

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V. 5

AN ESSAY ON
CRIMES AND
PUNISHMENTS

A Modern Adaptation

CESARE BECCARIA

Edited and modernized by
JEFF HOOD

COMPLICIT PRESS

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Voltaire's *Commentary*, printed with the essay in the Albany edition, is not included in this volume and is reserved for a separate edition.

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*The history of mankind is an immense sea of errors, in
which a few obscure truths may here and there be found.*

BECCARIA

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FOREWORD

I have watched the state kill thirteen people.

I have stood close enough to see the chest stop moving. I have anointed foreheads that were about to be strapped down. I have prayed the prayers of the dying over men the law had already buried.

Every one of those killings was legal. Every one was performed by careful people following careful procedure. Nobody in the room believed they were murdering anyone.

That is what Beccaria understood in 1764. He was twenty-six years old. He had no death row to visit and no execution chamber to enter. He simply looked at the machinery of European justice and asked the question nobody in power had bothered to ask...by what right?

The answer he gave has never been refuted. It has only been ignored.

He said the state's authority comes from what each of us surrendered to it. He said no one ever surrendered his own life. He said the power to kill was therefore never given and cannot be exercised. He said the gallows teaches the very lesson it claims to prevent. He said that a government which forbids killing and then kills in public is teaching its people that killing is permitted when the killer is strong enough.

Two hundred and sixty years later Alabama straps men to a gurney and pumps nitrogen into a mask over their faces. Idaho has brought back the firing squad. Florida signs warrants faster than lawyers can file. The arguments in defense of all of it are the same arguments Beccaria took apart before the American Revolution began.

They said deterrence. He showed that the certainty of punishment deters and the severity of it does not.

They said the public demands it. He showed that the crowd at an execution feels pity mixed with disgust...not the terror the state was aiming for.

They said justice requires blood. He showed that the executioner is despised by the very people who authorize him, and that the contempt is a confession.

They said the law must speak with force. He showed that force is not the same thing as authority.

We are not making new arguments. We are repeating old ones that were never answered. That should encourage us and it should also shame us. Encourage us because the case is finished, the reasoning is sound, the ground has been held for two and a half centuries. Shame us because we have let it take this long.

This book is short. Beccaria wrote it in a burst, published it anonymously because he was afraid, and watched it burn across Europe faster than anyone could suppress it. Catherine invited him to Russia. Empress Maria Theresa's son abolished the death penalty in Tuscany within twenty-two years of its printing. The Grand Duke read this book and stopped killing people. That has happened before. It can happen again.

I have carried this text into visiting rooms. I have read pieces of it to men who had a date. There is something in it that a condemned man recognizes immediately...the recognition that the thing being done to him is not justice, and that somebody said so a long time ago, and said it well.

Read it as an argument. Then read it as a witness.

The state has no right to kill. It never had one. It never obtained one. It has only ever had the power, and power without right is what Beccaria called it...tyranny.

JEFF HOOD
North Little Rock, 2026

A NOTE ON THIS EDITION

Cesare Bonesana, Marquis of Beccaria, published *Dei delitti e delle pene* in Livorno in 1764, without his name on it. He was twenty-six. The book was on the Index of Forbidden Books within two years and translated across Europe within three. It shaped Blackstone, Bentham, Jefferson, and Rush. It remains the single most consequential abolitionist text ever written.

This edition is based on the anonymous English translation of 1767, as corrected in the edition published at Albany by W. C. Little & Co. in 1872. That text is in the public domain. It is also, for most readers today, nearly unreadable. Beccaria's Italian is compressed and urgent. The eighteenth-century English rendering is neither.

What I have done here is modernize rather than retranslate. Sentences of a hundred and forty words have been broken apart. Archaic spellings and constructions have been brought into current English. Latin tags have been translated in place or dropped where they carried no argument. Redundancies of the sort common in eighteenth-century prose have been trimmed. Chapter titles have been rendered in plain language. The chapter numbers and their order are Beccaria's, untouched.

What I have not done is soften him. Where Beccaria is severe about the poor, about women, about sodomy, about the necessity of an established religion, I have left the argument intact. He was a man of 1764 writing under a censor and an inquisition. Reading him honestly means reading what he actually said, including the parts he got wrong and the parts he was too frightened to say plainly. Chapter XXXIX, in which he refuses to discuss the crime of heresy while making it perfectly clear what he thinks of the pyres, is the sound of a man

writing around a censor. Leave it in. It teaches something about what courage costs.

The 1872 Albany edition prints Voltaire's *Commentary* alongside the essay. It is not included here. Voltaire's contribution is a distinct work with its own argument and its own cruelties, and it deserves its own volume rather than a subordinate position at the back of this one. It will receive one.

The Definitions and Terms at the end are mine. They exist because Beccaria's vocabulary is technical in ways that are easy to miss...*social compact, infamy, perpetual slavery, lese-majesty*. Reading past those words costs you the argument.

Beccaria wrote to be used. That is the spirit in which this edition is offered.

AN ESSAY ON
CRIMES AND PUNISHMENTS

Cesare Beccaria, 1764

INTRODUCTION

Most people, in most times and places, have been given laws by conquest, accident, or the convenience of the powerful. Very rarely have laws been the product of a clear-eyed examination of human nature. They are usually the leftovers of some barbarous age, patched together by generations of judges and lawyers who mistook custom for reason.

Look at the results. A handful of errors, adopted by nobody in particular and defended by everybody, govern the lives and deaths of millions. Men are tortured to obtain truth. Men are hanged for the theft of property. Men are burned for opinions. And the people who administer these systems are not monsters. They are ordinary men following procedure, which is precisely what makes the systems so difficult to overturn.

If I can persuade a single reader that the cruelty around him is neither necessary nor just, I will consider this book worth the risk of writing it. Those who suffer under bad laws are rarely in a position to complain about them. Someone has to speak on their behalf.

I write against no government in particular. I write against errors that belong to all of them.

CHAPTER I

THE ORIGIN OF PUNISHMENT

Laws are the terms on which independent human beings agreed to live together. People grew tired of a permanent state of war and of a freedom made worthless by the fact that it could be taken at any moment. So they gave up a portion of that freedom in order to enjoy the rest in peace.

The sum of those surrendered portions is the sovereignty of a nation. It is held in trust by whoever governs.

But establishing the trust was not enough. It had to be defended, because every individual will always try to take back his own portion and to seize the portions of others as well. Something was needed that could be felt...something immediate enough to keep private appetite from dragging society back into chaos.

That something is punishment.

Punishment is necessary because people do not, in fact, govern themselves by abstract rules. Society tends toward dissolution the way every other physical and moral system tends toward disorder, and it is held together only by consequences that the senses can register. Eloquence will not restrain a man in the grip of a present desire. Neither will the sublimest truth. Only the near and the certain can compete with appetite.

CHAPTER II

THE RIGHT TO PUNISH

Montesquieu wrote that every punishment not arising from absolute necessity is tyrannical. The principle can be stated more broadly still. Every exercise of authority by one human being over another, where there is no absolute necessity for it, is tyranny.

The sovereign's right to punish rests entirely on that necessity...the need to defend public liberty from the encroachments of individuals. Punishments are just in exact proportion as the liberty they protect is real.

No moral arrangement lasts unless it is grounded in what people actually feel. A law that violates that ground will meet resistance, and resistance applied steadily will destroy it in the end. The smallest continuous force overcomes the most violent motion.

Nobody ever gave up his freedom purely for the public good. That kind of person exists only in stories. Every individual would exempt himself from the compact binding everyone else if he could.

It was necessity that forced people to surrender part of their liberty. And each of them surrendered as little as possible...only as much as was required to persuade others to defend the rest. The aggregate of those smallest possible portions is the right to punish. Everything beyond that aggregate is not justice. It is abuse.

By justice I mean nothing mystical. I mean only the bond required to keep the interests of individuals united, without which people return to barbarism. Punishments that exceed what that bond requires are unjust by definition. We should be careful about attaching to the word *justice* the idea of some real thing, some force or being that

exists in the world. I am not speaking here of divine justice, which is of another kind entirely and belongs to rewards and punishments in a life to come.

CHAPTER III

CONSEQUENCES

Only the law can determine the punishment for a crime, and only the legislature, which represents the whole society bound by the compact, can make penal law. No magistrate, being himself a member of that society, may lawfully impose on another member a punishment the law has not established.

A punishment increased beyond what the law fixed is the lawful punishment plus another one that has no authority behind it. So no magistrate may increase a penalty, however zealous he is and however much he believes the public good requires it.

If the individual is bound to society, society is equally bound to him. The contract binds both parties by its nature. This obligation runs from the throne to the poorest house and means simply this: it is in everyone's interest that arrangements useful to the greatest number be observed exactly. The violation of that compact by any individual is the beginning of anarchy.

The sovereign, representing society, can make general laws to bind its members. But it is not for him to judge whether a particular individual has broken the compact. In that dispute there are two parties, the sovereign asserting the violation and the accused denying it. A third is required to decide between them...a judge, whose determination is final and consists of nothing more than an affirmation or denial of fact.

And if severity of punishment can be shown to be useless, even where it is not directly contrary to the public good, then that severity is contrary to the enlightened virtues that instruct a sovereign to prefer

CONSEQUENCES

governing free and happy people over governing slaves. It is also contrary to justice and to the social compact itself.

CHAPTER IV
INTERPRETING THE LAW

Judges in criminal cases have no authority to interpret penal law, because they are not legislators. They did not receive the law from our ancestors as a family tradition or as the will of a testator whose heirs must carry out his wishes. They receive it from a society that exists now, or from the sovereign who represents it.

The authority of law does not rest on some ancient agreement, which could bind no one who was not alive to make it and which would reduce later generations to a herd of animals with no power to judge or act. It rests on the loyalty, tacit or expressed, that living subjects give to their sovereign in order to restrain the endless churning of private interests. Who then is the lawful interpreter? The sovereign, meaning the representative of society. Not the judge, whose office is only to determine whether a man has or has not done something the law forbids.

In every criminal case the judge should reason in a syllogism. The major premise is the general law. The minor premise is whether the act conforms to it or violates it. The conclusion is liberty or punishment. If the judge is forced by defective law, or chooses on his own, to construct any other syllogism, he has introduced uncertainty into the system.

Nothing is more dangerous than the common maxim that we must consider the *spirit* of the law. To accept it is to open the gates to a flood of private opinion. This will look like a paradox to people more disturbed by a small visible disorder than by the enormous remote consequences of a single false principle adopted by a nation.

Our knowledge is proportional to the number of our ideas, and the more complex those ideas are, the more positions they can be viewed from. Every person has his own vantage point, and the same person sees the same object differently at different times. So the spirit of the law becomes whatever the judge's logic makes of it, which depends on his digestion, his temper, the social rank of the accused, the judge's personal connections, and every other circumstance that shifts the appearance of things in the unstable human mind. This is why a defendant's fate changes as he passes from court to court, his life and liberty hostage to a magistrate's mood. This is why the same crime is punished differently in the same tribunal at different times. It happens because the courts consulted the shifting voice of interpretation instead of the fixed voice of the law.

The disorders produced by strict adherence to the letter of a penal law are nothing compared with those produced by interpreting it. The first are temporary inconveniences that force the legislature to correct the imprecise language that caused them. That correction ends the whole fatal liberty of explaining, which is the source of arbitrary and purchasable judgment. Once a code is fixed, it should be read literally, and nothing should be left to the judge but the question of whether an act does or does not conform to the written law. When the rule of right is a matter of controversy rather than of fact, the people are slaves to their magistrates.

The despotism of a multitude of small tyrants is worse the closer the tyrant stands to the person he oppresses. It is more fatal than the despotism of one, because the tyranny of many can only be shaken off by resorting to the tyranny of one. And it is crueler, because it meets more resistance, and a tyrant's cruelty is measured not by his strength but by the obstacles in his way.

These are the means by which security of person and property is actually obtained. That security is just, because it is the purpose for which we united. It is useful, because it lets each person calculate exactly what a crime will cost him. By these means people acquire a

spirit of independence, whatever may be said by those who dare to call blind submission to their own capricious opinions by the sacred name of virtue.

These principles will offend anyone who has made it his rule to pass down to his inferiors the tyranny he suffers from his superiors. I would have everything to fear if tyrants read my book. But tyrants never read.

CHAPTER V

OBSURE LAWS

If the power to interpret law is an evil, obscurity in the law is another, because the first follows from the second. The evil is greater still when the laws are written in a language the people do not know, so that they are ignorant of the consequences of their own actions and are made dependent on a small class of interpreters. A law that cannot be read is not public. It is private property.

What are we to think of a species when we notice that this is the ordinary custom of most of enlightened Europe?

Crimes will be less frequent the more widely the code is read and understood. There is no question that the eloquence of the passions is enormously assisted by ignorance about what the punishment will be.

It follows that without written law no society can ever acquire a fixed form of government, one in which power rests in the whole rather than in a part, and in which the laws cannot be altered except by the will of the whole or corrupted by private interest. Experience and reason both show that the reliability of human tradition decays with distance from its source. How can law resist the force of time if there is no lasting monument to the compact?

Here is the use of printing, which makes the public rather than a few individuals the guardians of the law. This art, by spreading literacy, has gradually dissolved the atmosphere of cabal and intrigue. To it we owe the fact that the atrocities of our ancestors, who were slaves and tyrants by turns, have become less common. Anyone who knows the history of the last two or three centuries can observe how the most humane virtues emerged from what moralists call luxury and

effeminacy. Consider what was so improperly called ancient simplicity and good faith: humanity groaning under implacable superstition, the ambition of a few staining thrones with blood, secret treason and public massacre, every noble a tyrant over the people, and the ministers of the gospel of Christ washing their hands in blood in the name of the God of all mercy. We can say what we like about the corruption of the present age. We no longer see horrors like those.

CHAPTER VI

PROPORTION BETWEEN CRIMES AND
PUNISHMENTS

It is in everyone's interest not only that crimes not be committed, but that they be less frequent in proportion to the harm they do. So the means the legislature uses to prevent them should be stronger in proportion to how destructive the crime is and how strong the temptation to commit it. There ought to be a fixed proportion between crimes and punishments.

It is impossible to prevent all the disorders that human appetite causes in society. They increase with population and with the collision of private interests. In political reasoning we must substitute a calculation of probabilities for mathematical exactness. The force that pushes each of us toward private advantage acts constantly, like gravity, unless something resists it. Punishments are the political obstacle that prevents the fatal effects of private interest without destroying the underlying drive, which is inseparable from being human. The legislator here works like a skillful architect, counteracting the force of gravity by combining the elements that give a building strength.

Given the necessity of society and of the arrangements that conflicting interests require, we can construct a scale of crimes. At the top are those that tend immediately to dissolve society. At the bottom is the smallest injustice done to a private person. Between the extremes lies everything contrary to the public good, descending by degrees. If mathematics could be applied to the infinite combinations of human action, there would be a corresponding scale of

punishments running from greatest to least. It is enough that a wise legislator mark the principal divisions and not disturb the order, so that crimes of the first degree do not receive punishments of the last.

If such a scale existed and were universal, we would have a common measure of the degree of liberty and slavery, of humanity and cruelty, in different nations.

Anything not comprehended in that scale is not a crime and should not be punished as one, except by people with an interest in the label. The uncertainty at the extremes of the scale has produced a system of morality that contradicts the law, a mass of laws that contradict each other, and many statutes that expose the best people to the harshest penalties, until the ideas of vice and virtue become so vague that their existence is doubtful. From this comes the lethargy of political bodies, which ends in their destruction.

Anyone who reads the history of nations with a philosophical eye will find that the ideas of virtue and vice, of the good and the bad citizen, change with the ages. And they change not in response to altered circumstances, which would make them conformable to the common good, but in response to the passions and errors of successive lawmakers. He will frequently observe that the passions and vices of one age become the morality of the next. Violent passion, born of fanaticism, is weakened by time, and then becomes the prudence of the age and a useful instrument in the hands of the powerful.

Pleasure and pain are the only springs of action in any creature capable of sensation. Even in matters of religion the invisible Legislator has ordained rewards and punishments. From an uneven distribution of these arises the contradiction that is so little noticed because it is so common: the law punishing the crimes the law itself created. And if equal punishment is assigned to two crimes that injure society unequally, nothing prevents a man from committing the greater whenever the greater is more profitable.

CHAPTER VII

MEASURING THE GRAVITY OF CRIMES

Crimes can only be measured by the injury done to society.

Those who imagine that a crime is greater or lesser according to the intention of the person committing it are mistaken. Intention depends on the immediate impression of objects on the senses and on the prior disposition of the mind, both of which vary between people and within the same person from day to day. On that system we would need not only a separate code for every individual but a new penal law for every offense. People with the best intentions often do enormous harm, and people with the worst sometimes do the greatest service.

Others have measured crimes by the dignity of the person offended rather than by the consequences to society. If that were the standard, the smallest irreverence toward God would deserve infinitely more punishment than the assassination of a king.

Still others imagine that the gravity of the sin should aggravate the crime. The mistake becomes obvious the moment we consider the relations involved. The relations between one person and another are relations of equality. Necessity alone, out of the collision of private interests, produced the idea of public utility, which is the foundation of human justice. But the relation between a creature and his Creator is a relation of dependence, and God has reserved to himself the right to be both lawgiver and judge, because he alone can be both without injustice. If he has decreed eternal punishment for those who disobey him, shall an insect step into the place of divine justice and pretend to punish on behalf of the Almighty, who is entirely sufficient to

himself, who can receive no impression of pleasure or pain, and who alone acts without being acted upon?

The degree of sin depends on the malignity of a heart no finite being can see into. How then can it serve as the measure of a crime? If we admitted that standard, we would punish where God pardons and pardon where God condemns.

CHAPTER VIII

THE DIVISION OF CRIMES

Crimes, then, are to be measured by the injury done to society. This is one of those obvious truths that, by some combination of circumstances, only a few people in any nation or age actually hold. Opinions worthy of Asiatic despotism, backed by power, have effaced by slow pressure and occasional violence the simple ideas that may have made up the first philosophy of human society. Fortunately the philosophy of the present age seems to be leading us back to those same principles, now with the certainty that comes from rational examination and repeated experience.

Strict order would require me to distinguish here every species of crime and every mode of punishment. But they vary so much across ages and countries that the catalog would be endless. It is enough to lay out the most general principles and the most common and dangerous errors, and so to undeceive both those who would introduce anarchy in the name of liberty and those who would reduce society to the regularity of a monastery.

Some crimes destroy society itself or its representative. Others attack the security of the life, property, or honor of individuals. A third class consists of acts contrary to the laws that serve the general good.

The first are the gravest and are called crimes of lese-majesty. Tyranny and ignorance have confused this term hopelessly, attaching it to crimes of an entirely different nature and assigning them all the same punishment. Here, as in a thousand other places, human beings have been sacrificed to a word. Every crime injures society. Not every

crime threatens its immediate destruction. Moral actions, like physical ones, have their sphere of effect bounded by time and space, and it is a sophistry, the ordinary philosophy of slaves, to blur the limits that truth has fixed.

Next come the crimes that destroy the security of individuals. Since that security is the principal end of society and every citizen's undoubted right, these crimes must carry the heaviest punishments.

The proposition that every member of society may do anything the law does not forbid, fearing no consequence beyond the natural results of the act itself, is a political doctrine that ought to be defended by the law, taught by the magistrates, and believed by the people. It is a sacred doctrine, and without it there is no lawful society. It is the fair return for our surrender of that universal freedom of action which belongs to every sentient creature. By this principle our minds become free and vigorous. By it alone we acquire the kind of virtue that knows no fear, which is nothing like the pliant prudence suited to people who live on sufferance.

Attacks on the life and liberty of a citizen are therefore crimes of the highest order. Under this heading I include not only the assassinations and robberies committed by the mob but those committed by nobles and magistrates, whose example carries further and does more damage, destroying the very ideas of justice and duty among the people and replacing them with the rule of the strongest, which is equally dangerous to those who exercise it and those who suffer under it.

CHAPTER IX

HONOR

There is a striking difference between the civil laws, those jealous guardians of life and property, and the laws of what we call honor, which are concerned with the opinion of others.

Honor has been the foundation of long and brilliant arguments without ever being attached to a precise idea. How miserable the human mind is, that the motion of the heavenly bodies should be more clearly known to it than the most urgent truths of morality, which stay confused and shifting according to how the winds of passion drive them. This should stop surprising us if we consider that objects held too close to the eye appear blurred. The ideas of morality are so near us that their simple components are easily confused with one another, though they must be separated before we can understand human feeling at all.

Honor is one of those complex ideas made up not only of simple ones but of others so complicated that in different applications they shed some of their own elements and retain only a few in common. To find what those common elements are, we have to go back to the formation of society.

The first laws and the first magistrates existed to prevent the disorders that the natural despotism of individuals would produce. That was the purpose of society and, really or nominally, the design of every code of law, including the worst. But as human beings connected more intimately and their knowledge grew, an infinite number of needs and mutual kindnesses arose between them. The laws had not anticipated these, and no individual had the power to

satisfy them alone. At this point the despotism of opinion was established, as the only way to obtain benefits the law could not provide and to avoid evils the law did not guard against.

Opinion, that tormentor of the wise and the ignorant alike, has raised the appearance of virtue above virtue itself. The esteem of others became not merely useful but necessary to keep from sinking below the common level. The ambitious man reaches for it because his designs require it. The vain man begs for it as a testimony to his worth. The honest man demands it as his due. Most people regard it as necessary to their existence.

Because honor came into being after society was formed, it was never part of the common deposit. So when we act under its influence we return, for that moment, to a state of nature and step outside laws that in this case give us no protection.

It follows that under extreme political liberty and under absolute despotism the idea of honor disappears or is absorbed into something else. In the first case reputation becomes useless because the laws are supreme. In the second the despotism of one man annuls civil existence and reduces everyone else to a precarious and temporary personhood. Honor is therefore one of the fundamental principles of those monarchies that are a limited despotism, and within them it functions the way revolutions function in despotic states...as a momentary return to nature and to original equality.

CHAPTER X

DUELING

Out of the need for the esteem of others came single combat, established by the anarchy of the laws. The ancients are thought not to have known it, perhaps because they did not gather in their temples or their theaters carrying swords, and perhaps because single combat was a spectacle put on for them by gladiators, who were slaves, and free men declined to imitate slaves.

Laws that punish dueling with death have failed to abolish it. A man of honor who has lost the esteem of others foresees that he will be reduced either to solitude, which is unbearable to a social creature, or to a life of perpetual insult. Either prospect is enough to overcome the fear of death.

Why are duels less frequent among ordinary people than among the great? Not only because ordinary people do not carry swords, but because reputation matters less to them than to those of higher rank, who habitually regard each other with suspicion.

It is worth repeating what others have said: the best way to prevent this crime is to punish the aggressor, meaning the man who gave the occasion for the duel, and to acquit the man who, through no fault of his own, was forced to defend what the law had failed to secure for him.

CHAPTER XI

CRIMES AGAINST PUBLIC ORDER

Another class of crimes disturbs the public tranquility...riots in the streets that are meant for commerce and passage, and the speeches of fanatics, which excite the curious crowd and gather force from the number of hearers, who are deaf to calm reasoning but always moved by obscure and mysterious enthusiasm.

Streets lit at public expense during the night, guards stationed through the quarters of a city, plain moral preaching reserved for the quiet of churches, and political speech delivered only in the assemblies of the nation are all means of preventing the dangerous effects of misguided public passion. These should be the principal objects of a magistrate's vigilance. But if the magistrate acts arbitrarily rather than according to a code that every member of the community can hold in his hand, he opens a door to tyranny, which always waits at the edges of political liberty.

I know of no exception to this rule: every member of society should know when he is guilty and when he is innocent. If censors and arbitrary magistrates are necessary in any government, that necessity reveals a defect in the constitution. Uncertainty about what constitutes a crime has sacrificed more victims to secret tyranny than public cruelty has ever claimed.

What punishments are proper? Is the punishment of death actually useful or necessary to the safety of a state? Are tortures consistent with justice, and do they accomplish what the law intends? What is the best method of preventing crime? Are the same punishments equally useful at all times? What effect do they have on a people's

character? These problems should be solved with a precision that the fog of sophistry, the seductions of eloquence, and the timidity of doubt cannot resist.

If my only merit is to have presented to my country, with somewhat greater clarity, what other nations have written and are beginning to practice, I will count myself fortunate. But if by defending the rights of humanity and of unconquerable truth I save from the agony of death one victim of tyranny or of ignorance, his blessing and his tears will console me for the contempt of everyone else.

CHAPTER XII

THE PURPOSE OF PUNISHMENT

It follows from everything above that the purpose of punishment is neither to torment a sentient being nor to undo a crime already committed. Can torment and useless cruelty, the instruments of fanaticism and of impotent tyranny, be authorized by a political body whose whole function is to be the cool moderator of individual passion? Can the groans of a tortured man recall the past or reverse what he has done?

The end of punishment is nothing other than to prevent others from committing the same offense. So we should choose punishments, and ways of inflicting them, that make the strongest and most lasting impression on the minds of others with the least torment to the body of the criminal.

CHAPTER XIII

THE CREDIBILITY OF WITNESSES

Determining the credibility of a witness and the weight of evidence is one of the essential tasks of good legislation.

Any person of common sense, meaning anyone whose ideas hang together and whose sensations resemble those of other people, may be a witness. The credibility of his evidence varies with his interest in telling or concealing the truth. This shows how frivolous it is to reject the testimony of women on account of weakness, how childish to refuse the evidence of those under sentence of death because they are legally dead, and how irrational to exclude those branded with infamy. In all these cases they should be believed when they have no interest in lying.

Credibility should diminish only in proportion to the hatred, friendship, or connection between the witness and the accused. One witness is not enough, because while the accused denies what the witness affirms, the truth is suspended, and the right of every person to be presumed innocent tips the balance in his favor.

The credibility of a witness decreases as the atrociousness of the alleged crime increases, because the crime is that much less probable. This is true in accusations of witchcraft and in accusations of gratuitous cruelty. Writers on penal law have adopted the opposite principle, holding that a witness is *more* credible when the crime is more atrocious. Look at their inhuman maxim: *in the most atrocious cases the slightest conjecture is sufficient, and the judge may exceed the limits of the law*. Let it be translated so that people can see one of the many unreasonable principles they are ignorantly subject to.

The absurd practices of lawmakers often come from timidity, which is a principal source of human contradiction. Legislators, or rather lawyers, whose opinions were interested and purchasable while they lived and became decisive authority after they died, were terrified by the condemnation of some innocent person and so buried the law under pompous formalities, the scrupulous observance of which puts anarchic impunity on the throne of justice. At other times, confronted with atrocious crimes that were difficult to prove, they imagined themselves obliged to suspend the very formalities they had created. And so, with despotic impatience one day and timidity the next, they turned their solemn judgments into a game of chance.

In witchcraft it is far more probable that a number of people were deceived than that anyone exercised a power God has refused to every created being. In accusations of gratuitous cruelty the presumption is always against the accuser unless some motive of fear or hatred appears. There are no spontaneous or superfluous sentiments in the human heart. They are all the result of impressions on the senses.

The credibility of a witness may also be diminished by his membership in a private society whose customs and principles are unknown or differ from the public's. Such a man has not only his own passions but those of the body he belongs to.

Finally, credibility is worth nothing when the question concerns the *words* of the accused. Tone of voice, gesture, and everything that precedes and follows a statement can so alter its meaning that it is nearly impossible to repeat it as it was spoken. Violent and unusual actions, such as real crimes, leave traces in the circumstances that attend them and in their effects. Words remain only in the memory of hearers who are commonly careless or prejudiced. It is infinitely easier to build an accusation on a man's words than on his acts, because his acts come surrounded by circumstances that give him many means of defense.

CHAPTER XIV

EVIDENCE, PROOF, AND THE FORM OF
JUDGMENT

The following theorem is useful in determining certainty of fact. When the proofs of a crime depend on one another, so that the evidence of each witness taken separately proves nothing, or when all the proofs depend on a single one, then the number of proofs neither increases nor decreases the probability of the fact. The strength of the whole is only the strength of the one they rest on, and if that fails, they all fall. When the proofs are independent of one another, probability increases with their number, because the falsehood of one does not diminish the truth of another.

It may seem strange to speak of probability in matters where certainty is required before punishment. The paradox dissolves once we notice that moral certainty is, strictly speaking, only probability, called certainty because every person in his senses assents to it out of the habit produced by the necessity of acting. The certainty required to declare a man guilty is exactly the certainty that governs every important decision of ordinary life.

Proofs may be divided into perfect and imperfect. I call perfect those that exclude the possibility of innocence, and imperfect those that do not. One perfect proof is sufficient to convict. Of the imperfect kind, as many are required as together amount to a perfect proof, so that although none of them separately excludes innocence, their union does. And an imperfect proof that an innocent man could clear away and does not becomes perfect.

It is much easier to feel this moral certainty than to define it. For that reason I think it an excellent law that gives the principal judge assistants chosen by lot. Ignorance that judges by feeling is less prone to error than legal learning that judges by opinion. Where the law is clear and precise, the judge's office is only to establish the fact. Acuteness may be required to examine the proofs and precision to sum them up, but to judge the result nothing is needed but plain good sense, which is a less deceptive guide than the trained mind of a judge accustomed to finding people guilty and to fitting everything into a system borrowed from his studies. Happy is the nation where knowledge of the law is not a science.

It is an admirable law that requires every man to be tried by his peers. When life, liberty, and fortune are at stake, the sentiments produced by differences of rank and fortune should be silent: both the superiority with which the fortunate regard the unfortunate and the envy with which inferiors regard their betters. But when the offense is against a fellow subject, half the judges should be peers of the accused and half peers of the person injured, so that private interest, which shapes the appearance of things even for the most equitable, is counteracted from both sides. It is also just that the accused should be able to exclude a certain number of his judges. Where that liberty exists and a defendant declines to use it, he seems to be condemning himself.

All trials should be public, so that opinion, which is the best and perhaps the only cement of society, may restrain the authority of the powerful and the passions of the judge, and so that the people may say: we are protected by the law, we are not slaves. That sentiment inspires courage and is the best tribute to a sovereign who understands his own interest.

CHAPTER XV

SECRET ACCUSATIONS

Secret accusations are an obvious abuse, though custom has consecrated them in many nations where weak government makes them seem necessary. The custom makes people false and treacherous. Whoever suspects another of informing sees an enemy in him, and from there people learn to disguise what they think, until from the habit of hiding their sentiments from others they end by hiding them from themselves.

Unhappy are those who reach that point. Without any fixed principle to guide them they float in a vast sea of opinion, occupied entirely with escaping the monsters that surround them. For them the present is always embittered by uncertainty about the future, and a few scattered moments of happiness console them for the misery of existing. Are these the men among whom we will find intrepid soldiers to defend their country? Will we find incorruptible magistrates among them, who with the spirit of freedom will explain the true interest of their sovereign, who together with the tax revenue will carry to the throne the love and blessing of the people?

Who can defend himself against slander armed with the impenetrable shield of secrecy? What a miserable government it must be that suspects an enemy in every subject and must sacrifice the peace of every individual to secure the peace of the public.

What arguments are offered for secret accusation? Public safety, they say, and the maintenance of the established form of government. But what a strange constitution it is where the government, possessing both power and opinion, still fears its own subjects. They say the

informer must be protected. Do the laws not defend him sufficiently? Are there subjects more powerful than the laws? They say the informer must be shielded from infamy. So secret slander is authorized and only public slander punished. They point to the nature of the crime. If acts that are indifferent in themselves, or even useful to the public, are called crimes, then certainly both the accusation and the trial must be kept secret. But can there be any real crime against the public that ought not to be publicly punished?

I respect all governments and speak of none in particular. Circumstances may be such that abuses are so woven into a constitution that correcting them seems to threaten the whole. But if I were writing new laws in some remote corner of the world, the good of posterity would hold back my trembling hand and keep me from authorizing secret accusations.

Public accusations, Montesquieu says, suit a republic, where zeal for the public good is a citizen's principal passion, better than they suit a monarchy, where that sentiment is weak and the better arrangement is a body of commissioners who prosecute in the name of the public. But under every government, republic or monarchy, the punishment due for the crime alleged should fall on the informer who alleged it falsely.

CHAPTER XVI

TORTURE

The torture of an accused person during his trial is a cruelty that custom has consecrated in most nations. It is used to make him confess, or to explain contradictions in his testimony, or to reveal his accomplices, or for some incomprehensible metaphysical purging of infamy, or finally to discover other crimes he has not been charged with but might be guilty of.

No one can be judged a criminal until he has been found guilty. Society cannot withdraw its protection from him until it has been proved that he violated the conditions on which that protection was granted. What right, then, except the right of power, can authorize the punishment of a citizen while his guilt remains in doubt?

The dilemma is simple. Either he is guilty or he is not. If he is guilty, he should suffer only the punishment the law has fixed, and torture is useless because his confession is unnecessary. If he is not guilty, you are torturing an innocent man, because in the eye of the law every man is innocent whose crime has not been proved.

Besides, it confounds all relations to expect a man to be simultaneously the accuser and the accused, and to treat pain as the test of truth, as though truth resided in the muscles and nerves of a wretch on the rack. By this method the strong escape and the weak are condemned. This is the pretended test of truth, worthy only of cannibals, which the Romans, barbarous in many respects and far too much admired for their savage virtue, reserved for slaves alone.

What is the political purpose of punishment? To deter and to make an example. Is that purpose served by privately torturing the guilty

and the innocent alike? It matters that crimes not go unpunished, but there is no public example in the torment of a man hidden in the dark. A crime already committed can be punished by a political society only with the intention that no one else be encouraged by hope of impunity. And if it is true that more people respect the laws than break them, then the risk of torturing an innocent person is the greater risk, because for any individual it is more probable that he obeyed the law than that he broke it.

There is another ridiculous justification for torture, which is that it purges a man of infamy. Should such an absurdity be tolerated in the eighteenth century? Can pain, which is a sensation, have any connection with a moral sentiment, which is a matter of opinion? Perhaps the rack is supposed to be a refiner's furnace.

The origin of this senseless practice is not hard to trace, because an absurdity adopted by a whole nation must be connected to other ideas that nation respects. This custom seems to be the offspring of religion. We are taught that the stains of sin contracted through human weakness, which have not deserved the eternal anger of God, are purged in another life by an incomprehensible fire. Infamy is a stain. If the fire of purgatory can take away spiritual stains, why should the pain of torture not take away civil ones? I suspect that the requirement of confession in some tribunals has a similar origin, borrowed from the tribunal of penance, where confession is a necessary part of the sacrament. So people have abused the light of revelation, and in ages of tractable ignorance, having nothing else, they applied it to everything, however remote. Besides, infamy is regulated neither by law nor by reason but entirely by opinion, and torture itself makes its victim infamous. So it cannot possibly remove infamy.

Torture is also used to make an accused man reconcile the contradictions in his testimony, as if the dread of punishment, the uncertainty of his fate, the solemnity of the court, the majesty of the judge, and his own ignorance were not enough to account for contradictions that occur constantly in people who are perfectly calm,

and that must multiply in a man whose whole mind is occupied with escaping imminent danger.

This infamous test of truth is a monument to that ancient and savage legislation in which trial by fire, by boiling water, or by combat was called the judgment of God. The only difference between torture and the ordeal by boiling water is that the outcome of the first appears to depend on the will of the accused and the second on something purely physical. The difference is apparent, not real. A man convulsing on the rack has as little power to declare the truth as he once had to prevent the effect of fire without fraud.

Every act of will is proportional to the force of the impression on our senses. Pain may increase until, occupying the mind entirely, it compels the sufferer to take the shortest route out of torment. His answer is therefore as necessary an effect as the burning of flesh, and he will accuse himself of crimes he did not commit. The very means employed to distinguish the innocent from the guilty destroys all difference between them.

It would be superfluous to list the innocent people who have confessed under torture. There are countless instances in every nation and every age. It is astonishing that humanity has never drawn the obvious conclusion.

The result of torture is a matter of calculation, depending on constitution and sensibility, which differ in every individual. To find truth by this method is a problem better suited to a mathematician than a judge, and it can be stated precisely: given the strength of the muscles and the sensitivity of the nerves of an innocent man, find the degree of pain necessary to make him confess to a given crime.

Interrogation is meant to find the truth. If truth is difficult to read in the face and gesture of a man at ease, how is it to be read in a face distorted by convulsion? Every violent action destroys the small alterations of feature that sometimes disclose what a person feels.

These truths were known to Roman legislators, who tortured only slaves, who were not counted as citizens. They are known to the

English, whose commerce, wealth, and courage leave no doubt about the excellence of their laws. They have been acknowledged in Sweden, where torture is abolished. They are known to one of the wisest monarchs in Europe, who has seated philosophy on a throne and made his subjects free while leaving them dependent on law, which is the only freedom reasonable people can ask for under present conditions. And torture has not been thought necessary in the laws of armies, made up largely of the dregs of humanity, where its use might seem most defensible. Strange, that men hardened by slaughter should teach humanity to the sons of peace.

Even those who use torture most freely seem half aware of these truths, since a confession extracted under torture is void unless afterward confirmed under oath, and if the prisoner refuses to confirm it he is tortured again. Some jurists permit this shameless circularity to be repeated three times. Others leave the number to the judge. So of two men equally innocent or equally guilty, the strong and resolute is acquitted and the weak is condemned, by the following excellent reasoning: I, the judge, must find someone guilty. You, being strong, resisted the torment, so I acquit you. You, being weaker, gave way, so I condemn you. I understand that the confession extracted from you carries no weight, but if you do not confirm it under oath I will have you tormented again.

A strange but necessary consequence of torture is that the innocent man is in a worse position than the guilty one. The innocent either confesses to a crime he did not commit and is condemned, or is acquitted after suffering a punishment he did not deserve. The guilty man has the better side of it: if he endures the torture with resolution he is acquitted, having exchanged a greater punishment for a lesser one.

The law that authorizes torture says: *be insensible to pain*. Nature has given you an irresistible self-love and an inalienable right of self-preservation, but I create in you the opposite sentiment, a heroic hatred of yourself. I command you to accuse yourself and to declare

the truth while your flesh is torn and your bones are pulled apart.

Torture is used to discover whether a criminal is guilty of crimes besides the one charged, which amounts to this reasoning: you are guilty of one crime, therefore you may have committed a thousand others; the matter is doubtful, so I will apply my criterion of truth. The law orders you tormented because you are guilty, because you might be guilty, and because I choose that you should be guilty.

Torture is used to make a criminal name his accomplices. But if it is not a means of discovering truth, how can it discover accomplices, which is one of the truths sought? Will a man who accuses himself not accuse others more readily still? And is it just to torment one man for the crime of another? May accomplices not be found through the witnesses, through the evidence, through the nature of the crime, through all the means used to prove the prisoner's own guilt? Accomplices usually flee when their comrade is taken. The uncertainty of their situation condemns them to perpetual exile and frees society from further injury, while the punishment of the man in custody serves its deterrent purpose.

CHAPTER XVII

F I N E S

There was a time when all punishments were pecuniary. The crimes of subjects were the inheritance of the prince. An injury to society was a windfall to the crown, and the sovereign and his magistrates, those guardians of public security, had a financial interest in the violation of the law. Crimes were tried in a court of exchequer and the case became a civil suit between the accused and the crown. The judge was a collector for the treasury rather than a minister of the law.

Under that system, for a man to confess was to acknowledge himself a debtor to the crown, and that remains the underlying logic of criminal prosecution even now that the original cause has disappeared. So a criminal who refuses to confess, though convicted by the clearest proof, may suffer less than one who confesses, and he will not be tortured to reveal other crimes because he has not confessed the principal one. But once confession is obtained, the judge becomes master of his body and torments him with studied formality in order to squeeze out every possible advantage. Confession is treated as conclusive proof, especially when extracted by torture, while a confession made out of court, when a man is at ease and under no apprehension, is not sufficient to condemn him.

All inquiries that might clarify the facts but weaken the claims of the crown are excluded. It was never compassion that spared a prisoner torment. It was fear of losing revenue.

The judge becomes an enemy to the accused, to a wretch already surrounded by the horrors of a dungeon, by torture, by death, and by an uncertain eternity that is more terrible than any of them. He does

not inquire into the truth of the fact but into the nature of the crime. He lays traps to make the man convict himself. He is afraid of failing to find him guilty, and afraid that the infallibility every man claims for himself might be called into question.

It is left to the magistrate to determine what evidence is enough to send a man to prison, so that in order to be proved innocent he must first be presumed guilty. This is what is called an offensive prosecution, and in the eighteenth century, throughout polished Europe, all criminal proceedings are of that kind. The prosecution *for information*, meaning an impartial inquiry into the facts, which reason prescribes and military law adopts, is barely practiced in any court of justice.

What a labyrinth of absurdities. A happier posterity will find them incredible. Only a philosopher will be able to read in human nature the possibility that such a system ever existed.

CHAPTER XVIII

OATHS

There is an obvious contradiction between the law and the natural sentiments of humanity in the practice of administering oaths to an accused man to make him tell a truth that is directly against his interest. As if a person could feel obliged to contribute to his own destruction. As if religion were not generally silent when interest speaks.

Religion has been more commonly abused than anything else. On what grounds should the wicked respect it when it has been violated by men reputed the wisest? The motives religion opposes to the fear of immediate harm and the love of life are too weak and too distant to make an impression on the senses. The affairs of the next world are governed by entirely different laws than the affairs of this one. Why should we try to negotiate between them? Why reduce a man to the terrible alternative of offending God or destroying himself? A law that requires an oath in such a case leaves him only the choice of becoming a bad Christian or a martyr.

For this reason oaths become a formality by degrees, and the sentiments of religion, which are perhaps the only motive to honesty in most people, are destroyed. Experience proves their uselessness. I appeal to every judge whether he has ever known an oath alone to bring the truth from the lips of an accused man. Reason tells us it must be so. Laws that contradict the natural feelings of humanity are useless and therefore destructive. They are like a dike built directly across a torrent, either overwhelmed at once or gradually undermined by the whirlpool it creates.

CHAPTER XIX

THE ADVANTAGE OF IMMEDIATE PUNISHMENT

The sooner punishment follows a crime, the more just and the more useful it is.

More just, because it spares the accused the cruel and superfluous torment of uncertainty, which grows in proportion to his imagination and his sense of his own weakness. Because the deprivation of liberty is itself a punishment, it cannot be imposed before conviction except for as short a time as possible. Imprisonment before trial is only a means of securing the person of the accused, and it should be brief and as free of severity as circumstances allow. Its length should be determined by the necessary preparation for trial and by the priority of those longest held. Confinement should be no closer than is needed to prevent flight or the destruction of evidence, and the trial should be conducted as fast as possible.

Can there be a crueller contrast than the one between the indolence of a judge and the anxiety of the accused, between the comforts of an insensible magistrate and the filth of the prisoner? The degree of punishment and the consequences of a crime should be arranged to have the greatest possible effect on others with the least possible pain to the offender. Any society in which this is not a fundamental principle is an unlawful society, because human beings united in the first place to subject themselves to the fewest evils possible.

Immediate punishment is also more useful, because the shorter the interval between crime and punishment, the stronger and more lasting the association between the two ideas, so that one comes to be regarded as cause and the other as necessary effect. The association of

ideas is the cement of the human intellect. Without it, pleasure and pain would be simple sensations without consequence. Ordinary people act on the most immediate and familiar associations. The remote and complex ones present themselves only to those passionately attached to a single object or to those trained to compare many objects rapidly.

It is therefore of the greatest importance that punishment follow crime as immediately as possible, so that in the untrained mind the attractive picture of the advantage to be gained will instantly awaken the idea of the penalty. Delay separates the two ideas and makes the punishment strike the spectators as a terrible sight rather than as the necessary consequence of a crime.

There is another way to strengthen this connection, which is to make the punishment resemble the crime as closely as possible, so that the penalty leads the mind back to the offense from a different angle than the one flattering promise offered.

Lesser crimes are commonly punished in the obscurity of a prison, or the offender is transported to give, by his servitude, an example to a society he never injured. That example is useless because it is distant from the place where the crime occurred. People do not generally commit great crimes deliberately. They commit them in a sudden gust of passion, and they regard the punishment for a great crime as remote and improbable. The public punishment of small crimes therefore makes a greater impression, and by deterring people from the small ones it effectively prevents the great.

CHAPTER XX

ACTS OF VIOLENCE

Some crimes are against the person and others against property. The first should be punished corporally.

The great and the rich should never be able to set a price on the security of the weak and the poor. If they can, then riches, which under the protection of law are the reward of industry, become the food of tyranny. Liberty is finished the moment the law permits a man in certain circumstances to stop being a person and become a thing. Then the powerful will use their skill to select from the arrangements of civil society everything that favors them. This is the magic that turns human beings into beasts of burden and becomes, in the hands of the strong, the chain that binds the weak.

This is how tyranny hides inside governments that have every appearance of liberty. It settles into some neglected corner of the constitution and gathers strength unnoticed. People generally resist open tyranny with resolution. They ignore the small insect gnawing through the dike, opening a secret passage for the flood.

CHAPTER XXI

PUNISHING THE POWERFUL

What punishments should be assigned to nobles, whose privileges make up so much of the law of nations?

I do not propose to inquire whether a hereditary distinction between nobles and commoners is useful in any government or necessary in a monarchy, or whether such a class forms an intermediate power that moderates the excesses of both extremes, or whether nobles are rather slaves to their own order, confining the natural effects of industry within a very small circle. Whatever the answer, I assert that the punishment of a nobleman should differ in no way from the punishment of the lowest member of society.

Every lawful distinction in honor or wealth presupposes a prior equality founded on laws to which all members of society are equally subject. Imagine that people, in renouncing their natural despotism, said to one another: the wisest and most industrious among us will receive the greatest honors, and his dignity will pass to his descendants. The fortunate may hope for greater honors, but let him not therefore be less afraid than anyone else of violating the conditions on which he was raised. No such declaration was ever made in a general assembly of humanity, but it exists in the invariable relations of things. It does not destroy whatever advantages a nobility produces. It prevents the corresponding harm, and it makes the laws respectable by destroying all hope of impunity.

It may be objected that the same punishment inflicted on a nobleman and on a commoner is really different, given the difference in their education and the infamy it brings on an illustrious family. I

answer that punishments are to be measured not by the sensibility of the offender but by the injury done to society, and that injury is increased by the high rank of the offender. Precise equality of punishment can never be more than external anyway, since sensitivity to pain differs in every individual. As for the infamy that falls on an innocent family, it can be wiped away easily enough by some public mark of favor from the sovereign. Form has always had more influence than reason on a watching crowd.

CHAPTER XXII

T H E F T

Theft unaccompanied by violence should be punished with a fine. A man who tries to enrich himself with another's property should be deprived of some of his own.

But this crime is usually the effect of misery and desperation. It is the crime of that unhappy part of humanity to whom the right of exclusive property, a terrible and perhaps unnecessary right, has left nothing but bare existence. And since a fine may increase the number of the poor and may strip an innocent family of subsistence, the most appropriate punishment is the only kind of servitude that can be called just: the kind that makes society, for a time, master of the person and labor of the offender, so that by this dependence he repairs the unjust despotism he exercised over another's property.

When theft is accompanied by violence, corporal punishment should be added. Many writers have shown the disorder that follows from failing to distinguish robbery with violence from theft committed by stealth, and from absurdly making a sum of money equivalent to a man's life. It is never superfluous to repeat truths that humanity has failed to profit from, because political machinery keeps its motion far longer than any other kind and receives a new impulse with far greater difficulty. These two crimes are absolutely different in nature, and it is as certain in politics as in mathematics that between qualities of different natures there is no similarity.

CHAPTER XXIII

INFAMY AS PUNISHMENT

Injuries that affect a person's honor, meaning that portion of esteem every citizen has a right to expect from others, should be punished with infamy.

Infamy is a mark of public disapproval that deprives a man of consideration in the eyes of his fellow citizens, of the confidence of his country, and of the fellowship that exists among members of the same society. This is not always within the power of the law. The infamy the law inflicts must be the same as the infamy that arises from the relations of things, from universal morality, or from the particular system the nation has adopted. If the two diverge, either the law will lose its authority or the received notions of morality will vanish, whatever moralists say. If we declare actions infamous that are in themselves indifferent, we diminish the infamy of the actions that are genuinely disgraceful.

Infamy should not be inflicted too often, because the power of opinion weakens with repetition. It should not be inflicted on many people at once, because the infamy of many resolves itself into the infamy of none.

Painful and corporal punishment should never be applied to fanaticism, which is founded on pride and glories in persecution. Only infamy and ridicule work against fanatics. Against the first, their pride is overbalanced by the pride of the people. As for the second, consider that even truth must summon all its strength when error attacks it armed with ridicule. By setting one passion against another and one opinion against another, a wise legislator ends the popular admiration

produced by a false principle whose original absurdity is hidden behind a chain of well-drawn consequences.

This is how to avoid confounding the immutable relations of things or setting oneself against nature, whose operations are not limited by time and which will overturn every regulation that contradicts her. Imitation of nature is the fundamental principle not only in the fine arts but in sound policy, which is nothing more than the art of uniting and directing toward a single end the natural and unchangeable sentiments of humanity.

CHAPTER XXIV

IDLENESS

A wise government will not tolerate, in the midst of labor and industry, that kind of political idleness which rigid moralists confuse with the leisure that comes from wealth honestly acquired, which is useful to a growing society when kept within limits.

By the politically idle I mean those who contribute to the good of society neither by their labor nor by their wealth, who accumulate continually and never spend, who are revered by the ignorant with stupid admiration and regarded by the wise with disdain, and who, being victims of a cloistered life and deprived of every incentive to the activity necessary to preserve or increase comfort, devote all their energy to the passions of opinion.

I do not call idle the man who enjoys the fruits of the virtues or the vices of his ancestors and who, in exchange for his pleasures, supports the industrious poor. It is not the narrow virtue of austere moralists but the law that should determine what kind of idleness deserves punishment.

CHAPTER XXV

BANISHMENT AND CONFISCATION

Whoever disturbs the public peace, disobeys the laws, and violates the conditions on which people mutually support one another should be excluded from society. That is, banished.

Banishment seems appropriate for those accused of an atrocious crime who are probably but not certainly guilty. This would require a law as precise and as little arbitrary as possible, condemning to banishment those who have reduced the community to the fatal alternative of either fearing them or punishing them unjustly, while still leaving them the sacred right of proving their innocence. The reasons for banishing a citizen ought to be stronger than for banishing a stranger, and stronger for a first accusation than for a man who has repeatedly been cleared.

Should a person permanently excluded from society be deprived of his property? Confiscation added to banishment is a greater punishment than banishment alone, so there should be cases where the whole fortune is forfeited, cases where part is, and cases where none is. The whole should be forfeited when the law that orders banishment also declares that every connection between society and the offender is annihilated. In that case the citizen dies and only the man remains, and with respect to the political body the death of the citizen should have the same consequences as the death of the man. It would seem to follow that his property should pass to his lawful heirs.

But it is not on that technical ground that I object to confiscation. Some have argued that confiscations restrain private vengeance. They

have not considered that punishments are not more just for producing some good. To be just they must be necessary. Even a useful injustice can never be permitted by a legislator who means to guard against the watchfulness of tyranny, which under the pretext of momentary advantage would establish permanent principles of destruction and, to secure comfort for a few in high places, would draw tears from thousands of the poor.

The law that orders confiscation sets a price on the head of a subject, punishes the innocent along with the guilty, and by reducing them to poverty and despair tempts them into crime. Can there be a more melancholy spectacle than a whole family overwhelmed with infamy and misery for the crime of its head, a crime they were forbidden by the very laws to prevent even if they could have?

CHAPTER XXVI

THE SPIRIT OF FAMILY IN THE
STATE

It is remarkable how many fatal injustices have been authorized and approved by the wisest and most experienced men in the freest republics. This happened because they considered the state a society of families rather than a society of individuals.

Suppose a nation of one hundred thousand people divided into twenty thousand families of five, including the head who represents each one. If the nation is an association of families, it contains twenty thousand men and eighty thousand subjects. If it is an association of individuals, it contains one hundred thousand citizens and not a single subject. In the first case we see a republic and twenty thousand little monarchies inside it. In the second the spirit of liberty breathes not only in the public squares and the assemblies of the nation but inside private houses, where people find most of their happiness or misery.

If a society is an association of the heads of families, the spirit of monarchy will gradually work its way into the republic itself, restrained only by the competing interests of each head and not by any universal spirit of liberty and equality. The private spirit of family is a spirit of small concerns. Public spirit is governed by general principles and deduces from facts the rules useful to the greatest number.

In a republic of families the children remain under the authority of the father as long as he lives and must wait for his death to acquire an existence dependent on law alone. Accustomed to kneel and tremble in their earliest years, when their natural feelings were least restrained

by the caution that experience teaches, how will they resist the obstacles that vice always sets in the way of virtue, in the decline of their own age, when the despair of ever seeing the fruit is enough to sap resolution?

In a republic where every man is a citizen, family subordination is the effect of contract rather than compulsion. Sons, released from the dependence that the weakness of infancy required, become free members of society while remaining subject to the head of the family for their own benefit, exactly as they are subject in the larger society.

In a republic of families, the young, who are the most numerous and most useful part of the nation, are at the discretion of their fathers. In a republic of individuals they are attached to their parents by nothing but the sacred and inviolable obligation of mutual assistance and gratitude for benefits received. That sentiment is destroyed less by the wickedness of the human heart than by a mistaken subjection the laws themselves prescribe.

These contradictions between the law of families and the fundamental law of the state produce many others between public and private morality, and a perpetual conflict in the mind. Domestic morality teaches submission and fear. Public morality teaches courage and liberty. The first tells a man to confine his kindness to a small number of people he did not choose. The second tells him to extend it to everyone. The first demands the continual sacrifice of himself to an idol called the good of the family, which is often no real good to anyone in it. The second teaches him to consider his own advantage without offending the laws, or excites him to sacrifice himself for his country by rewarding him in advance with the enthusiasm it inspires. Such contradictions are why people abandon the pursuit of virtue, which they can hardly distinguish in the confusion. How often do people, looking back over their own actions, find with astonishment that they have been dishonest.

As a society grows, each member becomes a smaller part of the whole, and the republican spirit diminishes in the same proportion

unless the laws attend to it. Political societies, like human bodies, have limits they cannot exceed without disordering their economy. It seems that the size of a state should be inversely proportional to the sensibility and activity of its individuals. If instead population and inactivity increase together, the laws will barely be able to prevent the crimes produced by the very prosperity they created. An overgrown republic can be saved from despotism only by subdividing into a number of confederated republics.

As the sentiments that bind us to the state weaken, those that attach us to the objects immediately around us grow stronger. So in the most despotic governments friendships are most durable and domestic virtues, which are always of the lowest class, are the most common or the only ones remaining. This shows how narrow the views of most legislators have been.

CHAPTER XXVII

MILDNESS IN PUNISHMENT

Crimes are prevented more effectively by the certainty of punishment than by its severity.

This requires vigilance in the magistrate and inflexibility in the judge, which becomes a useful virtue only when joined to mild legislation. The certainty of a small punishment makes a stronger impression than the fear of a severe one accompanied by the hope of escape. Human beings are terrified by the approach of the smallest inevitable evil, while hope, the best gift of heaven, has the power to dispel the fear of a greater one, especially when examples of impunity are available.

If punishments are very severe, people are naturally led into further crimes to escape the penalty for the first. The countries and eras most notorious for severity have always been the ones where the most atrocious crimes were committed, because the hand of the legislator and the hand of the assassin were guided by the same ferocity. On the throne it dictated iron laws to slaves. In private it prompted the subject to sacrifice one tyrant in order to make room for another.

As punishments become crueler, minds grow hardened and insensible, the way a fluid rises to the level of what surrounds it. Passion continues at the same strength, and within a hundred years the wheel terrifies no more than the prison once did. For a punishment to produce the required effect it is enough that the evil it causes exceed the good expected from the crime, taking into account the certainty of the punishment and the loss of the anticipated advantage. All severity beyond that point is superfluous and therefore tyrannical.

People regulate their conduct by the repeated impression of evils they know, not by evils they have never experienced. Suppose two nations, in one of which the greatest punishment is perpetual servitude and in the other the wheel. Both will inspire the same degree of terror. And there is no reason for increasing the punishments of the first that would not equally justify increasing those of the second to still more ingenious modes of torment, and so on to the refinements of a science too well known to tyrants.

There are two further consequences of cruel punishments that defeat the purpose they were instituted for. The first is the impossibility of maintaining an exact proportion between crime and punishment. Ingenious cruelty has multiplied the varieties of torment, but the human frame can suffer only to a certain degree, beyond which it is impossible to go, however enormous the crime. The second consequence is impunity. Human nature is as limited in evil as in good. Excessive barbarity can never be more than temporary, because no permanent system of legislation can sustain it. If the laws are too cruel they must either be changed or anarchy and impunity will follow.

Is it possible to read without shuddering the history of the barbarous and useless torments coolly invented and executed by men who were called wise? Who does not tremble at the thought of thousands of wretches whom misery, caused or tolerated by laws that favored the few and outraged the many, had driven in desperation back toward a state of nature, or who were accused of impossible crimes fabricated by ignorance and superstition, or who were guilty only of remaining faithful to their own principles, and who were then torn apart with slow and studied barbarity by men possessing the same passions and the same feelings? A delightful spectacle for a fanatical crowd.

CHAPTER XXVIII

THE PUNISHMENT OF DEATH

The useless profusion of punishments, which has never made anyone better, leads me to ask whether the punishment of death is really just or useful in a well-governed state.

What right, I ask, do human beings have to cut the throats of their fellow creatures? Certainly not the right on which sovereignty and law are founded. The laws are only the sum of the smallest portions of private liberty surrendered by each person, and they represent the general will, which is the aggregate of every individual will. Did anyone ever give another the right to take his life? Is it possible that within the smallest portions of liberty each of us sacrificed to the public good is contained the greatest of all goods, life itself? And if it were, how could that be reconciled with the principle that a man has no right to kill himself? He would have to have that right, if he could hand it to someone else.

The punishment of death is therefore not authorized by any right, because I have shown that no such right exists. It is a war of a whole nation against a citizen, whose destruction the nation considers necessary or useful. But if I can further show that it is neither necessary nor useful, I will have won the case for humanity.

The death of a citizen can be necessary in only one case: when, though deprived of his liberty, he retains such power and such connections that his existence endangers the security of the nation, when his life might produce a revolution dangerous to the established form of government. Even then it is necessary only when a nation is on the verge of recovering or losing its liberty, or in a time of total

anarchy, when disorder has taken the place of law. But in a time of tranquility, under a form of government approved by the united wishes of the nation, in a state fortified against enemies abroad and supported by strength and opinion at home, where all power is lodged in the hands of the true sovereign, and where wealth can purchase pleasures but not authority, there can be no necessity for taking the life of a subject.

If the experience of every age is not enough to show that the punishment of death has never stopped determined men from injuring society, if the example of Rome is not enough, if the twenty-year reign of Elizabeth of Russia is not enough, in which she gave the fathers of nations an example more illustrious than any conquest bought with blood, then let us consult human nature itself.

It is not the intensity of pain that has the greatest effect on the mind but its duration. Our sensibility is more easily and powerfully moved by weak impressions repeated than by a single violent one. Habit is universal in every sentient being. We learn to speak, to walk, and to satisfy our needs by habit, and by the same repetition the ideas of morality are stamped on us.

The death of a criminal is a terrible but momentary spectacle. It is therefore a less effective deterrent than the sustained example of a man deprived of his liberty and made to repair by his labor the injury he did to society. *If I commit such a crime*, the spectator says to himself, *I will be reduced to that condition for the rest of my life*. That is a far more powerful preventive than the fear of a death people always see at a distance and in shadow.

The terror of death makes so slight an impression that it cannot withstand the forgetfulness natural to human beings, especially when the passions assist that forgetfulness. Violent impressions surprise us, but their effect is momentary. They are suited to producing the revolutions that turn a common man into a Spartan or a Persian. In a free and quiet government they ought to be frequent rather than strong.

An execution is, to the crowd, a spectacle that stirs compassion mixed with indignation in some of them. Those sentiments occupy the mind far more than the salutary terror the law is trying to inspire. But in the contemplation of continued suffering, terror is the only sensation, or at least the dominant one. The severity of a punishment should be just enough to excite compassion in the spectators, since it is intended more for them than for the criminal.

A punishment, to be just, should have only the degree of severity sufficient to deter others. No one, on the slightest reflection, would weigh the total and permanent loss of his liberty against any advantage a crime could bring him. Perpetual servitude therefore contains everything necessary to deter even the most hardened, as much as death does. I say it contains more. There are many who can face death with intrepidity, some through fanaticism, some through the vanity that accompanies us to the grave, some through a desperate resolution to be rid of misery. But fanaticism and vanity abandon a man in chains and in an iron cage, and for him despair is the beginning of misery rather than its end. The mind, collecting all its force, can repel assault for a moment. Its most vigorous efforts cannot resist a wretchedness without end.

In every nation where death is used as a punishment, each example requires a new crime. Under perpetual servitude, every single criminal furnishes a frequent and lasting example. If it is necessary that people frequently witness the power of the laws, then criminals must frequently be executed. But that presupposes a frequency of crime, which means the punishment has ceased to work. So it must be useful and useless at the same time.

I will be told that perpetual servitude is as painful as death and therefore just as cruel. I answer that if all the miserable moments in the life of such a man were collected into a single point, it would indeed be a crueler punishment than any other. But they are scattered across an entire life, while the pain of death spends all its force at once. There is a further advantage in servitude, which is that it is more

terrible to the spectator than to the sufferer. The spectator adds up all the wretched moments. The sufferer, occupied by the misery of the present, is prevented from contemplating the future. All evils are magnified by the imagination, and the sufferer finds resources and consolations the spectators know nothing about, since they judge by their own sensibility what passes in a mind that habit has made callous to misfortune.

Consider for a moment the reasoning of the robber or the assassin who is supposed to be deterred by the gallows or the wheel. I am aware that articulating the sentiments of one's own heart is an art only education teaches, and that a criminal may be unable to give a clear account of his principles even though they govern his conduct. He reasons this way:

What are these laws I am bound to respect, that leave such a distance between me and the rich man? He refuses me the coin I ask him for and tells me to go and work, at labor he knows nothing about. Who made these laws? The rich and the great, who never once visited the miserable hut of the poor, who have never seen a man dividing a piece of moldy bread among his hungry children and his weeping wife. Let us break these bonds, which are fatal to most of humanity and useful only to a few idle tyrants. Let us attack injustice at its source. I will return to my natural state of independence. I will live free and happy on the fruits of my own courage. A day of pain and repentance may come, but it will be short, and for one hour of grief I will have years of pleasure and liberty. King of a small band as determined as myself, I will correct the mistakes of fortune, and I will see those tyrants grow pale before a man they would not permit to rank with their dogs and horses.

Then religion presents itself to the mind of this outlaw and, promising him something close to a certainty of eternal happiness on the easy terms of repentance, does a great deal to reduce the horror of the last scene.

But the man who foresees a great number of years, perhaps his whole life, spent in pain and servitude, a slave to the very laws that protected him, in full view of fellow citizens who live in freedom beside him, makes a useful comparison between all that evil, the uncertainty of his success, and the shortness of the time in which he would enjoy the fruits of his crime. The example of those wretches continually before his eyes makes a far greater impression than a punishment which, instead of correcting him, only hardens him.

The punishment of death is destructive to society because of the example of barbarity it sets. If the passions and the necessities of war have taught people to shed each other's blood, the laws, whose purpose is to moderate human ferocity, should not increase it with their own examples of barbarity, which are all the more horrible because this punishment is usually carried out with formal pageantry.

Is it not absurd that the laws, which detest and punish homicide, should commit public homicide themselves in order to prevent murder?

What are the truest and most useful laws? They are the agreements everyone would propose and observe in those moments when private interest is silent or aligned with the public. And what are the natural sentiments of every person concerning the punishment of death? We can read them in the contempt and indignation with which everyone looks at the executioner, who is nevertheless an innocent instrument of the public will, a good citizen contributing to the general safety, as much as a soldier does. Where does this contradiction come from? Why is this sentiment indelible, to the scandal of reason? It exists because in some secret corner of the mind, where the original impressions of nature are still preserved, people discover a conviction that their lives are not lawfully in anyone's power except that of the necessity which rules the universe with an iron scepter.

What must people think when they see wise magistrates and grave ministers of justice dragging a man to death with indifference and composure, and when they watch the judge who condemned him

leave the tribunal with the coldest insensibility, perhaps with some private gratification at the exercise of his authority, to go and enjoy the comforts of his life?

They will say: *Ah, those cruel formalities of justice are a cloak for tyranny, a secret language, a solemn veil meant to conceal the sword we are sacrificed to. Murder, which they describe to us as a horrible crime, we see them practice without repugnance or remorse. Let us follow their example. Violent death seemed terrible in their descriptions, but we see that it is the affair of a moment. And it will be even less terrible to the man who does not expect it and so escapes almost all of the pain.*

That is the fatal and absurd reasoning of people disposed to crime, on whom the abuse of religion has more influence than religion itself.

If it is objected that nearly every nation in every age has punished certain crimes with death, I answer that the force of those examples vanishes when set against truth, against which the argument from long usage is worthless. The history of humanity is an immense sea of errors, in which a few obscure truths can here and there be found.

Human sacrifice, after all, has also been common in nearly every nation. That only a few societies, and only briefly, have abstained from the punishment of death is actually favorable to my argument, since this is the fate of great truths: their duration is a flash of lightning in the long dark night of error. The happy time has not yet come when truth, as falsehood has been until now, will be the possession of the greatest number.

I know that the voice of one philosopher is too weak to be heard over the clamor of a multitude blindly governed by custom. But there is a small number of thoughtful people scattered across the earth who will answer me from the bottom of their hearts. And if these truths should happen to force their way to the thrones of princes, let those princes know that the truths come attended by the secret wishes of all humanity, and let them be told that the fame of a sovereign who receives them graciously will outshine the glory of conquerors, and

that a just posterity will raise his peaceful trophies above those of any conqueror.

How fortunate humanity would be if laws were only now being written for the first time, when we see on the thrones of Europe monarchs who are friends to the virtues of peace, to the arts and sciences, fathers of their people, crowned and yet citizens, whose increase of authority increases the happiness of their subjects. If such princes have allowed the old laws to survive, it is doubtless because they are deterred by the countless obstacles that oppose the overturning of errors sanctioned by many ages.

CHAPTER XXIX

IMPRISONMENT

That a magistrate, the executor of the laws, should have the power to imprison a citizen, to deprive a man he dislikes of his liberty on some trivial pretext, and to leave a friend at liberty despite the strongest proof of guilt, is an error as common as it is contrary to the purpose of society, which is personal security.

Imprisonment differs from every other punishment in that it necessarily precedes conviction. That difference does not eliminate the essential feature it shares with all other punishments, which is that it should never be imposed except as the law directs. The law should therefore determine what crime, what presumption, and what evidence are sufficient to subject an accused person to imprisonment and examination. Public report, flight, a confession made out of court, the confession of an accomplice, threats, a standing enmity with the injured party, and the circumstances of the crime may all be sufficient to justify imprisoning a citizen. But the sufficiency of that evidence should be settled by the law and not by magistrates, whose decrees are always hostile to political liberty when they are not particular applications of a general rule in the public code.

When punishments become less severe and prisons less horrible, when compassion penetrates the iron gates of dungeons and reaches the inflexible ministers of justice, the law may then be satisfied with weaker evidence for imprisonment.

A person accused, imprisoned, tried, and acquitted should carry no mark of infamy whatsoever. Among the Romans many who were accused of great crimes and later declared innocent were respected by

the people and given office in the state. Why is the fate of an innocent person so different now? Because our system of penal law presents an idea of power rather than of justice. Because the accused and the convicted are thrown indiscriminately into the same prison. Because imprisonment is treated as a punishment rather than as a means of securing the person of the accused. And because the internal power that defends the laws and the external power that defends the kingdom are kept separate when they should be united.

The barbarity of our ancestors still survives in our customs and our laws, which always run several ages behind the actual refinement of a people.

CHAPTER XXX

PROSECUTION AND TIME LIMITS

Once the proofs are obtained and the fact established, the accused must be allowed the time and the means to defend himself, but a period short enough not to diminish the promptness of punishment, which is one of the most powerful means of preventing crime. A mistaken humanity may object to the shortness of the time. The objection loses force when we remember that the danger to the innocent increases with every defect in the legislation.

The time for inquiry and for defense should be fixed by law and not by the judge, who would otherwise become a legislator. For atrocious crimes, which are long remembered, no time should be allowed once the crime is proved and the criminal has fled. For lesser and more obscure offenses a limit should be fixed, after which the accused is no longer left uncertain of his fate. In those cases the passage of time, during which the crime is nearly forgotten, prevents the example of impunity and allows the offender to reform.

It is impossible to fix precise limits for every society and circumstance, so general principles must serve. I will add only that in a nation willing to test the usefulness of moderate punishment, laws that lengthen or shorten the period of inquiry and defense according to the nature of the crime, treating imprisonment or voluntary exile as part of the punishment, will produce a workable set of mild penalties for a great number of offenses.

But the time for inquiry and defense should not increase in direct proportion to the atrociousness of the crime, because the probability that such a crime was committed is inversely proportional to its

atrociousness. So the time for inquiry should sometimes be shortened and the time for defense lengthened, and sometimes the reverse.

To explain this, I divide crimes into two classes. The first includes homicide and every greater crime. The second includes offenses of a lower degree. The distinction is founded in human nature. The preservation of life is a natural right. The preservation of property is a right created by society. The motives that overcome the natural sentiment of compassion, which must be destroyed before a great crime can be committed, are far fewer than the motives that push people, out of the ordinary desire to be happy, to violate a right that is the work of society rather than of the human heart. The different degrees of probability in these two classes require that they be governed by different rules.

In the greatest crimes, which are rarer and where the probability of innocence is therefore greater, the accused should have more time for his defense and the state less time for inquiry. Hastening the final judgment destroys the flattering hope of impunity, which grows more dangerous as the crime grows more atrocious. In lesser crimes, where the probability of innocence is smaller, the time for inquiry should be longer and the time for defense shorter, since impunity there is less dangerous.

It should also be remembered that a person whose guilt or innocence was left undetermined for want of proof may be imprisoned again for the same crime and tried again if new evidence appears within the period fixed.

This is, in my judgment, the best way to provide at once for the security and the liberty of the subject without favoring one at the expense of the other. Both are the inalienable and equal inheritance of every citizen, and both are liable to be invaded, the one by open or disguised despotism and the other by popular anarchy.

CHAPTER XXXI

CRIMES DIFFICULT TO PROVE

With these principles in view, it is astonishing that reason has hardly ever presided over the making of law, that the weakest and most equivocal evidence and even bare conjecture have been thought sufficient proof of the most atrocious and therefore the most improbable crimes. It is as if the interest of the law and of the judge were not to find the truth but to prove the crime, and as if there were no greater risk of condemning an innocent person precisely where the probability of guilt is smallest.

There are crimes that are frequent in society and difficult to prove, and difficulty of proof is properly treated as equivalent to the probability of innocence. But since the frequency of these crimes is not owing to impunity so much as to other causes, the danger of their going unpunished matters less, and the periods of inquiry and limitation may accordingly be shortened.

These principles are the opposite of the received ones. It is precisely in the crimes hardest to prove that partial proofs and half proofs are admitted, as if a man could be half innocent and half guilty, half punishable and half acquitted. It is in these cases that torture is turned on the accused, the witnesses, and even the whole family, as some jurists have coldly recommended while pretending to dictate law to nations.

Adultery, considered politically, owes its existence to two causes: bad laws and the powerful attraction between the sexes. That attraction resembles gravity in many respects. One governs the motion of bodies and the other the motion of souls. They differ in this, that

the force of gravity decreases in proportion to the obstacles opposing it, while this other force gathers strength as the obstacles increase.

If I were speaking to nations governed only by natural law, I would tell them that there is a considerable difference between adultery and every other crime. Adultery arises from the abuse of a necessity that is constant and universal in human nature, a necessity older than society and indeed the founder of it, while other crimes tend to the destruction of society and arise from momentary passion rather than natural necessity. Those who have studied history and human beings believe that this necessity remains constant in the same climate. If that is true, then every law and custom tending to diminish the total effect of that passion is useless or worse. Such laws only burden one part of society with the additional needs of the other. The wise law follows the natural course of the river and divides the stream into equal branches, preventing both drought and flood.

Fidelity in marriage is always greater in proportion as marriages are more numerous and less difficult to make. When the interest or pride of families, or paternal authority rather than the inclination of the parties, joins two people together, the bond is slight and easily broken, whatever the moralists say who condemn the effect while pardoning the cause.

The act of adultery is instantaneous and concealed by the very veil the laws have woven, a veil necessary but so transparent that it heightens rather than hides what is behind it. The opportunities are frequent and discovery is easily avoided. It would be far easier for the law to prevent this offense than to punish it.

Any crime that must frequently go unpunished by its nature is a crime for which punishment functions as an incentive. Such is the human mind that difficulties, if they are not insurmountable, embellish the object and spur the pursuit.

The crime of sodomy, so severely punished and so often proved by tortures that triumph over innocence itself, has its source far less in the passions of a free and independent person than in society and

servitude. It is less the effect of satiety in pleasure than of an education that, in order to make people useful to others, begins by making them useless to themselves. In those public seminaries where ardent youth are carefully excluded from all contact with the other sex, the vigor of nature is consumed in a way that is not only useless but that hastens the approach of age.

The killing of infants born outside marriage is likewise the effect of a cruel dilemma in which a woman finds herself who has been seduced through weakness or overcome by force. The alternative is her own infamy or the death of a being incapable of feeling the loss of life. How is she to avoid preferring the second to the certain misery of herself and her child? The best way to prevent this crime would be to protect the woman effectively from the tyranny that magnifies every fault which cannot be hidden under the cloak of virtue.

I do not pretend to lessen the horror these acts deserve. I mean only to find the sources they spring from, and I draw this conclusion: the punishment of a crime cannot be just, meaning cannot be necessary, if the laws have not first tried to prevent that crime by the best means the times allowed.

CHAPTER XXXII

SUICIDE

Suicide is a crime that seems to admit no punishment properly so called, because punishment can fall only on the innocent or on an insensible corpse. In the first case it is unjust and tyrannical, since political liberty requires that all punishment be personal. In the second it has the same value as an example as the whipping of a statue.

People love life too well. The objects that surround them, the seductive phantom of pleasure and hope, that sweetest of human errors which makes us swallow such large draughts of evil mixed with a few drops of good, attract us far too strongly for anyone to fear that this crime will become common through the certainty of its impunity. Laws are obeyed through fear of punishment, and death destroys all sensation. What motive, then, could restrain the desperate hand?

A man who kills himself does less injury to society than one who leaves his country forever, since the first leaves his property behind and the second carries part of his substance away. And since the strength of a society consists in the number of its citizens, the emigrant is a double loss. The real question, then, is whether it is advantageous to society that its members enjoy an unlimited right to leave.

Every law that is not armed with force, or that circumstances render ineffective, should not be promulgated at all. Opinion, which rules the minds of people, yields to the slow indirect pressure of a legislator and resists him when he applies force directly. Useless laws communicate their insignificance to the most necessary ones, which then come to be regarded as obstacles to be got around rather than as

safeguards.

My purpose here is to show the futility of turning a nation into a prison. Such a law is empty, because unless impassable seas or mountains divide the country from every other, it is impossible to secure every point on the frontier, and impossible to guard the guards. Besides, once the act is committed it cannot be punished, and to punish it beforehand would be to punish an intention rather than an action, the will rather than the deed, which is entirely outside the reach of human law. To punish the absent by confiscating his property would invite collusion, could not be prevented without tyranny, and would end all commerce with other nations. To punish him on his return would be to prevent him from repairing the harm he did by making his absence permanent. And any prohibition increases the desire to leave while certainly deterring strangers from settling.

What are we to think of a government that has no means but fear to keep its subjects in the country their earliest impressions attached them to? The surest way to keep people at home is to make them happy, and it is in the interest of every state to turn the balance not only of trade but of contentment in favor of its subjects.

If it is demonstrated that laws imprisoning people in their own country are empty and unjust, the same holds for laws punishing suicide, which can only punish after death, and that belongs to God alone. With respect to human beings it is no crime, because the punishment falls on an innocent family. If it is objected that the prospect of such a punishment may prevent the act, I answer that a man who can calmly renounce existence, who is weary enough of life to face the idea of eternal misery, will never be moved by the more distant considerations of family and property.

CHAPTER XXXIII

SMUGGLING

Smuggling is a real offense against the sovereign and the nation, but the punishment should not brand the offender with infamy, because the crime is not infamous in public opinion. By inflicting infamous punishments for offenses that are not regarded as infamous, we destroy the idea of infamy where it would actually be useful. If the same punishment is decreed for killing a pheasant as for killing a man, the difference between those crimes soon vanishes in the public mind. That is how the moral sentiments are destroyed, sentiments that took ages and much bloodshed to produce.

This crime is the creation of the laws themselves. The higher the duty, the greater the profit and therefore the greater the temptation, and the temptation is increased by the ease of the act when the border to be guarded is vast and the prohibited goods are small. Seizure of the goods is just, but it would be better to lower the duty, since people risk only in proportion to the advantage expected.

Why is this crime, a theft from the prince and therefore from the nation, unattended by infamy? Because crimes that seem to produce no bad consequence to ordinary people do not interest them enough to excite indignation. Most people, on whom remote consequences make no impression, see no harm in smuggling, especially when they gain by it. They see only a loss to the prince. So they have no reason to withhold their esteem from the smuggler as they would from a thief or a forger, whose crimes might touch them directly.

Should the offense then go unpunished when it is committed by someone with nothing to lose? No. Certain kinds of smuggling so

directly attack the revenue, which is an essential and difficult part of government, that they deserve imprisonment or even forced labor, but always in proportion to the offense. It would be grossly unjust for a smuggler of tobacco to suffer the punishment of a robber or an assassin. It would be entirely appropriate that the product of his labor be applied to the use of the treasury he intended to defraud.

CHAPTER XXXIV
BANKRUPTCY

Good faith in contracts and the support of commerce oblige the legislature to secure the persons of bankrupts for their creditors. But the fraudulent bankrupt must be distinguished from the honest one.

The fraudulent bankrupt should be punished like a man who debases the coinage, since falsifying a coin, which is a pledge of mutual obligation between citizens, is no worse than violating the obligations themselves.

But consider the bankrupt who has proved before proper judges, after strict examination, that the fraud of others or misfortunes no human prudence could avoid have stripped him of everything. On what barbarous pretext is he thrown into prison and deprived of the last thing he has, the melancholy enjoyment of bare liberty? Why is he ranked with criminals and driven in despair to repent of his own honesty? He lived at ease under laws he violated unintentionally. Those laws were dictated by the avarice of the rich and accepted by the poor, who were seduced by the universal flattering hope that misfortune is the lot of others. People love cruel laws when they first hear of them, though being subject to those laws themselves it is in everyone's interest that they be as mild as possible. The fear of being injured is always stronger than the intention of injuring.

Let the honest bankrupt's debt stand uncanceled until the whole is paid, if you like. Let him be refused permission to leave the country without his creditors' consent, or to carry his industry to another nation when he could be required to employ it for their benefit. But what pretext justifies depriving an innocent though unfortunate man

of his liberty, with no benefit whatsoever to his creditors?

They will say that the hardship of confinement will make him disclose fraudulent transactions. That is hardly to be expected after a rigorous examination of his affairs. And if the fraud is not discovered, they say, he escapes unpunished. It is a maxim of government that the political inconvenience arising from the impunity of a crime is directly proportional to the injury to the public and inversely proportional to the difficulty of proof.

Fraud attended by aggravating circumstances must be distinguished from simple fraud, and simple fraud from perfect innocence. For the first, the punishment of forgery. For the second, a lesser punishment with loss of liberty. For the honest bankrupt, let him choose the method of re-establishing himself and satisfying his creditors, or if his honesty is doubtful, let his creditors determine it. But these distinctions should be fixed by law, which is impartial, and not by the arbitrary and dangerous prudence of judges.

With what ease a shrewd legislator might prevent most fraudulent bankruptcies and relieve the misfortunes of honest and industrious people. A public register of all contracts, open to every citizen, and a public fund raised by contribution from wealthy merchants for the timely relief of unlucky enterprise, would produce no real inconvenience and many advantages. But the simplest, easiest, and wisest laws, which wait only for the nod of a legislator to spread wealth and happiness through a nation, are either unknown or refused. A restless and trifling spirit, the timid prudence of the present moment, and a distrust of the most useful innovations occupy the minds of those empowered to regulate human action.

@@A note from Beccaria's later editions:* It may be argued that the interests of commerce and property must be secured. But commerce and property are not the end of the social compact. They are the means of reaching that end, and to subject all the members of a society to cruel laws in order to preserve them from evils necessarily produced by the present arrangement of political society is to make

the end subservient to the means, which is a fallacy in every science and especially in politics. In earlier editions of this work I fell into that error myself, when I said that the honest bankrupt should be held in custody as a pledge for his debts or made to labor for his creditors. I am ashamed of having held so cruel an opinion. I have been accused of impiety, and did not deserve it. I have been accused of sedition, and deserved that as little. But I did insult every right of humanity, and for that I was never reproached.

SANCTUARIES AND EXTRADITION

Are sanctuaries just? Is an agreement between nations to surrender each other's criminals useful?

Within the whole extent of a state there should be no place independent of the law. Its power should follow every subject as a shadow follows a body. Sanctuary and impunity differ only in degree, and since the effect of punishment depends more on certainty than on severity, sanctuaries invite more crimes than punishment deters. To multiply sanctuaries is to erect so many small sovereignties, since where the law has no power new bodies form in opposition to the public good. History teaches that the greatest revolutions in kingdoms and in opinions have arisen from the use of sanctuaries.

Some have argued that wherever a crime is committed, the criminal may justly be punished for it anywhere else, as though the character of subject were indelible, or worse than the character of slave, as though a man could live under one country's laws and be accountable to another's, answerable to two sovereigns and two codes that often contradict each other. Others hold that an act of cruelty committed in Constantinople may be punished in Paris, on the abstract ground that whoever offends humanity has all humanity for his enemy, as if judges were knights errant of human nature in general rather than guardians of the particular agreements between people. The place of punishment can only be the place where the crime was committed, because only there does the necessity of punishing an individual for the general good exist. A villain who has not broken the agreements of a society he never belonged to may be feared, and may be excluded

from that society by force. He should not be formally punished by laws meant to maintain a compact he was never party to.

Whether nations should deliver up each other's criminals I will not undertake to decide, at least not until laws more conformable to the rights of humanity, milder punishments, and the abolition of the arbitrary power of opinion give some security to virtue and innocence when they are oppressed.

CHAPTER XXXVI

REWARDS FOR CAPTURING OR KILLING

Is it advantageous to society to set a price on the head of a criminal and so make an executioner of every citizen?

If the offender has taken refuge in another state, the sovereign encourages his own subjects to commit a crime and to expose themselves to a just punishment, insults the other nation, and authorizes similar usurpations against himself. If the criminal remains at home, putting a price on his head is the strongest possible proof of the weakness of the government. A man strong enough to defend himself does not purchase the help of others.

Beyond that, such an edict confuses every idea of virtue and morality, which are already unsteady enough. At one moment treachery is punished by the laws and at the next it is rewarded. With one hand the legislator strengthens the ties of kinship and friendship, and with the other he pays for their violation. Always in contradiction with himself, he invites the suspicious minds of his subjects to mutual confidence and then plants distrust in every heart. To prevent one crime he gives birth to a thousand.

These are the expedients of weak nations, whose laws are temporary repairs on a collapsing structure. As a nation becomes more enlightened, honesty and mutual confidence become more necessary and increasingly align with sound policy. Laws that reward betrayal set off a secret war and destroy the union of morality and policy on which happiness and peace depend.

CHAPTER XXXVII

ATTEMPTS, ACCOMPLICES, AND PARDON

The law does not punish intention. Nevertheless an attempt that manifests the intention of committing a crime deserves punishment, though less than if the crime had been completed. The importance of preventing even attempts authorizes a penalty. But since time may pass between the attempt and its execution, the greater punishment should be reserved for the completed act so that even after an attempt there remains a motive to stop.

Accomplices should not suffer as severely as the principal, but for a different reason. When a number of people unite and run a common risk, the greater the danger the more they try to distribute it equally. If the principal is punished more severely than the accessories, the danger cannot be equally divided, and it becomes harder to find anyone willing to strike the blow. There is one exception. When the principal receives payment from the accomplices, the difference in danger is compensated and the punishments should be equal. These considerations will seem overly refined to anyone who does not see how important it is that the law leave associates as few means as possible of agreeing among themselves.

Some tribunals offer pardon to an accomplice in a serious crime if he betrays his associates. The practice has advantages. Its disadvantages are that the law authorizes treachery, which even criminals despise, and introduces crimes of cowardice, which are far more destructive to a nation than crimes of courage. Courage is uncommon and needs only a benevolent power to direct it toward the

public good. Cowardice is frequent, self-interested, contagious, and can never be improved into a virtue. Besides, a court that resorts to this method confesses its own fallibility and the weakness of its laws by begging assistance from the people who broke them.

The advantage is that it prevents great crimes whose effects are public while their authors stay hidden. It also demonstrates that a man who violates the public compact will violate a private one. A general law promising pardon to any accomplice who exposes his associates would be better than a special declaration in each case, since it would prevent villains from combining at all, inspiring mutual distrust and making each afraid of standing alone in the danger. The accomplice should be pardoned on condition of leaving the country.

But it is useless for me to try to extinguish the remorse I feel in urging the sacred laws, the monument of public confidence and the foundation of human morality, to authorize dissimulation and perfidy. And what an example a nation is given when it sees the interpreters of the law break their own promise of pardon and, on the strength of learned subtleties, drag to punishment a man who accepted their invitation. Such examples are not rare. That is why political society is regarded as a complex machine whose springs are moved at the pleasure of whoever is most dexterous or most powerful.

CHAPTER XXXVIII

LEADING QUESTIONS

The law forbids leading questions, meaning questions that are specific about the circumstances of the crime where they ought to be general, questions that suggest an answer to the accused. Interrogation, according to the law, should approach the fact indirectly and never directly. The intent is either to keep the questioner from suggesting an answer that might acquit the accused, or to honor the principle that a man should not be made to accuse himself.

Whatever the motive, the law has fallen into an obvious contradiction by condemning leading questions while authorizing torture. Can there be a more leading question than pain? Torture will suggest obstinate silence to a strong villain, who exchanges a greater punishment for a lesser one, and confession to a weak man, who feels the present pain more than the future penalty. If a leading question violates natural right because it obliges a man to accuse himself, torture does so far more effectively. But people are influenced by the names of things rather than by their nature.

A man who stubbornly refuses to answer deserves a punishment fixed by the law, and a severe one, so that criminals cannot evade by silence the example they owe the public. But this punishment is unnecessary when guilt is beyond dispute, since interrogation is then useless, as is confession when the proofs are already sufficient. That last case is the common one. Experience shows that in the great majority of criminal prosecutions the accused pleads not guilty.

CHAPTER XXXIX

A CERTAIN CLASS OF CRIMES

The reader will have noticed that I have said nothing about a certain class of crimes, the class that has covered Europe with blood and raised those horrid piles from which, in clouds of rolling smoke, the groans of human victims and the crackling of their bones were a pleasing spectacle and an agreeable music to a fanatical crowd.

But people of understanding will see that the age and the country I live in do not permit me to inquire into the nature of this crime.

It would be tedious and foreign to my subject to prove the necessity of perfect uniformity of opinion in a state, contrary to the example of many nations. It would take too long to prove that opinions differing only in subtleties beyond the reach of human capacity may nevertheless disturb the public peace unless one religion alone is established by authority, or that some opinions strike out truth by collision with each other while others, feeble in themselves, require the support of power. It would carry me too far to prove that however odious the empire of force over opinion is, obtaining nothing but pretended assent followed by contempt, and however contrary it may seem to the spirit of the brotherly love that reason and authority command us, it is nevertheless necessary and indispensable.

We are to believe that all these paradoxes are resolved beyond doubt and agree with the true interest of humanity, provided they are practiced by lawful authority.

I write only about crimes that violate the law of nature and the social contract. I do not write about sins, whose temporal punishment must be determined on other principles than those of a limited human

philosophy.

CHAPTER XL

FALSE IDEAS OF UTILITY

A principal source of error and injustice is false ideas of utility.

That legislator has a false idea of utility who prefers particular conveniences to general ones, who would rather command the sentiments of humanity than awaken them, who dares say to reason, *be a slave*, who would sacrifice a thousand real advantages out of fear of one imaginary inconvenience, who would deprive people of the use of fire because they might be burned and of water because they might drown, and who knows no way of preventing an evil except destroying it.

Laws forbidding the carrying of arms are of this kind. They disarm only those who are not inclined to commit the crime the laws mean to prevent. Can it be supposed that people who have the courage to violate the most sacred laws of humanity will respect a lesser and arbitrary regulation, when violating it is so easy and matters so little by comparison? Does enforcing such a law not deprive the subject of the personal liberty so precious to any wise legislator, and subject the innocent to inconveniences that ought to fall only on the guilty? It certainly makes the position of the assaulted worse and the assailant's better, and it encourages rather than prevents killing, since it takes less courage to attack an unarmed man than an armed one.

It is a false idea of utility that would impose on a multitude of sentient beings the symmetry and order that only inanimate matter can receive, that would neglect the present motives which act with force on ordinary people in favor of distant ones whose impression is weak and fleeting. And finally, it is a false idea of utility that sacrifices

things to names and separates the public good from the good of individuals.

There is this difference between a state of society and a state of nature: a savage does no more harm to another than is necessary to procure some benefit to himself, while a man in society is sometimes tempted, by a defect in the laws, to injure another with no prospect of advantage at all. The tyrant fills his subjects with fear and servility, and it rebounds on him with double force. Fear is least dangerous to the man who uses it when it is private and domestic. The more public it is, and the more people it touches, the greater the probability that some desperate person will draw others to his side with flattering promises. And that becomes easier as the danger of the attempt is divided among more people, because those who are most miserable value their own existence least.

CHAPTER XLI

PREVENTING CRIME

It is better to prevent crimes than to punish them.

This is the fundamental principle of good legislation, which is the art of leading people to the greatest happiness and the least misery. But the means so far employed for that purpose are generally inadequate or contrary to the end proposed. It is impossible to reduce the tumult of human activity to perfect regularity. Human laws cannot entirely prevent disorder among the competing attractions of pleasure and pain. That is the fantasy of weak men clothed with authority.

To prohibit a great number of indifferent actions is not to prevent the crimes they might produce. It is to create new crimes. It is to change at will the ideas of virtue and vice that we are told at other times are eternal and unchangeable. What condition would we be reduced to if everything that might possibly lead to a crime were forbidden? We would have to be deprived of the use of our senses. For every motive that leads a person to a real crime there are a thousand that lead to the indifferent actions bad laws call crimes. If the probability of a crime is proportional to the number of motives, then enlarging the sphere of crimes enlarges that probability. Most laws are nothing but exclusive privileges, a tribute paid by all for the advantage of a few.

Do you want to prevent crimes? Make the laws clear and simple. Put the whole force of the nation behind their defense. Let the laws favor every individual rather than any particular class. Let the laws be feared, and only the laws.

The fear of law is healthy. The fear of other people is a fertile and fatal source of crime. People held in subjection are more debauched and more cruel than people who are free. The free study the sciences and the interest of nations, set great objects before themselves, and imitate them. The subjected, whose view is confined to the present moment, try in the distraction of riot to forget their situation. Accustomed to the uncertainty of everything, since the law settles nothing for them, they find the consequences of their crimes uncertain too, which gives their passions still more strength.

CHAPTER XLII
KNOWLEDGE

Do you want to prevent crimes? Let liberty be accompanied by knowledge.

As knowledge spreads, its disadvantages diminish and its advantages increase. A bold impostor, who is always a man of some talent, is worshipped by an ignorant crowd and despised by people who understand. Knowledge makes comparison possible by showing an object from more than one side. When the clouds of ignorance are scattered by knowledge, authority trembles, but the force of the laws remains immovable. People of enlightened understanding necessarily approve the useful agreements that are the foundation of public safety. They compare with satisfaction the small portion of liberty they gave up with the total that others sacrificed for their security, and observing that they surrendered only the pernicious liberty of injuring others, they bless the laws.

It is false that knowledge has always been harmful. Where it was, the harm was unavoidable. The multiplication of the species introduced war, the rudiments of the arts, and the first laws, which were temporary compacts arising from necessity and perishing with it. That was the first philosophy, and its few elements were sound.

But as needs increased with numbers, stronger and more lasting impressions were required to prevent frequent relapse into barbarism. The first religious errors, which peopled the earth with false divinities and invented invisible beings to govern the visible world, were of enormous service. By presenting to ordinary minds things beyond the reach of the senses, things that fled as they were pursued and were

never comprehended and therefore never despised, they united the passions of a people and attached them to a single object. That was the first transition of every nation out of savagery, and perhaps the only bond available to societies at their formation. But since it is the nature of error to subdivide endlessly, the pretended knowledge that grew out of it turned humanity into a blind and fanatical multitude, destroying itself inside the labyrinth it had built. It is not surprising that some thoughtful minds have looked back with longing to the ancient state of barbarism. That was the first age in which knowledge, or rather opinion, proved fatal.

The second is the difficult and terrible passage from error to truth, from darkness to light. The violent collision between a mass of errors useful to a powerful few and the truths that matter to the weak many, with all the passion such a collision excites, has produced infinite suffering. In the study of history we often find one generation sacrificed to the happiness of the next during the necessary passage from ignorance to philosophy and from tyranny to liberty. But when that fire burns out and the world is delivered from its evils, truth, after a very slow progress, sits down with monarchs on the throne and is worshipped in the assemblies of nations.

Shall we then believe that light spread among the people is more destructive than darkness?

Ignorance may be less fatal than a small amount of knowledge, because a partial view adds its own errors to the evils of ignorance. But a person of enlightened understanding appointed as guardian of the laws is the greatest blessing a sovereign can give a nation. Such a man is accustomed to look at truth and not to fear it. Unacquainted with most of the imaginary and insatiable needs that put virtue to the test, and used to contemplating humanity from an elevated position, he regards the nation as his family and his fellow citizens as brothers. The distance between the great and the ordinary appears smaller to him the more people he holds in view.

CHAPTER XLIII
MAGISTRATES

Another way of preventing crime is to make the observance of the laws, rather than their violation, the interest of the magistrate.

The larger the number of people who compose a tribunal, the smaller the danger of corruption, because the attempt becomes more difficult and the power of any single individual proportionally less. If a sovereign, by pomp and by the severity of his edicts and by refusing to hear the complaints of the oppressed, accustoms his subjects to respect magistrates more than laws, the magistrates gain, but the gain comes at the cost of public and private security.

CHAPTER XLIV

REWARDS

Yet another way of preventing crime is to reward virtue. On this subject the laws of every nation are silent.

If the prizes offered by academies for the discovery of useful truths have increased knowledge and multiplied good books, is it not probable that rewards distributed by the hand of a sovereign would also multiply virtuous actions? The coin of honor is inexhaustible, and it is abundantly fruitful in the hands of a prince who distributes it wisely.

CHAPTER XLV

EDUCATION

The most certain method of preventing crime is to perfect education.

This subject is too vast for my plan, and it is so intimately connected with the nature of government that it will always remain barren ground cultivated by a few wise people.

A great man, persecuted by the very world he enlightened and to whom we owe many important truths, has set out the principal maxims of a useful education. It consists chiefly in presenting a small number of selected objects to the mind, in substituting originals for copies in both physical and moral phenomena, in leading the pupil toward virtue by the easy road of feeling, and in restraining him from evil by the infallible power of necessary consequences rather than by command, which obtains only counterfeit and momentary obedience.

CHAPTER XLVI

PARDONS

As punishments become milder, clemency and pardon become less necessary. Happy the nation in which they are considered dangerous.

Clemency has often been treated as a sufficient substitute for every other virtue in a sovereign. It should be excluded from a perfect system of law, where punishments are mild and criminal proceedings are regular and swift. This will seem cruel to people living in countries where the absurdity of the laws and the severity of the punishments make pardon necessary. Pardon is indeed among the noblest prerogatives of a throne, and at the same time it is a silent condemnation of the laws.

Clemency is a virtue belonging to the legislator and not to the executor of the law, a virtue that ought to shine in the code rather than in private judgment. To show people that crimes are sometimes pardoned and that punishment is not the necessary consequence is to feed the flattering hope of impunity and to make every punishment that is inflicted look like an act of oppression. The prince who pardons surrenders the public security in favor of an individual and, by an ill-judged benevolence, proclaims a public act of impunity.

Let the executors of the law be inexorable, and let the legislator be tender, indulgent, and humane. He is a wise architect who builds on the foundation of self-love and arranges things so that the interest of the public is the interest of each individual.

A small crime is sometimes pardoned when the person injured chooses to forgive. That may be an act of good nature and humanity, but it is contrary to the public good. The right of punishing belongs

not to any individual but to society as a whole. A man may renounce his own portion of that right. He cannot give up anyone else's.

CHAPTER XLVII

CONCLUSION

I close with this reflection: the severity of punishment ought to be proportioned to the state of the nation.

Among a people barely emerged from barbarism the impressions must be strong. As minds are softened by intercourse in society, the severity of punishment should diminish, if the necessary relation between the object and the sensation is to be maintained.

From everything I have written, the following general theorem results, useful though not conformable to custom, that common legislator of nations:

In order that a punishment may not be an act of violence committed by one or by many against a private member of society, it must be public, immediate, and necessary, the least possible in the given case, proportioned to the crime, and determined by the law.

EDITORIAL
APPARATUS

DEFINITIONS AND TERMS

Beccaria wrote in a technical vocabulary that has since drifted. Several of his key words look familiar and mean something other than what a reader in 2026 will assume. Reading past them costs the argument.

Social compact. The agreement, real or hypothetical, by which people surrender a portion of their natural liberty to a common authority in exchange for security. For Beccaria this is not a historical event but a measuring device. Everything the state may lawfully do is contained inside what was surrendered. Everything outside it is force without right. His entire case against capital punishment runs through this word: no one surrendered his own life, so the state never received the power to take it.

Sovereign. Not simply the monarch. The sovereign is whoever holds the deposited liberty of the whole society in trust. Beccaria is deliberately vague, partly for safety and partly because his argument works the same way under a king or a republic.

Lese-majesty. Literally, injury to the majesty of the sovereign. In eighteenth-century law it covered treason and had been stretched to cover an enormous range of offenses, including speech, so that lesser acts carried the punishment of treason. Beccaria's complaint in Chapter VIII is that the label, not the injury, determined the penalty. The modern equivalents are the offenses that trigger the death penalty by definition rather than by proven harm: felony murder, capital sexual battery statutes, terrorism enhancements.

Infamy. A formal legal status, not a feeling. The infamous person lost the confidence of his neighbors, the capacity to testify, and access to office and trade. Beccaria treats it as a punishment with a fixed supply that is devalued by overuse. The American analogue is the collateral consequence regime: the loss of the vote, of housing, of licensure, of employment. His warning holds. Attach infamy to acts that no one considers shameful, and it stops carrying weight where it is needed.

Perpetual slavery. This is the phrase that requires the most care.

Beccaria's proposed replacement for execution is *la schiavitù perpetua*, rendered in the 1767 English as perpetual slavery and meaning penal servitude for life: the condemned kept alive, held permanently, and made to labor in public view. He argues for it on deterrent grounds, that the sustained spectacle of a life reduced works on the mind of the observer where the momentary spectacle of a death does not.

An American reader in 2026 cannot pass over this. Two things need saying plainly.

The first is that Beccaria's argument here is the weakest thing in the book. He defends the punishment as more terrible to the spectator than to the sufferer, and he defends it on a theory of deterrence he had already shown to be unreliable. He is arguing for a lesser cruelty against a greater one and calling the lesser one humane. Modern abolitionists who have sat with men serving life without parole know exactly what that arrangement is.

The second is that the Thirteenth Amendment to the United States Constitution abolished slavery *except as a punishment for crime whereof the party shall have been duly convicted*. That exception is not an accident of drafting. It is the direct descendant of the European penal tradition Beccaria was writing inside, and it is the legal ground on which American prison labor still stands. The line runs from this chapter to the convict lease system to the fields at Angola.

So read Chapter XXVIII with both hands. Beccaria destroyed the state's claim of a right to kill and never questioned the state's claim of a right to own. We inherited both. Only one of them has been honestly examined.

Torture. In Beccaria's usage, not punishment but procedure. The *quaestio* was a formal evidentiary tool applied to the accused during trial, before any finding of guilt, in order to produce a confession or reveal accomplices. Chapter XVI attacks it as evidence, not as cruelty, and that is precisely what gives the chapter its force.

Demi-proof, half proof, quarter proof. Fractional standards of evidence in the civil law tradition. Several partial proofs, none of which excluded innocence, could be summed to a conviction. Beccaria calls this the arithmetic of a man half innocent and half guilty. It survives in the modern habit of stacking weak circumstantial items, none sufficient alone, into a capital verdict.

Prescription. A statutory time limit on prosecution.

Sanctuary. A place, ordinarily ecclesiastical, where civil law could not reach a fugitive.

Political idleness. Chapter XXIV. Not unemployment. Beccaria means the accumulation of wealth that is neither spent nor put to use, and specifically the cloistered life. He is attacking monastic and rentier wealth under cover of a discussion of vagrancy.

Fanaticism. Religious zeal turned violent. Beccaria's recommendation in Chapter XXIII, that fanatics be met with ridicule rather than pain, is one of the earliest arguments that martyrdom is a manufactured good and that execution supplies it.

The invisible Legislator. God. Beccaria uses circumlocutions of this kind throughout, and the reader should hear the censor standing behind him whenever he does.

FURTHER READING

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The most serious modern challenge to the reform tradition Beccaria founded, arguing that the shift from the scaffold to the prison was a refinement of power rather than a retreat from it. Read against Chapter XXVIII.

THE AMERICAN RECORD

Furman v. Georgia, 408 U.S. 238 (1972).

Gregg v. Georgia, 428 U.S. 153 (1976).

Glossip v. Gross, 576 U.S. 863 (2015). Justice Breyer's dissent is the closest thing in American law to a restatement of Beccaria's case.

Death Penalty Information Center, deathpenaltyinfo.org. Current execution data, warrant tracking, and state-by-state status.