

BEFORE ABOLITIONISM

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V. 0

BEFORE ABOLITIONISM

Arguments Against Death, 250 BCE to 1631

THE JAIN AND BUDDHIST CANON

AŚOKA

THE MAHĀBHĀRATA

THE MISHNAH

AUGUSTINE OF HIPPO

NICHOLAS I

PETR CHELČICKÝ

THOMAS MORE

SEBASTIAN CASTELLIO

FRIEDRICH SPEE

Edited and Modernized by

JEFF HOOD

THE ABOLITION CLASSICS

V.0

COMPLICIT PRESS

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Ācārāṅga Sūtra follows Hermann Jacobi (1884); the Dhammapada follows F. Max Müller (1881); the Fourth Pillar Edict of Aśoka follows E. Hultzsch (1925) and Vincent A. Smith (1909); the Mahābhārata follows Kisari Mohan Ganguli (1883–96).

Mishnah Makkot 1:10 rendered for this edition.

Augustine, Letter 133, follows the translation by J. G. Cunningham in *Nicene and Post-Nicene Fathers*, First Series, Vol. 1 (1887).

Chelčický selections follow the translation of *The Net of Faith*, Book One, by Enrico C. S. Molnár (1947), transcribed and released by nonresistance.org (2006).

More, *Utopia*, Book One, follows the translation by Gilbert Burnet (1684).

Nicholas I, *Responsa ad consulta Bulgarorum*, translated for this edition from the Latin in Migne, *Patrologia Latina* 119.

Castellio, *Contra libellum Calvinii*, and Spee, *Cautio Criminalis*, translated for this edition from the Latin.

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THE DEATH PENALTY ABOLITION CLASSICS

V. 0

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FOREWORD

Everybody starts the story in 1764.

Beccaria publishes *On Crimes and Punishments*, Europe reads it, Catherine the Great writes him a letter, Voltaire supplies the commentary, and the modern case against the gallows is born. That is how it gets taught. That is how I was taught it. Eighteen centuries of people hanging each other without a serious word of complaint, and then a twenty-six-year-old Milanese economist finally says the obvious thing out loud.

It is not true.

The complaint was filed. It was filed early, it was filed repeatedly, and it was filed by people standing a great deal closer to the scaffold than Beccaria ever stood. It just never accumulated.

That is the thing that got me. Not the arguments. The isolation.

Somewhere in the fourth century before Christ, Jain monks write down that no living thing may be killed, with no exception carved out for the guilty, and Europe does not hear of it for two thousand years. A Buddhist emperor orders three days of grace for men already condemned and has it cut into a pillar, and the pillar is still standing while the West is busy inventing the drop. A rabbi in Roman Palestine says that had he sat on the court, nobody would ever have been put to death.

A bishop in North Africa writes to a judge and begs him not to execute men who have just murdered one of his own priests. A pope writes to a warlord fresh off a massacre and tells him to stop killing people, and to stop torturing them, and gives a reason about confession that would have saved a great many lives if anybody had troubled to read it in 1600. A Czech farmer who can barely manage Latin works out from the Gospels that the state has no business holding a rope at all.

The Lord Chancellor of England writes that a country which hangs thieves has first manufactured the thieves and then killed them for it, and then goes on to burn men himself. A schoolteacher in Basel watches a man burn on green wood and has a book out in four months, printed under a false name in a city that is not the city on the title page. A Jesuit walks women to the stake, concludes that every one of them was innocent, and publishes without his name on it because his name would have killed him.

None of them knew about each other in any way that mattered. Every one of them had to start over.

I have felt that. Anyone who does this work has felt it. You stand outside a prison in Arkansas at midnight and it does not feel like you are the latest name on a list going back two thousand years. It feels like you are the only person who ever thought of it, and everybody reasonable is across the road with a sign.

You are not the only one. That is what this book is for.

I want to be careful about what I am claiming, because most of these men are not abolitionists in the way we use the word.

Aśoka kept the death penalty and slowed it down. Augustine is pleading for one set of prisoners in front of one judge. Nicholas told one khan one time, and the papacy spent the next six centuries doing the opposite. Chelčický will grant the pagan state its plaster on the abscess. More is arguing about thieves and will be lighting fires himself within twenty years. Castellio refuses to defend the man he is defending, and says so twice.

Only the Jains and Akiva say the whole thing flat, with nothing held back and nobody excepted.

So this is not a lineage. It is eight voices across nineteen centuries arriving at some portion of the same conclusion from directions that never touched, which is either a coincidence or it is the thing itself pressing through wherever the material happens to be thin enough to let it.

I think it is the second one. I have thought so for a long time.

Read the *Ācārāṅga* first, and then Akiva. They are the shortest and they are the hardest. Neither one says the accused was innocent. Neither one

says the evidence was thin. They are describing a world with courts in it that hold the authority to kill, and they are saying that in their hands nobody would have died there. Ever. For anything.

Nineteen hundred years and nobody has improved on it.

The Rev. Dr. Jeff Hood
North Little Rock, Arkansas
2026

EDITOR'S NOTE

THE PROBLEM

There is a hole in the abolitionist canon between the ancient world and the Enlightenment, and it is not there because the hole is empty. It is there because the material sits in six languages, is buried inside works ostensibly about something else, and in several cases had never been printed in English at all.

Eight texts have been taken out of that hole and set here in order.

THE TEXTS

The **Ācārāṅga Sūtra**, oldest of the Jain canonical texts, compiled around the fourth or third century BCE. The **Dhammapada**, chapter ten, the chapter of the rod. The **Fourth Pillar Edict of Aśoka**, cut into stone around 243 BCE, which is the oldest surviving order of any state restraining the death penalty. And a passage from the **Mahābhārata**, included because the Hindu record is genuinely divided and this book is not going to pretend otherwise.

Mishnah Makkot 1:10, from the earliest stratum of rabbinic law, compiled around the year 200. It is given complete, objection included, because the objection is half the passage and every edition that drops it is lying by omission.

Augustine, Letter 133, written in 412 to the tribune Marcellinus, who had just extracted confessions from the men who killed the priest Restitutus. Augustine wrote twice more on the same case, to Marcellinus again and to his brother Apringius, the proconsul who actually held the power of sentence. Those are described in the introduction and not set

here, since Letter 134 was left out of the Cunningham selection.

Nicholas I, from the *Responsa ad consulta Bulgarorum* of 866. Two chapters out of a hundred and six: the twenty-fifth, on sparing the guilty as well as the innocent, and the eighty-sixth, on judicial torture.

The Net of Faith, written by Petr Chelčický around 1443. Only Book One has ever been rendered into English. What is given here is a set of selections from it, and no English reader has ever had the whole argument.

Utopia, Book One, 1516. The dinner at Cardinal Morton's table, which is the best-known demolition of the English gallows written before the eighteenth century.

Contra libellum Calvini, written by Sebastian Castellio in 1554, four months after Servetus burned at Geneva, too dangerous to print, and not published until 1612.

Cautio Criminalis, 1631. Selected doubts out of the fifty-one, chosen for the ones that are not about witchcraft at all, but about what happens to a legal system when a crime is declared exceptional.

THE TRANSLATIONS

Everything in this book is in the public domain, including the English.

That rule was harder to keep than it sounds. For several of these works a good modern translation exists and is under copyright, which would have made this volume something the press does not own. The answer was not to hunt for another translation. It was to go back to the original, which has been free for centuries, and make a new one.

So Nicholas I is translated for this edition from the Latin in Migne, *Patrologia Latina*, volume 119. Castellio is translated from the Latin of *Contra libellum Calvini*. Spee is translated from the Latin of the second edition of *Cautio Criminalis*, Frankfurt, 1632. Mishnah Makkot 1:10 is rendered for this edition.

The rest follow public-domain translations, modernized. Hermann Jacobi for the *Ācārāṅga*, 1884. F. Max Müller for the *Dhammapada*, 1881. E. Hultsch and Vincent A. Smith for the edict, 1925 and 1909. Kisari Mohan

Ganguli for the Mahābhārata, 1883 to 1896. J. G. Cunningham for Augustine, 1887. Enrico Molnár for Chelčický, 1947, transcribed and released without copyright in 2006. Gilbert Burnet for More, 1684.

THE METHOD

Spelling, punctuation, and sentence length have been modernized throughout. Where a translator's phrasing has gone opaque with age it has been opened out. Nothing has been added, and no argument has been sharpened in the direction I would prefer it to run.

Each work is introduced separately, and the introductions carry the history, the objections, and in four cases the parts of the record that do not flatter the author. More burned heretics. Aśoka never abolished anything. Nicholas presided over a church that would spend the next six hundred years contradicting him. Augustine, who wrote the finest surviving plea against retaliation in Latin, also handed the West its doctrine of the just war.

None of that is a reason to leave them out. It is the reason to print the introductions.

Jeff Hood
Editor

Had we been on the court, no one would ever have been put to death.

Rabbi Tarfon and Rabbi Akiva, Mishnah Makkot 1:10, c. 200

TO ALL, LIFE IS DEAR

The oldest surviving order in the world restraining the death penalty was cut into stone by a Buddhist emperor around 243 BCE, and almost nobody who argues about capital punishment in English has ever read it.

That is where this book has to start, because the whole shape of the story we tell ourselves is wrong. The argument does not begin in Christian Europe and it does not begin with Beccaria. It begins on the Gangetic plain, in three traditions that were working on the problem of killing several centuries before anybody in this volume was born, and it begins with a conclusion more radical than anything Europe would reach for two thousand years.

JAINISM

The Jain position is the most absolute statement against killing produced by any human civilization, and it is not hedged.

The *Ācārāṅga Sūtra* is the oldest of the Jain canonical texts, compiled somewhere around the fourth or third century BCE out of material attributed to Mahāvīra, the contemporary of the Buddha. It does not carve out an exception for the guilty, or for war, or for the state. There is no category of person it is permissible to kill. Jain doctrine does not merely disapprove of the executioner; it has no conceptual room for him.

This was not only theory. Jain influence at court produced actual policy. The Gujarati king Kumārapāla, under the guidance of the Jain monk Hemacandra in the twelfth century, is recorded as having prohibited animal slaughter and, by several accounts, capital punishment across his territory. Whatever the exact scope of that, the record of a medieval state trying to govern without an executioner exists, and it is

Jain.

The English here follows Hermann Jacobi's translation in *Jaina Sūtras*, Part I, Sacred Books of the East volume 22, published in 1884 and long in the public domain.

BUDDHISM

The Buddhist material comes in two forms, and both matter.

The first is doctrinal. The tenth chapter of the *Dhammapada* is called the *Danḍavagga*, the chapter of the rod, and the rod means punishment. Its opening verses do not argue from scripture or from the nature of the state. They argue from one observation, which is that the person about to be struck is afraid, and so are you. Everything follows from that.

The second is legal, and it is the reason this chapter opens the book. Around 243 BCE the emperor Aśoka, who had converted after the slaughter at Kalinga, had a series of edicts carved into pillars and rock faces across the subcontinent. The fourth of the Major Pillar Edicts concerns the conduct of his provincial officers. Buried in the middle of it, almost casually, is an order granting three days to men already sentenced and lying in prison under condemnation of death.

Read what those three days are for. Not appeal in our sense. The relatives are to go and plead with the officers for the man's life, and if he has no relatives, or nobody willing, he is to have the time to give alms and keep a fast for the sake of what comes after.

That is a stay of execution and a clemency window, and it is also something no modern death warrant contains: a recognition, written into the order itself, that a man about to be killed by the state has business to finish that is nobody's business but his own. In the fifth pillar edict Aśoka records that in the twenty-six years since his anointment he had ordered the release of prisoners twenty-five times.

There is a scholarly argument that Aśoka never abolished the death penalty and this is true. He did not. He kept it and slowed it down. That makes him the first recorded head of state to do the thing every abolitionist since has settled for on the way to the thing they actually

wanted.

The verses follow F. Max Müller's translation of 1881, Sacred Books of the East volume 10. The edict follows the translations of E. Hultzsch, *Inscriptions of Aśoka*, 1925, and Vincent A. Smith, 1909, both public domain.

HINDUISM

Hinduism is the honest problem in this chapter and I am not going to smooth it over.

The Hindu legal tradition is not abolitionist. The *Manusmṛti* prescribes death readily and by method. The *Arthaśāstra* treats execution as ordinary statecraft. The *daṇḍa* literature, the doctrine of the rod, holds that without the king's punishment the strong would roast the weak like fish on a spit, which is an argument you will hear this year from a prosecutor.

And running against all of it, in the same books, is *ahiṃsā*, and the repeated formula that abstention from injury is the highest duty of all. The *Mahābhārata* holds both positions and does not resolve them. What it does instead is more interesting, and it is why the passage is set here: it puts the contradiction in the mouth of a king who has just won a war and cannot bear what he has done, and it lets him say out loud that the teaching he is being given has loosened every tie that binds him to morality.

Yudhiṣṭhira is not given an answer. He is given more instruction. He remains unconvinced. Anyone who has ever sat in a clemency hearing knows that room.

The English follows Kisari Mohan Ganguli's complete translation of the *Mahābhārata*, published between 1883 and 1896, in the public domain.

FROM THE ĀCĀRĀṄGA SŪTRA

The Arhats and Bhagavats of the past, the present, and the future all say this, speak this, declare this, explain this.

All breathing, existing, living, sentient creatures should not be slain, nor treated with violence, nor abused, nor tormented, nor driven away.

This is the pure, unchangeable, eternal law, which the clever ones who understand the world have declared. Among the zealous and the not zealous, among the faithful and the not faithful, among the cruel and the not cruel, among those who have worldly weakness and those who have not, among those who like social bonds and those who do not: that is the truth, that is so, that is what is proclaimed in this creed.

Having taken up the law, one should not hide it and one should not forsake it.

All beings are fond of life. They like pleasure. They hate pain. They shun destruction. They like life and long to live.

To all, life is dear.

FROM THE DHAMMAPADA, CHAPTER OF THE ROD

All tremble at the rod. All fear death. Remembering that you are like them, do not kill, and do not cause slaughter.

All tremble at the rod. All love life. Remembering that you are like them, do not kill, and do not cause slaughter.

Whoever, seeking his own happiness, punishes or kills beings who also long for happiness, will not find happiness after death.

Whoever, seeking his own happiness, does not punish or kill beings who also long for happiness, will find happiness after death.

FROM THE FOURTH PILLAR EDICT OF AŚOKA, C. 243 BCE

Thus speaks the Beloved of the Gods, the king who looks with kindness.

I have appointed my officers over many hundreds of thousands of people, and I have given them independent authority in the awarding of honors and of penalties, so that they may do their work confidently and without fear, and may work for the welfare and the happiness of the country people.

For it is as when a man hands his child over to a skilled nurse, and feels easy in his mind, and says to himself: the skilled nurse is eager to care for the happiness of my child. So have I appointed these officers for the welfare and the happiness of the country.

It is desirable that there should be one rule in judicial proceedings and one rule in punishment.

And my order goes even this far. To those lying in prison who have been tried, on whom punishment has been passed, and who have been condemned to death, a respite of three days is granted by me.

In that time their relations may plead with the officers for their lives. Or, if there is nobody to plead for them, they may give alms or keep a fast, so as to gain the world to come.

For this is my desire: that even when their time has run out, they should gain the world to come. And that among the people various practices of duty should grow, and self-control, and the giving of gifts.

FROM THE MAHĀBHĀRATA

Yudhiṣṭhira said:

If a thing so horrible, a thing which like falsehood should never be an object of regard, is now cited to me as duty, then what act is there from which I ought to hold back? Why then should robbers not be respected?

I am stupefied. My heart is pained. All the ties that bind me to morality are loosened. I cannot quiet my mind, and I cannot bring myself to act in the way you have suggested.

Bhīṣma said:

I do not instruct you in duty from what I have heard in the Vedas alone. What I have told you is the result of wisdom and experience. This is

the honey the learned have gathered.

Kings should gather wisdom from many sources. No one can accomplish his course through the world with the help of a morality that is one-sided.

THE DESTRUCTIVE COURT

The Mishnah is the oldest layer of rabbinic law, compiled in Roman Palestine around the year 200 out of material considerably older. Tractate Makkot deals with lashes, cities of refuge, and the punishment of witnesses who testify falsely in capital cases. The tenth paragraph of its first chapter is four sentences long and it is the earliest surviving argument for something very close to abolition.

The context matters. Rabbinic law surrounds the death penalty with procedural requirements so demanding that a conviction becomes nearly impossible to obtain: two eyewitnesses to the act itself, a formal warning issued to the accused immediately beforehand, an acknowledgment by the accused that he understood the warning, and a court of twenty-three. Circumstantial evidence is inadmissible. A unanimous verdict of guilt is grounds for acquittal, on the theory that a court in which nobody could find anything to say for the defendant has not done its work.

By the time this was written down the courts had in any case lost the authority to carry out executions under Roman rule. So there is a reading of the passage that makes it theoretical, a memory of a power no longer held, and that reading is common and not stupid.

I do not think it survives contact with what Akiva and Tarfon actually say. They are not describing a court that rarely killed. They are saying that in their hands it would never have killed, which is a statement about themselves and not about the evidentiary rules. And Rabban Shimon ben Gamliel's answer, which is preserved right there in the text, is not the answer you give to a theoretical position. It is the answer you give to a man who has just said something dangerous.

That objection is the deterrence argument. It is written down here in the year 200, in one sentence, and it has not been improved on since either.



A court that puts a person to death once in seven years is called a destructive court.

Rabbi Elazar ben Azariah says: once in seventy years.

Rabbi Tarfon and Rabbi Akiva say: had we been on the court, no one would ever have been put to death.

Rabban Shimon ben Gamliel says: they too would have multiplied those who shed blood in Israel.

III

DO NOT CALL FOR THE EXECUTIONER

In 411 the Donatist schism came to its formal end at a conference in Carthage presided over by Marcellinus, an imperial tribune sent from Ravenna. He ruled for the Catholic side and then began enforcing the laws against the Donatists with some rigor.

In the district of Hippo, where Augustine was bishop, a band of Circumcellions and Donatist clergy had killed a priest named Restitutus and had beaten another priest, Innocentius, cutting off his finger and gouging out one of his eyes. They were arrested. Marcellinus examined them and most of them confessed.

Roman law provided for retaliation in kind. Augustine understood exactly what was coming, and he wrote this letter to stop it.

It is worth being clear about what this is. It is not a treatise. It is a bishop intervening in a live case, on behalf of men who had murdered one of his own priests and mutilated another, four hundred miles from any philosophical safety. He does not dispute the confessions. He does not suggest the men are innocent. He says that the church does not want its dead avenged by the state, that a punishment which restrains a violent man without destroying him is a mercy and should be called one, and that a judge who was gentle enough to extract a confession with a rod instead of the rack should not now send for the executioner.

He wrote twice more. Letter 134 went to Apringius, Marcellinus's brother and the proconsul of Africa, who actually held the authority to pass sentence. Letter 139 returned to Marcellinus on the same subject. Neither is set in this volume, for the reasons given in the editor's note.

There is an ending to this that Augustine did not write and could not have foreseen. Two years later, in September 413, Marcellinus and Apringius were themselves accused of conspiring in a revolt and were executed at Carthage. Augustine and the African bishops interceded for them and it did not work.

The judge he was writing to died on a charge he had no chance to answer, and the man who wrote this letter was the one who tried to stop it.

TO MARCELLINUS, 412

To Marcellinus, my noble lord, justly distinguished, my son very much beloved, Augustine sends greeting in the Lord.

I have learned that the Circumcellions and clergy of the Donatist faction from the district of Hippon, whom the guardians of public order brought to trial for what they did, have been examined by you, and that most of them have confessed their part in the violent death of the presbyter Restitutus, and in the beating of Innocentius, another Catholic presbyter, and in the digging out of his eye and the cutting off of his finger.

This news has thrown me into the deepest anxiety. I am afraid you may judge them worthy, according to the laws, of a punishment no less severe than what they inflicted on others, suffered now in their own persons.

So I write to beg you, by your faith in Christ and by the mercy of Christ the Lord himself, not to do this, and not to permit it to be done.

We might have passed over the execution of criminals in silence, since these men were not brought to trial on any accusation of ours but on an indictment laid by those whose charge is the keeping of the public peace. But we do not want the sufferings of the servants of God avenged by the infliction of the very same injuries in the way of retaliation.

Not that we object to taking away from wicked men the liberty to commit further crimes. Our desire is that justice be satisfied without the taking of their lives or the maiming of any part of their bodies, and that by whatever coercion the laws allow they be turned from their frenzy back to the quietness of men in their right minds, or else compelled to give up their violence and take up some useful labor.

This is called a penal sentence. But who does not see that when a restraint is placed on the boldness of savage violence, and the remedies that produce repentance are not withdrawn, such discipline ought to be called a benefit rather than a punishment?

Fulfill, Christian judge, the duty of an affectionate father. Let your indignation at their crimes be tempered by considerations of humanity. Do not be provoked by the atrocity of what they did into gratifying the passion of revenge. Be moved instead by the wounds these deeds have inflicted on their own souls, and desire to heal them.

Do not lose now the fatherly care you kept during the examination. You extracted the confession of such horrid crimes not by stretching them on the rack, not by furrowing their flesh with iron claws, not by scorching them with flame, but by beating them with rods, the correction schoolmasters use, and parents in chastising their children, and often bishops in the sentences they hand down.

Do not now punish with extreme severity the crimes you searched out with leniency.

The need for harshness is greater in the investigation than in the punishment. Even the gentlest men use diligence and pressure in searching out a hidden crime, so that they may find someone to whom they can show mercy. It is generally necessary to use more rigor in the inquiry, so that when the crime has been brought to light there is room to display clemency.

All good works love to be set in the light, not in order to win glory from men, but, as the Lord says, that they seeing your good works may glorify your Father who is in heaven. For the same reason the apostle was not satisfied with urging us to practice moderation, but commands us to make

it known. *Let your moderation be known to all men*, he says, and in another place, *showing all meekness to all men*.

So too that famous forbearance of holy David, when he spared his enemy who had been delivered into his hand, would not have been so conspicuous had his power to do otherwise not been plain to everyone.

Therefore do not let the power of executing vengeance make you harsh, seeing that the necessity of examining the criminals did not make you lay aside your clemency. Do not call for the executioner now that the crime has been found out, having refused to call in the torturer while you were finding it out.

Finally, you have been sent here for the good of the church. I declare that what I am recommending is expedient for the interests of the Catholic Church. Or rather, so that I do not seem to reach beyond the boundaries of my own charge, I declare that it is for the good of the church in the diocese of Hippo.

If you will not listen to me asking this as a friend, listen to me offering it as counsel from a bishop. Though I am speaking to a Christian, and in a case such as this, it would not be presumption for me to say that it becomes you to hear me as a bishop commanding with authority.

I know the principal charge of the church's legal business has been laid on you, but I believe this particular case belongs to the proconsul, and I have written him a letter as well, which I beg you either to deliver to him or, if necessary, to recommend to his attention. I entreat you both not to resent our intercession, or our counsel, or our anxiety, as though it were meddling.

Let the sufferings of Catholic servants of God, which ought to build up the weak, not be stained by the repayment of injury on those who did them wrong. Temper the rigor of justice instead, and let it be your care, as sons of the church, to commend both your own faith and your mother's clemency.

May almighty God enrich you with every good thing, my noble and justly distinguished lord and dearly beloved son.

RESCUE THOSE BEING LED AWAY

In 864 the khan of the Bulgars, Boris, accepted baptism. His nobles rose against him for it. He put down the revolt and killed the leading families to the last child, and then, being a new Christian and uncertain what a Christian ruler was permitted to do, he sent a list of questions to Rome.

The questions themselves are lost. What survives is the answer, sent in the autumn of 866 by Pope Nicholas I, running to a hundred and six chapters and covering everything the Bulgarians had asked about: marriage, fasting, trousers, whether one may go to war on a Sunday, what to do with the bodies of suicides, and how a judge should get the truth out of a man who will not give it.

It is the strangest document in this book. A pope is writing to a warlord who has just committed a massacre, and instead of congratulating him on the defense of the faith, tells him plainly that killing the children of the conspirators was a sin he did not escape and could not have committed without fault.

Then, in the twenty-fifth chapter, he tells him to stop killing people.

The argument is built on Paul. Before his conversion Paul breathed threats and slaughter; after it, he never once inflicted the penalty of death on anybody, and would have taken damnation on himself in exchange for his brothers. Nicholas puts that to Boris as the pattern of what conversion is supposed to do to a ruler, and then makes the demand explicit, and does not restrict it to the innocent.

The eighty-sixth chapter takes up judicial torture. The Bulgarians had described their practice: when a thief or a bandit denies the charge, the judge beats his head and drives iron goads into his sides until the truth

comes out. Nicholas answers that no law, divine or human, permits this, and gives a reason that has not been improved on in eleven hundred years. A confession has to be something a man gives. It cannot be something taken off him.

That the ninth-century papacy was clearer on the reliability of coerced confession than the courts of the seventeenth century, or than the interrogation rooms of the twentieth, is a fact I would rather not have to report.

None of this made Nicholas an abolitionist. Popes after him presided over a great deal of burning, and the letter itself was later quarried by canon lawyers for other purposes entirely. But the sentence is in the file, and it has been in the file since 866.

This is a new translation, made for this volume from the Latin as printed in Migne, *Patrologia Latina*, volume 119, where the letter appears as number 97. The only complete modern English translation is under copyright and is not the basis of anything here.

CHAPTER XXV

The blessed apostle Paul was formerly a persecutor and a reviler, breathing threats and slaughter against the disciples of the Lord. After he had obtained mercy and was turned by divine revelation, he not only never once inflicted the penalty of death upon anyone, but wished himself accursed for the sake of his brothers, and stood most willing to spend and to be spent for the souls of the faithful.

So must it be with you. Now that you have been called by the choosing of God and lit by his own light, you must no longer gape after deaths as you did before. Rather, at every opportunity you can find, you must without any doubt call every man back to life, the life of the body as well as the life of the soul.

And as Christ brought you back from the everlasting death in which you were being held, and led you to eternal life, so must you labor to snatch all men from the destruction of death. Not only the innocent. The guilty as well.

This is according to the word of the most wise Solomon:

Rescue those who are being led away to death, and do not cease
to deliver those who are dragged off to slaughter.

CHAPTER LXXXVI

You tell us that when a thief or a bandit has been caught and denies what is charged against him, the judge in your country beats his head with blows and pricks his sides with iron goads until he brings out the truth.

Neither divine law nor human law admits such a thing at all.

A confession ought to be freely given and not forced. It is not to be dragged out by violence. It is to be offered willingly.

THE NET AND THE WHALES

Petr Chelčický was a farmer in southern Bohemia who knew barely enough Latin to apologize for it, wrote only in Czech, held no office in any church, and produced the most thoroughgoing rejection of state violence written in Europe before the Reformation.

The break came in 1419. The Hussite movement was arming. At a mass gathering outside Prague the delegates from southern Bohemia asked the masters of the university whether a Christian might attack an enemy if necessity arose, and Jakoubek of Stříbro answered yes, provided cruelty and greed were kept out of it. Chelčický was not satisfied. He went to Jakoubek's rooms near the Bethlehem Chapel afterward and asked him to produce scriptural warrant from the New Testament for a war short of cruelty. Jakoubek could not. He could appeal to the fathers and to Thomas Aquinas on the just war, and that was all he had.

Chelčický's reply was one sentence: God never revoked his commandment, you shall not kill.

He went home to his farm and spent the rest of his life writing. *The Net of Faith*, composed around 1443, is his largest work. Its governing image comes from the miraculous catch in Luke's gospel. The net is the faith, the fish are the Christians, and the net was torn when two great whales swam into it: the pope, wielding royal power, and the emperor, who smuggled pagan violence in under the skin of faith. Everything after the Donation of Constantine is the tearing.

The men who gathered around him, the Brethren of Chelčice, refused military service, refused oaths, refused to hold any government office, and refused to sanction capital punishment. They became the seed of the Unity of Brethren, which became the Moravian Church.

Almost nobody has read him. Tolstoy found him in the 1890s and called the silence around him a conspiracy. The only English translation of any part of *The Net of Faith* was made by Enrico Molnár in 1947 as a divinity school thesis, covering Book One alone, and it existed as a single manuscript in a library until it was transcribed and released in 2006. Book Two has never been translated at all.

What follows is a set of selections, modernized, from that translation and from the passages of Chelčický preserved in it. It is not the argument entire. Nobody reading in English has ever had the argument entire, and until somebody funds the rest of the translation, nobody will.

THE TWO WHALES

The net was torn when two great whales entered it. The first was the supreme priest, wielding royal power and honor greater than the emperor's. The second was the emperor, who with his rule and his offices smuggled pagan power and violence in beneath the skin of faith.

When these two monsters began to turn about in the net they rent it so badly that very little of it has remained whole. And out of these two whales, so destructive of Peter's net, there were spawned many scheming schools, by which the net is torn further still, until nothing remains but tatters and false names.

ON THE SWORD

God never revoked his commandment, you shall not kill.

Our faith obliges us to bind wounds, not to make blood run.

He who obeys God needs no other authority.

Wars and other kinds of murder have their beginning in the hatred of the enemy and in the unwillingness to be patient with evil. Their root is in intemperate self-love and in immoderate affection for temporal possessions. These conflicts are brought into the world because men do

not trust the Son of God enough to abide by his commandments.

ON THE CHRISTIAN STATE

A Christian cannot rule, for God is the only ruler.

A secular ruler is bound by the very fact of his sovereignty to use violence and other methods that are not Christian. If he should somehow become a Christian, his only means of ruling would then be persuasion, which is to say preaching. And if a king preaches he is no longer a king; he has become a priest. As a king he is able to do nothing but hang all the evil men. For no king, not even the best one, could succeed in reforming an evil people except by the law of Christ.

Consider for yourself how state authority can approach men who are bound by the divine commandment not to resist evil in times of adversity, but to turn the other cheek when the one is struck, to leave revenge to God, and not to return evil for evil.

ON WHAT IS BEING REFUSED

The rule of Christ is perfect, and therefore it never uses compulsion. The virtue he expects of every Christian springs from a good and free will. Originating in freedom, it carries the responsibility of choice, to choose either the best or the worst.

How small and how barren is the dominion of pagan kings compared with the dominion of Christ. Temporal power heaps burdens and sufferings on its subjects instead of freedom and consolation. Yet the kingdom of Christ is so powerful and so perfect that if the whole world wanted him for king it would have peace, and all things would work together for good. There would be no need of temporal rulers, for everyone would stand by grace and truth. The need for kings arises only because of sins and sinners.

The Lord Jesus calls us to the best good. The devil and the world call us to the worst evil. Therefore choose joy or choose hell. The choice of either of these ways is in your hands.

FIRST YOU MAKE THIEVES

Thomas More was thirty-eight when he wrote *Utopia*, on an embassy to Flanders, in Latin, for an audience of humanists. Book Two describes the island. Book One is the argument that made Book Two necessary, and at its center is a dinner party.

The scene is set in the household of Cardinal John Morton, Archbishop of Canterbury and Lord Chancellor, where More himself had served as a boy. The traveler Raphael Hythloday is at table. An English lawyer praises the vigorous execution of justice on thieves, noting cheerfully that they were being hanged so fast there were sometimes twenty on one gibbet, and wondering aloud why there were still so many thieves left.

What follows is the best-known demolition of the English gallows written before the eighteenth century. Hythloday makes four moves. The punishment is disproportionate, since nothing in the world is equal in value to a human life. It is ineffective, since no severity restrains a man who has no other way to eat. It is the state's own doing, since the enclosures that turned sheep into devourers of men created the thieves in the first place, and a country that permits people to be ruined and then hangs them for the consequences has first made thieves and then punished them. And it is actively lethal, since a thief who knows he will hang either way has every reason to kill the witness.

That last point is the sharpest thing in the passage and it is still true. Make the penalty for the lesser crime identical to the penalty for the greater and you have handed the criminal a reason to commit the greater.

Hythloday's alternative is labor rather than death, modeled on a people he calls the Polylerites. The Cardinal, to the visible irritation of everyone else at the table, says it might at least be worth trying.

Now the part that has to be said. Thomas More, as Lord Chancellor, presided over the burning of men for heresy. He defended it in print. There is no reading of *Utopia* that dissolves this, and no honest edition should try. What the contradiction demonstrates is the thing this whole volume is about: an argument against killing can be perfectly clear in a man's hands and still fail to reach the part of him that holds the fire.

The English here follows Gilbert Burnet's 1684 translation, modernized. Burnet made it in the years just after he had defended Lord William Russell, attended his execution, and been stripped of his lectureship for vindicating his memory. He came to More's argument, in his own account, out of the same sense of unreason in high places.

AT THE CARDINAL'S TABLE

One day, when I was dining with him, there happened to be at the table one of the English lawyers, who took the occasion to run out into a high commendation of the severe execution of justice upon thieves, who, as he said, were then hanged so fast that there were sometimes twenty on one gibbet. And upon that he said he could not wonder enough how it came to pass that, since so few escaped, there were yet so many thieves left, still robbing in all places.

Upon this I, who took the boldness to speak freely before the Cardinal, said there was no reason to wonder at the matter, since this way of punishing thieves was neither just in itself nor good for the public. The severity was too great, and the remedy was not effective. Simple theft is not so great a crime that it ought to cost a man his life, and no punishment, however severe, is able to restrain from robbing those who can find no other way to live.

In this, I said, not only you in England but a great part of the world imitate some bad schoolmasters, who are readier to whip their students than to teach them. There are dreadful punishments enacted against

thieves. It would be much better to make such provisions that every man might be put in a way to live, and so be preserved from the fatal necessity of stealing and of dying for it.

WHO MADE THE THIEVES

There is another cause of this, more particular to England.

The increase of pasture. Your sheep, which are naturally mild and easily kept in order, may now be said to devour men, and to unpeople not only villages but towns. For wherever it is found that the sheep of any soil yield a softer and richer wool than ordinary, there the nobility and gentry, and even those holy men the abbots, not content with the old rents their farms yielded, nor thinking it enough that they live at their ease and do no good to the public, resolve to do it harm instead.

They stop the course of agriculture, destroying houses and towns, keeping only the churches, and enclose the ground so they may lodge their sheep in it. Those worthy countrymen turn the best inhabited places into wilderness.

When an insatiable wretch who is a plague to his country resolves to enclose many thousand acres, the owners as well as the tenants are turned out of their holdings by trickery or by main force, or, worn down by ill usage, are forced to sell. By this means those miserable people, men and women, married and unmarried, old and young, with their poor but numerous families, are all forced to move, not knowing where to go. They must sell their household goods for almost nothing, which could not have brought them much money even if they could have waited for a buyer.

When that little money is at an end, and it will be soon spent, what is left for them to do but either steal and so be hanged, God knows how justly, or go about and beg? And if they beg they are put in prison as idle vagabonds, though they would willingly work and can find nobody who will hire them.

If you do not find a remedy for these evils, it is a vain thing to boast of your severity in punishing theft, which, though it may have the appearance of justice, is in itself neither just nor useful. If you allow your

people to be badly brought up and their manners to be corrupted from infancy, and then punish them for the crimes to which their first education disposed them, what else is to be concluded but that you first make thieves and then punish them?

WHY DEATH IS NOT LAWFUL

It seems to me a very unjust thing to take away a man's life for a little money. Nothing in the world can be of equal value with a man's life.

If it is said that it is not for the money that a man suffers, but for his breaking of the law, then I must say that extreme justice is extreme injury. We ought not to approve of those terrible laws that make the smallest offenses capital, nor of that opinion of the Stoics which makes all crimes equal, as if there were no difference between killing a man and taking his purse. Examine the two impartially and there is no likeness and no proportion between them.

God has commanded us not to kill. Shall we kill so easily for a little money?

If it is said that by that law we are only forbidden to kill except where the laws of the land allow it, then on the same grounds laws may be made in some cases to allow adultery and perjury. God has taken from us the right of disposing either of our own lives or of other men's. If it is claimed that the mutual consent of men in making laws can authorize the killing of a man in cases where God has given no example, and that this frees people from the obligation of the divine law, and so makes murder a lawful act, what is this but to give human laws preference over the divine? And if that is once admitted, by the same rule men may put whatever restrictions they please on the laws of God.

Under the law of Moses, though it was rough and severe, being a yoke laid on an obstinate and servile nation, men were only fined and not put to death for theft. We cannot imagine that in this new law of mercy, in which God treats us with the tenderness of a father, he has given us a greater license to cruelty than he gave to the Jews.

THE ARGUMENT THAT STILL HOLDS

It is plain and obvious that it is absurd, and of ill consequence to the commonwealth, that a thief and a murderer should be punished equally.

If a robber sees that his danger is the same when he is convicted of theft as it would be if he were guilty of murder, this will naturally incite him to kill the person he would otherwise only have robbed. If the punishment is the same, there is more safety in killing, and less danger of discovery, when the man who could best identify him is put out of the way.

So terrifying thieves too much provokes them to cruelty.

WHAT TO DO INSTEAD

As to the question of what more suitable punishment can be found, I think it much easier to find that than to invent anything worse.

The method I liked best was the one I observed in my travels among the Polylerites. Those found guilty of theft among them are required to make restitution to the owner, and not, as it is elsewhere, to the prince, for they reckon that the prince has no more right to the stolen goods than the thief has. If what was stolen no longer exists, then the goods of the thieves are valued, restitution is made out of them, and the remainder is given to their wives and children.

The thieves themselves are condemned to serve in the public works, but they are neither imprisoned nor chained unless there is something extraordinary in their crime. They go about loose and free, working for the public. If they are idle they are whipped, but if they work hard they are well used and treated without any mark of reproach.

None of them is entirely without hope of recovering his freedom, since by obedience and patience, and by giving good grounds to believe that they will change their manner of life, they may expect at last to obtain their liberty. Some are restored to it every year on the good character given of them.

It is obvious that these laws are as advantageous as they are mild and gentle, since vice is destroyed and men are preserved, and they are treated

in such a way as to make them see the necessity of being honest and of employing the rest of their lives in repairing the injuries they had done to society.

THE CARDINAL ANSWERS

To this he answered that it could never take place in England without endangering the whole nation. As he said this he shook his head, made some faces, and held his peace, and all the company seemed to be of his opinion.

Except the Cardinal, who said that it was not easy to form a judgment of its success, since it was a method that had never yet been tried. But if, said he, when sentence of death were passed upon a thief, the prince would reprieve him for a while and make the experiment upon him, then if it had a good effect it might be adopted, and if it did not succeed, the worst that could happen would be to execute the sentence on the condemned man at last. And I do not see, he added, why it would be either unjust, or inconvenient, or at all dangerous to allow such a delay.

When the Cardinal had finished, they all commended the proposal, though they had despised it when it came from me.

TO KILL A MAN IS NOT TO DEFEND A DOCTRINE

Michael Servetus was burned alive at Champel outside Geneva on the twenty-seventh of October, 1553, on green wood, which took a long time. John Calvin had wanted the sword instead of the fire, and had pressed for the conviction, and afterward wrote a book defending what had been done.

Sebastian Castellio had known Calvin, had worked alongside him, and had been driven out of Geneva by him years earlier over a dispute about scripture. He was teaching Greek at Basel and living close to poor. Within four months of the burning he had a book out.

De haereticis, an sint persequendi appeared in March 1554 under a false author, a false printer and a false city. It is not a treatise so much as a case file: extracts on toleration gathered from twenty-five Christian writers, ancient and modern, including Luther, and including Calvin himself from an earlier and gentler period of his life. The dedication to Duke Christoph of Württemberg is Castellio's own, signed Martinus Bellius, and it asks the question the whole century had contrived not to ask: what exactly did you do, when you killed him?

Later that same year he wrote a second book, *Contra libellum Calvini*, answering Calvin's defense line by line. It was too dangerous to print. It circulated in manuscript, and it was not published until 1612, forty-nine years after Castellio was dead.

That book is a dialogue between two speakers, Calvinus and Vaticanus. Calvinus is given Calvin's own sentences, quoted. Vaticanus answers. The exchange set here is the most famous thing Castellio ever wrote and it takes about twenty seconds to read.

Notice what he does not argue. He does not defend Servetus. He says elsewhere, flatly, that he is not a disciple of Servetus and does not hold his doctrine. He concedes the man was a heretic. What he refuses to concede is the equation... that the fire was an argument, that the killing was a defense of anything, that the thing which happened at Champel belongs in the category of theology at all.

Strip the doctrinal frame off it and the argument is the one every abolitionist has been making since. The state did not do what it claimed to be doing. It said it was protecting something. It killed a man. Those are not the same act and no amount of purpose makes them the same act.

Castellio died in December 1563 at forty-eight, under investigation, worn out, having spent his last years digging in a garden to feed himself. Calvin died five months later.

This is a new translation, made for this volume from the Latin of *Contra libellum Calvini*. The standard modern English translation of the 1554 anthology is under copyright and is not the basis of anything here.

FROM AGAINST CALVIN'S BOOKLET, 1554

Calvinus, quoted from his own defense:

We see now that the ministers of the Gospel must be ready to bear the cross and to undergo the hatred and the reproaches of the world, since the Lord has armed them with no weapons but patience. And nevertheless let kings be commanded to defend the doctrine of piety with their protection.

Vaticanus answers:

To kill a man is not to defend a doctrine. It is to kill a man.

When the people of Geneva killed Servetus, they did not defend a doctrine. They killed a man.

The defense of doctrine is not the business of the magistrate. What has the sword to do with doctrine? It is the business of the teacher.

VIII

I AM A MAN AND
I CAN BE DECEIVED

Friedrich Spee von Langenfeld was a Jesuit priest who spent part of the 1620s hearing the confessions of women condemned as witches in the German lands and walking them to the stake. He came out of that work convinced that he had accompanied innocent people to their deaths, one after another, and that the machinery which produced their confessions would produce a confession from anybody alive, including him.

He wrote the book anonymously. It appeared in 1631 at Rinteln, without his knowledge or consent, and again in 1632 at Frankfurt. Attaching his name to it would have finished him. His own order investigated him for it. He died in 1635 at forty-four, of plague caught while nursing wounded soldiers at Trier.

Cautio Criminalis is built as fifty-one *dubia*, doubts, each stated as a question and then taken apart. It is not a book about witchcraft. Spee grants in the first doubt that witches exist, because denying it would have ended the argument before it started, and then spends the remaining five hundred pages demonstrating that the procedure used to find them cannot distinguish a witch from a farmer's wife with an enemy in the next house.

The passages set here are the ones that are not about witches at all. They are about what happens to a legal system when the crime is declared exceptional. Spee's German judges argued that because witchcraft was a *crimen exceptum*, the ordinary safeguards did not apply: no advocate, no defense, torture on thin evidence, confession accepted as proof. Every one of those arguments is alive in American capital practice under different names. Death is different, so the rules are different, so the review is

narrower, so the exception swallows the protection it was carved out of.

The heart of it is the eleventh doubt, where Spee stops arguing and testifies. As far as I can tell it is the first time in European literature that a man who stood beside the condemned wrote down what he concluded from standing there.

This is a new translation, made for this volume from the Latin of the second edition, Frankfurt, 1632. The only complete modern English translation is under copyright and is not the basis of anything here.

FROM THE AUTHOR'S PREFACE

I have addressed this book to the magistrates of Germany. That is, to the ones who are not going to read it, and not so much to the ones who are.

Here is the reason. Any magistrate careful enough to think he ought to read what I have written about witch cases already possesses the thing the book was written to supply, namely care and diligence in understanding these cases. So he has no need to read it or to take anything from it. But the man so careless that he will neither read such things nor attend to them is the man for whom it is desperately necessary to read this book and learn from it to be thorough.

So let those read who are not going to read. And those who are, let them not read at all.

Still, whether a man intends to read this book or not, I would ask one thing. Let there be nobody who does not at least read the last doubt in it and weigh it in his own mind. Indeed to read that one first, before all the rest, would be neither useless nor out of order.

DOUBT VII. WHETHER THIS SHARP METHOD CAN ROOT OUT THE EVIL

However much the princes burn, they will never burn it out unless they burn everything. They lay their own lands waste worse than any war does,

and they accomplish not a particle. The thing is to be wept over in blood.

DOUBT VIII. ON THE CARE PRINCES OWE

We see a process against witches, once begun, drawn out over years, and the number of those to be punished so swollen that whole villages are consumed to the foundation. Nor is anything else accomplished by it, except that the books are filled with the names of still others, so that if the thing is pressed on stubbornly there appears to be no end of the burnings until the whole region has been emptied out. And no prince has ever been found who did not eventually have to break it off. Every one of them down to this day has made an end. Not one has found one.

I hear that in certain places a fixed sum is settled on the salary of the lawyers and inquisitors whom princes appoint to this business of witches, reckoned by the number of the accused. Four or five thalers a head, for example.

Who does not see, on this ground alone, how much vigilance is needed, so that the hope of gain does not corrupt the process? For each man will be thought guilty all the more readily the better it suits somebody's purse that the number of the accused be larger rather than smaller. The thing is hard and dangerous. We are not all of us saints, nor of so unshakable a mind that some heat of acquisition will not loosen it and carry us sideways, at least when we are tempted.

DOUBT IX. WHETHER A PRINCE DISCHARGES HIS CONSCIENCE BY LEAVING IT TO HIS OFFICIALS

A charming arrangement. The prince frees himself from care and close attention and shifts it onto the conscience of his officials. The officials free themselves in turn and shift it onto the conscience of the prince. A into B, and B into A.

The prince says: let the officials see to it. The officials say: let the prince see to it.

What sort of circle is this? And which of the two will answer to God? For when this one has seen to it, and that one has seen to it, nobody has

seen to it.

I say that among all the punishments and miseries of prisoners, this one is the greatest, that they are deprived forever of the sight of princes. They are thrown into a corner where no ray from that quarter ever reaches them, except through other men's eyes, which is to say through tinted glass, which gives the light and the object whatever color the glass itself happens to have.

Let the prince therefore inquire into the particulars.

Whether the prisons are visited, and how often. Whether they are filthier than custody requires. Whether some of the accused lie whole years in cold and filth without a hearing, so that they beg for an end either to their chains or to their lives. What the manner and the measure of the torture is. What manner of questioning is used. What restraint and skill the priests have who are brought in. Whether a defense is open to every prisoner. Whether there are complaints among the people about the commissioners. Whether these men are greedy, or inhuman.

Whether among them all there is a single one who, before he has looked into the matter, leans to the side of the accused rather than to the other. Whether there is one who has ever given any sign that he would rather find an innocent person innocent than find a guilty one guilty. Whether there is one who, when a prisoner turned out to be innocent, was not annoyed but glad.

Let him ask also whether any of the accused have died in prison, and what was done with them. Whether the body was buried under the gallows, as proof that the person left this life by a bad death.

DOUBT XI. WHETHER INNOCENT PEOPLE HAVE IN FACT BEEN CAUGHT UP

If the reader will grant me anything, I confess that I myself accompanied a number of women to death in past years, in various places, about whose innocence I waver as little now as there was ever any effort, any almost excessive industry, that I did not apply to uncovering the truth.

Curiosity drove me. Why should I pretend otherwise? It carried me almost past the proper limit, because in a matter so uncertain I wanted to know something certain. And I found nothing anywhere but innocence.

Having satisfied myself of that innocence by arguments neither few nor trifling, and being nevertheless forbidden, for certain reasons, to intervene in the judgment, it is easy enough to estimate with what feeling I was present at deaths so pitiable.

I am a man and I can be deceived. I will never deny it.

But I have dealt long and often with those prisoners, inside and outside the seal of confession. I have turned their souls over in every direction. I have used every help and counsel, divine and human, that I could reach. I have gone through the evidence and the records. I have discussed the cases with the judges themselves as far as the seal allowed. I have weighed everything with care and argued out every single argument within my own mind.

And after all of that I could judge no otherwise than that the women who were reckoned guilty were free of the crime.

I do not think I am being careless if I find it hard to believe that I was wrong.

I know men, learned and religious, who handled these same cases for some time and who said that they not only feared this but had no doubt of it at all. I know a prince who, having pressed an inquisition against witches for a while, asked the priest who cared for the consciences of the condemned and led them out to execution whether he seriously believed that some of them were truly innocent and had been swept off with the rest. The priest drew his shoulders together and answered honestly that he had no doubt of it whatever, and that on the salvation of his own soul he could say nothing else.

That answer went to the prince's heart. He stopped at once and forbade his men to go any further.

Our lawgiver Christ prescribes it plainly in the parable of the tares. The servants said to the householder: shall we go and gather them up? And he answers, *No. Lest while you gather the tares you root up the wheat along with them.*

Note that it does not say *lest you root up*. It adds the word *perhaps*. Lest perhaps you root up.

By which he teaches two things. First, that one must abstain from tearing out the tares if the wheat must come out with them. And second, that one must abstain if there is merely the danger of the wheat coming out with them, which is what the added word indicates.

He draws no distinction here between a danger that arises through the fault of the servants and one that arises without it. He says simply and absolutely that on account of this danger there must be no uprooting.

It is better to let thirty guilty men go, and more than thirty, than to strike down even one who is innocent. Let the sword be so balanced against the wicked that it does not come down on innocent necks as well.

DOUBT XVII. WHETHER A DEFENSE IS TO BE ALLOWED

I am ashamed of the question. But the iniquity of our times wipes the shame away.

Men without skill, and worse, men with malice, hold that because this crime of witchcraft is an excepted crime, every defense whatever must be cut off. Let the reader hear how they proceed.

Somebody accuses me of theft. This is a great stain on my name. So these learned and excellent men at once allow me to defend myself and wash the stain off, and if I cannot manage it myself, to choose an advocate who will do it for me.

Another accuses me of adultery. The stain is greater. So they still allow me to wash this one off as well.

A third accuses me of witchcraft. This is the foulest and the largest stain of all. So now they forbid me to defend myself or to wash it off, and they supply the reason: that the stain is the foulest, the crime the most atrocious and the most deadly, and therefore must not be washed off at

all.

Who would not groan aloud at reasoning so magnificent?

It is ridiculous to shout that the crime of witchcraft is an excepted crime before it has been established that the prisoner is guilty of it. Let it be excepted. Let it be atrocious. Let it be as deadly as you please. What follows, if the person in custody denies being subject to it? If she has the crime, then by all means say it is excepted and proceed as one is permitted to proceed in excepted crimes. But whether she is bound by that crime is the very thing still in question. So the magnitude of the crime is brought forward absurdly.

It belongs to natural right that a full and proper defense be denied to nobody, and the best defense that can be had. So much so that a man who cannot defend himself should be defended by another, whoever seems most capable of it. And what belongs to natural right must be observed in excepted crimes exactly as in unexcepted ones.

If natural right grants that I may not be prevented from defending myself against the stroke of a knife, then much less may I be prevented from defending myself against the stroke of a cannon. From which it follows that if I have a right by nature to defend and clear myself of a lesser charge, I have all the more right to defend and clear myself of a greater one, and above all of one as atrocious as witchcraft.

It follows further that the larger the evil and the crime laid against me, and the more I must drive it from myself, the better and more suitable the means of defense that ought to be granted me, and the better and abler the advocates.

AFTERWORD

Eight voices. Nineteen hundred years. Nothing accumulates.

Akiva was flayed to death by the Romans. Aśoka's empire came apart within fifty years of his death and his pillars stood unread for two thousand, because nobody could make out the script until a clerk of the East India Company cracked it in 1837. Augustine watched the judge he had written to get executed on a charge nobody proved. Nicholas wrote to one khan, and the church he led went on to build the Inquisition on top of the letter.

Chelčický was buried so thoroughly that a Russian novelist had to dig him up four centuries later, and most of his book is still only in Czech. More went to the block himself in 1535, having first sent other men to the fire. Castellio published under a false name in a false city, and the second book was too dangerous to print at all; he died worn out at forty-eight with the manuscript unpublished, and it stayed unpublished another forty-nine years. Spee published without his name on it because his name would have killed him, and died at forty-four nursing soldiers through a plague.

That is the record. Nearly everyone in this book was either killed by a state, investigated by one, or ignored by one, and two of them managed all three.

I keep thinking about the Cardinal.

He is the only man at that table who does not laugh the argument off, and even he does not accept it. What he says is: we have never tried it, so let us try it on one man, and if it fails we can always still hang him. That is the most generous thing the best-placed man in England could produce in 1516. Keep the rope in the room. Run the experiment. If mercy does not work out, the gallows will still be standing.

Five hundred years later that is roughly where we are. Every moratorium in every state has been built exactly like Morton's proposal. Suspend it, study it, keep the chamber maintained. Arkansas has a chamber. It has always had a chamber. The drugs expire and they buy more.

And Aśoka is the same shape, twenty-two centuries earlier and with more power behind it. He does not abolish. He inserts three days. That is a man with absolute authority over a subcontinent finding that the most he can do is slow the machine down and give the condemned time to settle his accounts.

So I am not going to end this book by telling you these people won, because they did not, and the ones who came after them did not either, and I have stood in enough parking lots to know what winning would look like and I have never seen it.

Here is what I want to say instead.

Every one of these arguments was made by somebody with no evidence it would work. The Jains had no state. Akiva had no movement. Aśoka had an empire and could only buy three days. Augustine had one letter and a judge in a hurry. Nicholas had a warlord who had already done the killing. Chelčický had a farm. More had a dinner party and a job he would eventually be executed for. Castellio had four months and a fake printer. Spee had a stack of paper he could not sign.

None of them got to see anything change. They said it because it was true, and they said it into rooms that were not going to do anything about it, and then they died.

The saying is not instrumental. That is the whole lesson of the pre-modern record. You do not make the argument because it will work. You make it because a person is going to be killed and somebody in the room should be on record objecting.

Spee wrote that he could not stop believing the women were innocent, that he was present at their deaths anyway, and that he was a man and could be deceived but did not think he was. I have read that paragraph more times than I can count. I have thirteen of those on my own record

now. Thirteen times I have been in the room and it did not work.
Get in the room anyway.

Jeff Hood

DEFINITIONS AND TERMS

Ahiṃsā. Non-injury. The refusal to harm any living thing, shared across the Jain, Buddhist and Hindu traditions and pressed furthest by the Jains, who admit no exception for the guilty, for war, or for the state. It is the oldest continuous argument against the executioner in any language.

Daṇḍa. The rod, and by extension the king's power to punish. The Hindu *daṇḍa* literature holds that without it the strong would devour the weak, which is the deterrence argument in its earliest surviving form. It runs directly against *ahiṃsā* in the same books, and the Mahābhārata never resolves the two.

The Three Days' Respite. Aśoka's order in the Fourth Pillar Edict, c. 243 BCE, granting three days to men already condemned and lying in prison. The time is for relatives to plead with the officers, and for the condemned man, if nobody will plead for him, to give alms and keep a fast. It is at once the earliest recorded stay of execution, the earliest clemency window, and the only such order that provides for the prisoner's own business rather than the state's.

Sanhedrin. The rabbinic court. A capital case required twenty-three judges, two eyewitnesses to the act itself, and a formal warning issued to the accused beforehand and acknowledged by him. Circumstantial evidence was inadmissible. A unanimous guilty verdict acquitted, on the theory that a court in which nobody could argue for the defendant had not done its job.

Circumcellions. Militant Donatist bands in Roman North Africa, drawn largely from the rural poor, who attacked Catholic clergy and property. The men Augustine wrote Letter 133 to save had beaten one priest and killed another.

Retaliation in Kind. The principle that punishment should mirror the injury.

It is what Augustine feared Marcellinus would apply: the eye for the eye, the finger for the finger, the death for the death. The argument against it is the oldest continuous thread in abolitionist writing and the one that reappears in every section of this book.

Intercession. A bishop's formal appeal to a civil magistrate on behalf of a condemned person. In late antiquity it was an accepted part of the office and carried real force. It is the direct ancestor of every clemency petition filed since, and of everything a modern spiritual advisor does in the last week.

Coerced Confession. A statement obtained by force. Nicholas I dismantles it in 866 in a single sentence: a confession must be given freely, not dragged out by violence. Spee returns to the same ground seven hundred and sixty-five years later, having watched torture manufacture confessions to a crime he doubted anyone had committed. Neither man was heeded, and the modern research on false confession says exactly what they said.

The Donation of Constantine. A forged eighth-century document purporting to record Constantine's gift of imperial authority to the papacy. Chelčický believed it authentic, as everyone did, and built his whole account of the church's corruption on it. Lorenzo Valla proved it a forgery in 1440, within three years of Chelčický writing. Chelčický never heard. His historical premise was wrong and his conclusion about the fusion of church and sword was right.

The Just War. The doctrine, taken from Augustine and formalized by Aquinas, that a war is lawful if it has legitimate authority, just cause, and right intention. Jakoubek of Stříbro offered it to Chelčický in 1419 as warrant for Hussite arms. It is the same structure that underwrites every argument for a lawful execution: the right authority, the right cause, the right intention, and a dead man at the end of it.

Enclosure. The conversion of common and arable land into fenced sheep pasture in Tudor England, which drove tenants off the land in large numbers. More's charge is that enclosure manufactured the thieves the

gallows then consumed, which makes his the earliest structural argument in the abolitionist canon.

Gibbet. The frame from which the hanged were suspended, often left standing with the body on it. Twenty on one gibbet is the lawyer's boast at the Cardinal's table, offered as evidence that the system was working.

Extreme Justice Is Extreme Injury. *Summum ius, summa iniuria*, a Roman legal maxim More puts in Hythloday's mouth. Punishment pursued to the limit of what the law permits stops being justice and becomes its opposite. It is the ancestor of every proportionality argument in modern Eighth Amendment litigation.

The Polylerites. More's invented people, whose thieves make restitution, work in public, keep their families, wear a distinguishing mark, and may earn their freedom back. The first sustained description in English of an alternative to the gallows, and the ancestor of every argument that the sentence should aim at repair.

Heresy. Doctrinal error held obstinately. It was the charge that burned Servetus at Geneva in 1553 and the pretext for the trials Spee sat through in the 1620s. Castellio's answer is not that Servetus was orthodox. It is that killing a man is not an argument about doctrine, whatever the killing is called.

Crimen Exceptum. The excepted crime. A charge held so atrocious that the ordinary safeguards are suspended for it: no advocate, no defense, torture on thin evidence, confession taken as proof. Spee's whole book is an attack on the category. Its modern descendant is the claim that death is different, and therefore the rules are different, and therefore the review is narrower.

The Tares. The parable at Matthew 13, where the householder forbids his servants to pull the weeds lest they uproot the wheat with them. It is the single most-cited scripture in this book. Chelčický uses it, Spee builds an entire doubt on it, and Spee catches what everyone else misses: the text does not say *lest you uproot*, it says *lest perhaps you uproot*. Risk alone is

enough to stop the hand.

Botched Execution. An execution that departs materially from its own protocol. Strangulation instead of a broken neck. Failed venous access. Prolonged consciousness. The category is old and it is not shrinking. Its persistence is not a defect in the machinery. It is the machinery.

FURTHER READING

Several of these works are extremely hard to reach in English, and two of them had never been printed in English at all before this volume. What follows is where to go for each, and where the walls are.

THE TEXTS

- Jacobi, Hermann, trans.** *Jaina Sūtras, Part I: The Ācārāṅga Sūtra, The Kalpa Sūtra*. Sacred Books of the East, Vol. 22. Oxford, 1884. Public domain and online.
- Müller, F. Max, trans.** *The Dhammapada*. Sacred Books of the East, Vol. 10. Oxford, 1881. Public domain; Project Gutenberg carries the full text.
- Hultzsch, E.** *Inscriptions of Aśoka*. Corpus Inscriptionum Indicarum, Vol. I. Oxford, 1925. The standard scholarly edition of the edicts, with the Prakrit and the English facing. Public domain. Vincent A. Smith's *Aśoka: The Buddhist Emperor of India* (Oxford, 1909) gives a freer rendering and is also public domain.
- Ganguli, Kisari Mohan, trans.** *The Mahābhārata of Krishna-Dwaipayana Vyasa*. Calcutta, 1883–96. The complete English prose translation, public domain and online in full.
- The Mishnah.** Tractate Makkot, chapter 1. Herbert Danby's translation (Oxford University Press, 1933) is the standard English and is widely available. Sefaria carries the Hebrew alongside a modern translation without charge.
- Augustine.** *Letters*. Translated by J. G. Cunningham in the Nicene and Post-Nicene Fathers, First Series, Vol. 1, edited by Philip Schaff, 1887. Public domain and online. Letters 134 and 139 are best read in the Fathers of the Church series or in E. M. Atkins and R. J. Dodaro, eds., *Augustine: Political Writings* (Cambridge University Press, 2001), both in copyright.

Chelčický, Petr. *The Net of Faith, Book One*. Translated by Enrico C. S. Molnár, 1947; transcribed and released by nonresistance.org, 2006. The only English of any part of this work. Book Two has never been translated.

More, Thomas. *Utopia*. Translated by Gilbert Burnet, 1684. Public domain; Project Gutenberg carries the Henry Morley edition. Ralph Robinson's 1551 translation is also public domain and closer to More's century in its English.

Castellio, Sebastian. *Contra libellum Calvinii*. Written 1554, first printed Amsterdam, 1612. Public domain. The translation in this volume was made from it. His anthology *De haereticis, an sint persequendi* (Basel, 1554, under the false imprint of Magdeburg) is also public domain in the original Latin.

Spee von Langenfeld, Friedrich. *Cautio criminalis, seu De processibus contra sagas liber*. Second edition, Frankfurt, 1632. The Latin original, public domain, digitized by Google from an unknown library and held by the Internet Archive. The translation in this volume was made from it.

CONTEXT

Dundas, Paul. *The Jains*. 2nd edition, Routledge, 2002. The standard English introduction, and the best account of how far Jain non-injury actually reaches.

Thapar, Romila. *Aśoka and the Decline of the Mauryas*. Oxford University Press, 1961. On what the edicts were for, and what Aśoka's dhamma did and did not require of a state.

Berkowitz, Beth A. *Execution and Invention: Death Penalty Discourse in Early Rabbinic and Christian Cultures*. Oxford University Press, 2006. The best single book on how these two traditions talked themselves into and out of killing.

Brown, Peter. *Augustine of Hippo: A Biography*. Revised edition, University of California Press, 2000. On the bishop as intercessor, and on what a letter to a magistrate actually was.

Heiser, Lothar. *Die Responsa ad consulta Bulgarorum des Papstes Nikolaus I. Paulinus*, 1979. The fullest study of the letter. In German; there is no English

equivalent.

Wagner, Murray L. *Petr Chelčický: A Radical Separatist in Hussite Bohemia*. Herald Press, 1983. The only substantial English study.

Zweig, Stefan. *The Right to Heresy: Castellio against Calvin*. 1936. Partisan, and the book that rescued Castellio from two centuries of silence.

Sarat, Austin. *Gruesome Spectacles: Botched Executions and America's Death Penalty*. Stanford University Press, 2014. A century and a half of failed executions, counted and catalogued.

Banner, Stuart. *The Death Penalty: An American History*. Harvard University Press, 2002. For what happened to all of this once it crossed the Atlantic.

RELATED VOLUMES IN THIS SERIES

Livingston, Edward. *Argument Against Capital Punishment*. V. 6. 1833. Edited and modernized by Jeff Hood. Complicit Press, 2026.

Spear, Charles. *Essays on the Punishment of Death*. V. 10. 1844. Edited and modernized by Jeff Hood and Kat Bodrie. Complicit Press, 2026.

Burleigh, Charles C. *Thoughts on the Death Penalty*. V. 22. 1845. Edited and modernized by Jeff Hood. Complicit Press, 2026.

Dickens, Charles. *Capital Punishment*. V. 23. 1846. Edited and modernized by Jeff Hood. Complicit Press, 2026.

Bentham, Jeremy, Maximilien Robespierre and James Haughton. *An Excerpt, a Speech & a Pamphlet*. V. 24. 1791–1850. Edited and modernized by Jeff Hood. Complicit Press, 2026.

Douglass, Frederick. *Capital Punishment Is a Mockery of Justice*. V. 25. 1858. Edited and modernized by Jeff Hood. Complicit Press, 2026. The Rochester address, delivered into a mob.

ABOUT THE EDITOR

The Rev. Dr. Jeff Hood is an author, activist and death row advocate. He is the founder of the Execution Intervention Project, a 501(c)(3) organization dedicated to the abolition of the death penalty, and serves as Dean of The New Theology School, where he holds the Rev. Charles Moore Professor of Prophetic Theology chair.

He has served as spiritual advisor to condemned people across multiple states and has personally witnessed thirteen executions. His work is grounded in direct personal witness... in the visitation rooms, in the holding cells, in the chamber itself.

He edits The Death Penalty Abolition Classics for Complicit Press.

executionintervention.org