ca a ... d ... d ... a ... ca ... a d ... a ...  
 cc a ... : ... c a c ... c ... da ... a b ... ab ... a ...  
 NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, DETERRENCE AND THE DEATH PENALTY (2012). I ...  
 d c ... a ... a ... ca d ... d ... a c ... a a a d a a ...  
 a a ...



# TWO WAYS OF LOOKING AT A CRIMINAL

T b c a b c d e a a , ,  
 ( c b c a a ) a a c a a d ,  
 c a c c , ca ac a a a d ,  
 c c. T da a b c d  
 ca .  
 T d c d ca F  
 dca a , a b a d a a a  
 , a d, , a a ac d a a a  
 bca a da a a ac d a a a  
 a d (c. , c c ca ac).<sup>143</sup> B a  
 d ca a a a b bca a ca b  
 O ed c a a c bca c a a  
 ea, a a a d , ab  
 c a c ca a E Y I b a , a  
 c b c a c ca a ab . E a d a c  
 a a U d S a c . A c b a a d E  
 dca a ac a E a a b a c a  
 ca c ca c a a a a c a a  
 c c dca a a d b dca a c b  
 ab c a a a d. I a E d ca a  
 b a a a a d a a da ab  
 c d d E a a a ab a . T I a  
 c a E ca A c a d dca a . O d  
 b c a a d a d , a a ab  
 a c d .  
 W d c d I b c d a a d ?  
 T c d e a a , , b a a a d  
 I b c d E ca /A ca d c. T a b d  
 a a b a a a a ca dca  
 a a . W a a c , a c a ca  
 a a a a c a b a c a ac ca  
 a d d c c , a ab c, ac d. [R] a a c c

<sup>143</sup> V ca ca a a d a a C ca c a a a b R (a d a a  
 , d d a , L ) a a a a a , Ob a ab b ca a  
 a , a a a c a a , a



## TWO WAYS OF LOOKING AT A CRIMINAL

ab a d. T. a ac a c c a a a a d. He b dea beca a a d  
ca ac , a d d c , a c c a d d d I  
be a a . W a d d b e a d c d p  
e. M a d d a b . N , a W c d a ( c  
Ab G a b a d e b a c , a d B a )  
d a d . T (ab a c a a b c a b  
T a a (A c a d d a d c a b a  
a a d d a d c b e a d c a a  
I ab A ca: , c d c d c b e a d d ca a  
a a a b e , a d a a a b e d e d ca  
a (a a ) d e c a a d d ca  
c d T a a c E a d d b e : a d  
a a a b e d e d b ca a . W d ca a  
a d a c , a b , E a d e  
a c Na d b e d d . D a E c c e b e  
a a d d d d a d c c .  
T , a c a a ca a e a , ca a  
d e d a a b a c c e - d, c a c a . I e , ca a  
b ca a b e a a a d e a d d a  
B ca d c a a Pa , I ca a a  
a a a . I a a ca a d e . E c c a  
a d a b a ca a a d e ; A ca c a a

a T d c  
c . T  
b a

c b e c c a ab  
a . A ca c

a d ; a d z a a  
a a c a d e a c a

# TWO WAYS OF LOOKING AT A CRIMINAL

c a ac e d a a d d ; E a c a a a  
c c a d d . T d a c d c a  
d a c ab c c a c . I a b .  
E a c ab a d d a a ab acad c a  
a ab T c c a a d , ab a d  
d, a c a a c a a a a d  
c . C a a c a a a a a d  
<sup>147</sup> B I b a c c d b c d a d ab ed, beca  
be c a a b bca c c c a d d c a  
c a c c a A c ca d E ca a . I c a A c da a d  
E a c a a a c a c a c - cad d a d a a  
a c , c a d , da c , a d dca a  
a . Ac , a d be :c a , a c a a d c a c  
c c , d a c , a d A c ca c a b a  
c a <sup>148</sup> d c c c A c ca c a a b ab  
c c ? A d a , c c c c c (a I  
a c c ), c d b c c a a a ac c  
c c ac c c pa a c ca d a d . We d c d  
da a d de ac c c a a .  
T ac a a a c c c a ad c c c c ,  
a a a c c c a acad a. E a a b c  


---

<sup>147</sup> N c c a c c a c c a c c ,  
acc d c a c ( b d c c a c c ,  
a d c a c c b d c K a L d  
R S. C a & Mad c a c d a a a c a a d  
(1996) Ma a D ca a d c a c a a , 7 C . L.F.  
a d a b d c a a .

# TWO WAYS OF LOOKING AT A CRIMINAL

a c d a da a a ab cc, a ac a a a b a a  
T c a a a c a ac ca c a ca ab . P a a c  
c c d a a c a a .<sup>150</sup> C K aa d a ab c a a c, a d  
c c d , c [ ] c a c , c c a d .<sup>151</sup>  
T C a ad ca c a d G d. O a d a a  
a c c a d ca c a , G d. O a d a a  
G d a d c c a d ca c a , G d. O a d a a  
: O a a a : ac  
L a a a c c, a d ?  
N b b b ; a d a d  
D da b d c, . . .  
. . .  
S a a d a c a ,  
Fa c a d  
E b c d .<sup>152</sup>  
F M , a a ad b c c a c , a a a b a  
a c a c a c c c c c . C K aa d ca  
a d c c c c c [ ] a d d ca c  
M S a a .) Ka , a d b ad C a ad ,  
c a c d a ba ca a d c c , a c c d a  
a c c a a , a ad c c c c c d a  
F M , c a d . F Ka a a c c c c . H d c  
ab c , c b c c a , c c c , c b c d c  
a , a a a a , a d c a c

<sup>149</sup> AUGUSTINE OF HIPPO, THE CONFESSIONS OF ST. AUGUSTINE 37 (J.G. P  
1979) (397-401 A.D.). a ., Ea P  
<sup>150</sup> PLATO, SELECTED DIALOGUES OF PLATO 25 (B a J c a . M d L b a  
C a c 2004 (380 B.C.?)). T c a a c c a ad d a d  
a . N c c a a d a c c c a J d a -  
C a c . FRIEDRICH NETZSCHE, ON THE GENEALOGY OF MORALITY (E A -P a d.,  
C a b d U P 1994) (1887) (c a a c c d c b c d a d bad  
J d a -C a d c b c c d a d ).  
<sup>151</sup> CHRISTINE M. KORSGAARD, SELF-CONSTITUTION: AGENCY, IDENTITY, AND INTEGRITY 70 (2009)  
( Acc d , bad a c, a d . . . . Ca a a  
c c : c a a , a ac . ).  
<sup>152</sup> JOHN MILTON, PARADISE LOST V.73-110.  
<sup>153</sup> KORSGAARD, 151, a 170-71.  
<sup>154</sup> IMMANUEL KANT, RELIGION AND RATIONAL  
THEOLOGY (A W. W d & G D G a a ., Ca b d U P 1996) (1793).



# TWO WAYS OF LOOKING AT A CRIMINAL

a ca ce a d a , a a , a de a S (a d  
Me c a ) ca b b c c a a  
ca c a ; a a a a d d ca be  
T d b a b , a a a a ca b  
Ka a d M , a d c a , A d , T a  
a a a , b a a a a d d ,  
a abe; c d d a a c a c a c a . B  
a a ab , a a a c a a a a c  
d c a ac . E a d c d , a , a d a a  
Sec d A d ca c ad ca , a ac  
, a a c a d d d A d ca a ac  
a c c d d a b ac , a a a ad a a  
a d , d a S ad d Na c c o c  
a a J a ad b c a a c c d c  
a a G a a .<sup>160</sup> B a c d a a  
b a c a a a d d ( a , d a a  
c a d a d .<sup>161</sup> T a d ca b a a ,  
ed c b d c b b c c , a a a  
a b da a c a . W a  
A d a a a ad ca a a d  
a c a d a d a c d , a . L  
a a c a d d a c c d ca d  
. T d A d c c ba a c a l  
ac c c ad ca b c a a a c a  
d a d a , e d . B a d d . S  
a A d a a a a a , a  
a c d Ec a , a a d a  
a c c a la ( I a M . . .<sup>162</sup> a , . .  
[A d] a e c T a a a a ca a a  
a d d a a a a a a a ca  
ab a a c d a a . I d c d , a a , ba a a d b bac  
P a c c c a a c a c a c c  
d b a c ac . T a ca da A d , b

<sup>160</sup> A d , 158, a 3.

<sup>161</sup> , . . , MARILYN MCCORD ADAMS, HORRENDOUS EVILS AND THE GOODNESS OF GOD 2 (1999).

<sup>162</sup> WILLIAM SHAKESPEARE, OTHELLO ac 1, c. 3, ac 2 c. 3.

# TWO WAYS OF LOOKING AT A CRIMINAL

ca ca , ca d, a ca , d ba a a d  
 a : a ca ca , a a d, a - . T a ca d  
 cd a a ca de .  
 A b ca , a a ca a ca a  
 d , a a cd a c a a d a d d  
 a d a a a d a c c b d . I ,  
 c ab d c d. N , A d ad a a  
 M a d c c Sa a a , d a . I ca d  
 B , a , c ca d c . T c , a a ,  
 a cd, a b c ca ca a cc. I a d a d  
 , M . W d d b c ad D DeL ;  
 H c ac a l a a a a d d  
 d a a a . H a . S b d c  
 . h b a d , d a a d . S  
 b c . H a a ac a d d . S a d  
 E a a a , a d a a d ,  
 d . N c c ac , c . L a a a d , A d  
 , d a d a d , a d , a d a  
 , d a d a d . Y dead, b c . T bac  
 T , N d a d c ca d c c a a  
 a , b b a a d a d d d a a d,  
 d a da ab , b ca d, b ca a d ca ab ,  
 a a . T a d a A c c a  
 d? A ca c a a c d ca , d a a c ; E ca c a  
 a , c d ca , d a c a .  
 A a a a a . (T d a a a a  
 c a a d d c c a a c d d , 165  
 a d d d a c a C d a d a d  
 c b c c . Y c c c b c c c  
 , a a , c a a c c A ca c a a I ab A ca  
 c a a , c a a c c a a , a a acc,  
 c a a G d. J a c a

<sup>163</sup> ARENDT, 157, a 82.

<sup>164</sup> DON DELILLO, UNDERWORLD, 316-17 (1997). T / M c ac O daa ca d b  
 a a a d a - a - c . , a .

<sup>165</sup> FRIEDRICH SCHLEIERMACHER, ON RELIGION: SPEECHES TO ITS CULTURED DESPISERS (R c a d  
 C , ed., Ca b d 1996) (1799).



## TWO WAYS OF LOOKING AT A CRIMINAL

A ca a b d d a c c a c , d a c c c  
a , a C a cc a e ad.

## III. CAUSES: WHY HAVE EUROPE AND AMERICA DIVERGED?

T b c a a b c a a d E a c a a I a  
c a a c a b d d A ca a d E ca c a a  
a a a , ca a , A ca a d E ca c a a  
b c e d e . B ca ca c a e acc d e c e a  
a d c , a d a b c a a p a d c a  
d c d c a ) e c e a d c a d c ,  
a c ; c c d b ad e a e a d c 2 (d) 0.2 2 ( T Q 16) -234.6

[illegible]

166.

40

## TWO WAYS OF LOOKING AT A CRIMINAL

L ca ca a c c c c a d e , Ga a d a , a M c a ab  
ca a 1846. I deed a acc [ ]  
a a d ab ca a a d ac ed A ca , a d a a d  
a a c a ac , a bc a ed a d a

a Y c a d a b c c f e , a Ga a d  
a d a c c de ac , a b A c a ec a ac  
ca ed .172 A d a ca ed , bca a c , c  
a d a bee .173 b bca c ac a d be ce a c a d a  
c ,173 b bca c ac a d be ce a c a d a  
ad, cc 1976, ca ed 13 cc .174 T a, b c a , ad 342 dea  
a a d ad a a ca ed 449 cc .175 O c a a  
S / -S a , @ ad a d 176 dea a a d  
34 cc , V a ad 16 dea a a d 105 cc .17 S  
be a c a , Ca a a d @ a ad c dea a  
a c c c c c c : e e d a d e a  
. T a c c ca a - a -S -ac . A d  
a a c a a d e a de a -  
Ca a a d O a c d c c a ; ca a a  
a da a a d c c c a , a c a d c ,  
ab ac J c E d Ga a a d a Ma C Ne Ye ,  
Ge Pa a ba a ca a a b a a c d C a d  
Pa a dca a ).77 I a a d a a d a d , b a d

170 . a 35.

171 La 38

<sup>172</sup>Dea Pe a I a Ce e ,Ja a 31,2010.

<sup>173</sup>G, 122, a 1451.

<sup>174</sup>Dea Pe a I a Ce e, Ja a 31, 2010.

175

176

<sup>177</sup> G & E, c 122, a 41-42.

# TWO WAYS OF LOOKING AT A CRIMINAL

a Ca a a ca a - a - a - c . I d d, d Ca a d  
 b a a d. (W c a b a d b a d b a c c ?  
 W c a a c a a a , c , a d a ab  
 e a a c c, c a c a d c a ? A ca a  
 c b a c a a a a b c a.) B a ca, Ca a  
 ac a a a a d ca a a a a a  
 c ( a a a a a a a b ac a a ),<sup>178</sup> ca  
 ca a ; a a a a a , - a c a c a a  
 c a . I ad, A ca a c a d a a ba ca  
 d a d a d a ac a .<sup>179</sup> S , a d a d d a  
 T a a c c a b Ga a d . F , ac a  
 acc a I d , a ca a . B ac a d a a  
 a d c a ac a a ; d a ca ac a  
 c d ? S d, a a d c c, c d  
 a A ca a ca a , b E d c , a d a W  
 , E ac .<sup>180</sup> I G a , a c a a  
 ba d 1949; a -S d d a a ca b  
 H ca a d a da . N , a E a a b ca c a  
 a d d a a U ed S a d a c a c  
 a E a a a c a d c c. B I d acc  
 ac a d a a a . M d E ca  
 a a d d c a d c ac . Occa a a a d d  
 ca d da c c E , a d a , a c  
 da a . B d c , E ca a a , a c  
 ca d c c a d ba d d c c b  
 d c c a d a .  
 P bab a ad d c a d c Ja  
 W a ;<sup>181</sup> a a , c a a ,  
 c ca , c d a d c c a d a  
 a . W a d b a a c d ca  
 d ad a a ad a c a  
 a ( c a a ) c A c a ad a c a ,

<sup>178</sup> G , 122, a 1451.

<sup>179</sup> .

<sup>180</sup> WHITMAN, 1, a 6.

<sup>181</sup> WHITMAN, 1.

# TWO WAYS OF LOOKING AT A CRIMINAL

ac A ca a F d a d E a a a b E a d A ca ca  
B ad d c c a a a : E d , A ca d  
d . A ca a a c a c a d d a c a c a  
E . . . [T] d e a a a c a c a d c a  
A ca a a b c a , a b a a c a c a d a . 182  
d e a e . A W a a a , T e a e d e ad ,  
d e a . 183  
I a d W a a d ad , E ca a d A ca  
d e a a a d c a d c . B ca b a d a d c c  
a c c a a , a d c a a a a d c c  
ca a ca a a d d d 1969 ? a d  
a d Be ca c c , a d A ca a a , T c  
d e ad ca a a a d a a a  
d e c c . I d d , ( a a ) a a ca  
a d e ba a a d e a a c d d e a e .  
B e d c c a a d e a c : A ca ad a ab a  
c a d a a a d e a a d e a . F c d a e  
b e c ; e a c a a a a a a . N , a a d ,  
W a e d c c a c a A ca c c b c d d  
a c - a , E ca e b c c d a d e a  
e a c B c c a a a a a a a  
a , d a c ba d a a a  
a .  
a W a , a a c a c a , 184  
1950 e a c a c a c a J d S a  
d d e c c . 1990 c G e a a d c a E ca c  
e , ca e a a -c c , a e d c a ca e

182 . a 192.

183

184 A a c c Da d Ga a d , a b : . Ga a d a a  
c a A ca a d B c a a a c a c a c a d d d a  
(2002) c c a c

## TWO WAYS OF LOOKING AT A CRIMINAL

c e. 185 O ca a c a c a d a d , la Q. W , de  
ca a a c a d a d c T a . . . [W] e a  
d b a ce a c a , b a d a d , b a ,  
T A ca b c a a a c c d ab ca c . Γ  
1950 a a de a d / ' b ' - / T a a D a d Se ca  
K / Y a a de a d / ! M a c e' a d / O  
a a a d ca A ca a a ( d a b e a ,  
ad c a c d). 187 E a , c b ca a a ca c. 188 R c a d  
N ad a ca a a acc a ce cc a 1972  
Re b ca Na a G : F a a a a A ca a  
ce de a . . . I ed ed c . . . . We a a ced a a -  
de a ca a . . . . 189 T a I a ab ( c a  
c d c c ) , a c c b c , b a c , a  
c b ca ac a a d a ab a , a  
I a a d N ed a A ca ca c a a d  
c , : T - ca d ca 920 ca 1970 ,  
ca ce a a a ce da b a ab  
A d ce a ce a ed. I a 1970 , a ca be N  
a d a d a A ca ca c a a d , a C  
Ea d ce a d , ca a a bab - aced,

<sup>185</sup> FRIEDMAN, *supra* note 197, at 449-65 (1993).

<sup>186</sup> JAMES Q. WILSON, *CRIME AND PUBLIC POLICY* 492 (James Q. Wilson ed., 1983).

<sup>187</sup> Le a d Be e & S e e S d e , , We S d e S (1956).

<sup>188</sup>Feda, 197, a - .

<sup>189</sup>P de R c a d N , R b c a Na C e , Acc e a c e N a S e c (A . 23, 1972).

[illegible]

<sup>191</sup> A and B, C 387, 387 (James Q. Wilson & James Peacock ed., 1995).

# TWO WAYS OF LOOKING AT A CRIMINAL

ed- ab a c, a a Ha (Ea d' ) d, [b]ea  
 . 192 (T c, a Wa C c a c d e,  
 dbe a c a c a c.) A c d c d c c c, A c a d c c a c a  
 c c ab c c a . a c a d A , c c  
 a d! B a c c a c : O c c K c, ' c a a a c;/T b d c c d a  
 d c, c c d a a a ' c a c/I c c a a a b e c b e d./He  
 c c d b e d! T c c : O c c K c, ' c a a a b/T b d c '  
 c c d a d c c a d c c b./S c c c c d a a b c c /A d  
 c c c c ! B c c d c c c : O c c K c, ' c d c  
 a a ./T c b d c c d a b, c c d a a a ./I a a  
 d c d;/D c d c c , c c d! A d c b c a : We  
 d, c c d! We c c a c c d./L c c b e c da d!  
 J a c c a c a b e c c d c c a d c a c c a d e  
 c d b c a a d c c c a c c a c c 2 A c c c c c  
 c a d a c c c a c a a c c c I c c I b a c c a c  
 A c c a a c c a c a a b e c c 1950 a d  
 1990 . E c c c c c c d a c c a c c c d a c c a c  
 A c c a a c d a d d a c c c d d c c c a c  
 c . I d e d, a a c a a a c , I c c b c a a a c a a c  
 E c a /A c a a c c c c c c . I a c a c  
 a b e d a a a c a a A c c a d c c c c  
 c b d a b a d c a d a a c c c a c c c c  
 a c b a c c a c a d c c a c c a c c a c c  
 a d. I c c a H c a a a c a a a c a a d.  
 c c c a c c c a d c a a a a a c c a d c c c. T  
 c c c c c a a a : c c b a c a  
 c d c d

ca be a a . A d , a a c d c de c c a a c a d de a d , c a a a c b d c de c c a a c a d , d a c a acc . B a a d c a d a da a a ad . I c a a a a d c d ab a acc E a ad , R a c d ab a de c a ad A ca a d c d, Mad a<sup>193</sup> A b de c da a c a ad ca a d c , a d, Mad I a c a d de , a de a ca a d be c a a<sup>194</sup> T a a . A a c a d c , E a a d a d b de a a b a c Re , a ad , R ca a d a b a c a a a a c d a b ac<sup>195</sup> G a a a a a a a a d a d ab a adle beca a d d ca ede . (T decd Ge a a a a d d a c a a a c , a d a d a d , a c d . T be a b a c , a d c ca abe a c a .)

I add , a a a ab c d A ca ad , . W a , c c d, <sup>196</sup> b a c a d c c a a c a de c be c . E , a a d, d c c ; a c c , d a ad a ca c a ad d c be a d c . <sup>197</sup> A ca a d ac J a a Ed a d , d a d c a b ca , a a G d b a a

<sup>194</sup> THE FEDERALIST NO. 51 (James Madison).

<sup>196</sup> WHITMAN, 1, a 6.

N ab , G e a a c, e W a e e ad d e .



## TWO WAYS OF LOOKING AT A CRIMINAL

198 V a c de a (1611), a ca d Da a a c de  
ed La D e, M a a d Ma a . 199 T e d ac a b c c c de  
a a a a c c c a b b c c a d  
a d a bad d b ca c a b b ca c a b C d a ,  
a bad.  
T ac a E d c a d A ca a c a  
A ca a d F c c a d c c b c c ca d c c a  
P a a ; a d a a a d c a c c ac b c , A c a  
a b c c a c .  
L b c c a : d b c a a d a c c a c a c c a d  
a c c a d c : a c c A ca b c c a a c a d  
a E ca d . F c c A ca c c c c c a c c a  
a a a E a , a d c b c c a c c a ,  
d a A ca a d E ca b c c a c c a . T  
a a c c a c c a d b E ca c c a d d a A c a  
c c a a a a a a a a a a a a a a a a  
T a a a a a a a a a a a a a a a a a a  
a a . B I d a a a a a a a a a a a a a a  
a a . T a d

198 JONATHAN EDWARDS ET AL., SINNERS IN THE HANDS OF AN ANGRY GOD AND OTHER PURITAN  
SERMONS (2005). F d a : E d a : W c? V d b c ?  
C a A ca e d c b d a d , b , bad, c b ,  
a a a d b ac b d a d , a ca A ca a a  
e a d a ca . T c b ed a b d, d a a d  
; d a a c ca a c a c a . O a  
d a d ad p Sa a , a ad a . T c a ad d  
ca ; e ad bc a a ca . FRIEDMAN, 197,  
a 47. I a a a e a b e ca A ca c ce -da  
A ca a c c b a I a c ab ded a a ca  
. I a c ca b ca . O c a A ca ca  
a a a a a a acc bac c P a . Pe a . B  
J a a Ed d ad a ed Ya G 1720: T a da a cc , c a cb a ca  
c a A ca. A d ac a , c d a ce a a a ca : T  
d a d , dd a ; e d, a cab bed  
c . . . T da , a a a a ec d a ed a d b . a

52.

199 197

## TWO WAYS OF LOOKING AT A CRIMINAL

a b c c a a d c b , b  
F a , b d a a c c a a b  
c a c d . A c a ad a c c a a c G a  
A b d a a a d c , c a G a c , a  
d c da a a d c a a d c . A c a  
c a d d c a c b c a d d ,  
b a d c a c c c a l b a c c a  
c a a b c c . T d a a a c  
ca d a N c d a c a a : ac  
a E a a a c a a d A c a , a a  
a c . C d b c a a d a b a a ,  
c c a ab a a d a a ab E  
c a a a , A c a d b a a a d ,  
a a c a a a ? A c a b c a a d a  
b a c a b c a d b d b a , E  
a d a c ab a a a b a d ab a ab  
R a d L .

## CONCLUSION: TWO FORMS OF MORAL FAILURE

W a , a c , a c ? T a a a a  
c c d c a ; a a b b a  
a c c H a a a A c a d  
E a c a a , a c c . B d  
d c , c a a b c b c . W c a a  
a c a ? A d ( a c a ac c a  
a b c ?  
T a , a a a a , b a a a  
b a d . O d a a a a d a b  
c c c a c a a d a c d a ab  
c a a . T c a a a . R a d  
a a d a a a c a b c a c ,  
da a a a b c a a . P a  
a a da a a a d b a d ? O

# TWO WAYS OF LOOKING AT A CRIMINAL

d d e a d a a d e a a d e b d a d a d?  
T d c c d c d c a b a c a b e a d?  
b e c c c a c a a d e a c c c d e a .  
T c c A c a b e a a c c c d c a c d e a  
d c a a c . A c a c d a d a  
d e a a .  
Y e a a a c e a a c b a a  
e . T a a a a c c a a  
d e a a a b e a c c a e  
b e a d e a a a a a d a .  
A d a a d , a a a b e E a  
c b a a d a a a c a a a c a  
c , a a c a a d e a . W b a  
c a c a c a a c c d a  
c a d T a b e .<sup>200</sup> T G a a d a c c a b e  
b c a b a a a a d a a , a a a b e  
b e b c a b e a a a d e a a a a a  
d d e a . L e a d e c d e ,<sup>201</sup> G a a a  
d e b a c a a b e d e a d e a a d e a  
a a T a b e c a d e a a d e a  
d e , a d e c e a b e . B a I e a b a b  
a a a a G a d e a a d e c a a b  
; d e b a c d e a .  
Y e a d e , a a a a a b e  
a e a d e A c a a a d e . E d  
b e e e ; a a b e d e d b  
c a a , e a e b e a e b a d . Y e A e a a c a  
c d b e d e d e , b a a , d e a , d a ,  
d e d e , e a d e a a a e . A G a a a  
c c c , a A e a c c c ? I e a d a A e a  
c a a a c a , e , c e a c c  
A e a c a a e a a ; c a e a b e a d  
a a b e a c a e , a , a b e a d a a b e e  
a a d . O e a b e e ; c e

200

Pa II.A.

201

Pa II.C.

# TWO WAYS OF LOOKING AT A CRIMINAL

a B a c c. B c d c c b a a d. A

a b c c. I