

THE ABOLITION CLASSICS

COLLECTED EDITION VOL. II

THE ENLIGHTENMENT

BECCARIA, PELLI, RUSH & THE
PHILOSOPHERS OF LIFE

1760–1792



EDITED AND MODERNIZED BY

JEFF HOOD

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

THE ENLIGHTENMENT

1760 – 1799

OMNIBUS II

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1760 – 1799

Pelli · Beccaria · Bentham, Robespierre & Haughton · Rush

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JEFF HOOD

COMPLICIT PRESS

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THE ABOLITION CLASSICS

OMNIBUS II

CONTENTS

Each volume gathered here keeps the pagination of its own edition. The page numbers below, and those in the index, are the sequential pages of this omnibus

FRONT MATTER

Foreword	vi
Editor's Note: The Thread Between These Books	ix

THE WORKS

Against the Death Penalty	13
<i>Giuseppe Pelli · Florence, 1760–61 · V. 3</i>	
An Essay on Crimes and Punishments	95
<i>Cesare Beccaria · Livorno, 1764 · V. 5</i>	
An Excerpt, a Speech & a Pamphlet	207
<i>Jeremy Bentham · Maximilien Robespierre · James Haughton · 1791 · 1830 · 1850 · V. 24</i>	
Considerations on the Injustice and Impolicy of Punishing Murder by Death	213
<i>Benjamin Rush · Philadelphia, 1792 · V. 4</i>	

EDITORIAL APPARATUS

Conclusion	304
Index	306

FOREWORD

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

— BECCARIA

The first omnibus ended with a complaint about accumulation: for two thousand years the argument against the gallows was made completely, by people who had no idea it had ever been made before, and it never gathered. This volume is where it gathers.

Not because the argument improved. Read Pelli against the Mishnah, or Beccaria against Thomas More, and you will find the reasoning is not better. It is shorter, and it is in print, and it is in a language educated Europe could read without a priest's help. That is the entire difference, and it changed the world.

TWO MANUSCRIPTS

Look at what opens this book. In a study in Florence, sometime around 1760, a thirty-year-old nobleman named Giuseppe Pelli sat down and wrote a treatise arguing that the state has no right to kill. He worked out the social-contract argument that would make Beccaria famous, and he worked it out first. Then he stopped. He never finished it. He never published it. The manuscript went into a drawer in Florence and stayed there for two hundred and fifty years.

Four years later, in Livorno, a twenty-six-year-old Milanese named Cesare Beccaria published a short anonymous book making substantially the same case. Within three years it was in French with a commentary by Voltaire. Catherine the Great wrote to him. Grand Duke Leopold of Tuscany read him and, in 1786, abolished the death penalty in his territory — the first modern state on earth to do it. In 1792 a physician in Philadelphia who had signed the Declaration of Independence quoted him against the gallows of the new republic.

Same argument. One went into a drawer. The other rearranged the criminal law of the Western world.

I do not tell that story to diminish Beccaria. He wrote the better book, and he took a risk publishing it that Pelli would not take. I tell it because it is the plainest lesson this series has to teach anyone doing this work now. Being right is not the job. Being right where people can hear it is the job. Pelli is in this omnibus because he was right and nobody heard him, and because I have known too many people who were right about the machinery and died with it still running.

WHAT THEY ACTUALLY ARGUED

Strip the eighteenth-century manners off these four texts and the case is simple enough to state in a paragraph.

A government's authority comes from what the governed handed over. No one owns his own life in the sense required to hand it to a magistrate; a man may not kill himself, so he cannot have deputized someone else to kill him. Therefore the power to execute was never transferred, and a state that claims it is claiming something it was never given. And even if the right existed, the punishment fails on its own terms: it does not deter, because deterrence works by duration and not by intensity, and a spectacle that lasts four minutes cannot outweigh a life of imprisonment that lasts forty years. It brutalizes the crowd that watches it. It makes juries lie to avoid it. It cannot be corrected when it is wrong, and it is wrong more often than the law will admit.

That is Pelli. That is Beccaria. That is Bentham's ledger, and Robespierre's speech to the Assembly, and Rush's essay to a country that had just declared all men created equal. Four writers, three countries, thirty years, one argument.

THE CHRISTIAN TURN

Rush is here for a reason beyond his priority in America. He is the man who takes the Enlightenment case and drags it back into the church.

Beccaria argues from the social contract. Rush argues from the social contract and then keeps going: he takes on Genesis 9, he takes on the

Mosaic code, he takes on the whole apparatus of scriptural justification that his opponents were using, and he does it as a believer. When Theocratos came at him in the newspapers, he answered — and that answer is printed here with the essay. Rush understood something the philosophes mostly did not: in a Protestant country, the gallows does not stand on reason. It stands on a verse. You can defeat the reasoning all day long and the verse will still be there in the morning.

That fight — the one over *whoso sheddeth man's blood* — runs through the next three omnibus volumes and into every death chamber I have ever stood in. I have watched a chaplain bless a gurney. I have listened to a warden read a warrant in the cadence of liturgy. Rush saw what that was in 1792 and refused to concede the text.

WHAT IT COST

I want to be honest about the ugly part, because this volume contains it.

The Assembly heard Robespierre in 1791 say that human judgment is never certain enough to kill, and it kept the death penalty anyway, and within three years the man who said it was signing the lists. The Terror was run by a man who had made the finest speech against the scaffold in the French language. That is in this book on purpose. An argument does not become false because the person who made it betrayed it. If it did, there would be no scripture, and there would be no country.

The lesson I take is not that the Enlightenment failed. Tuscany abolished. Austria abolished. Pennsylvania divided murder into degrees and cut its gallows in half. The lesson is that the argument, once printed, outlives everyone who makes it — including the ones who go on to disgrace it.

These four texts are why anyone reading this has an argument at all.

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

EDITOR'S NOTE

This omnibus gathers V. 3, V. 5, V. 24 and V. 4 of The Abolition Classics. Three of the four belong to the eighteenth century without argument. The fourth needs explaining.

WHY THE ANTHOLOGY SITS HERE

An Excerpt, a Speech & a Pamphlet collects three works across sixty years: Jeremy Bentham's chapter on capital punishment from *The Rationale of Punishment*, printed at London in 1830 but written from manuscripts of the 1770s and 1780s; Maximilien Robespierre's speech to the Constituent Assembly of 30 May 1791; and James Haughton's paper to the Dublin Statistical Society in 1850.

It is placed in this volume for Robespierre. The speech is the Enlightenment argument delivered at the exact moment it might have become law in the largest country in Europe, and it belongs beside Beccaria, whom it is quoting in all but name. Bentham belongs here too by composition if not by publication: he was working out utilitarian penal theory while Beccaria was still being translated, and his ledger is the Enlightenment method carried to its conclusion. Haughton, from 1850, is the outlier — a Dublin merchant with parliamentary returns in his hand, and by rights a citizen of Omnibus IV. He is kept with the other two because the volume was published as a single book and because the three of them, read together, show one argument surviving from the philosophers to the statisticians without a break.

THE THREAD BETWEEN THESE BOOKS

Nobody can give away what he does not own. Pelli states it in 1760 and Beccaria in 1764: the social compact cannot contain a right to kill, because no one entering it possessed such a right over himself. Rush takes the same argument to Philadelphia in 1792. It is the single most durable idea in this omnibus and it descends directly from the argument Thomas More put in

the mouth of a traveler in Omnibus I.

Duration beats intensity. Beccaria's most consequential paragraph is not about rights at all. It is the observation that human beings are moved less by a violent and brief impression than by a weak one repeated over years, and that a lifetime of servitude therefore deters more than a moment on a scaffold. Bentham runs the same comparison as arithmetic. Rush runs it as psychology. Every deterrence study in the next two centuries is a footnote to it.

Executions teach killing. Pelli says the crowd learns cruelty. Beccaria says the law that forbids murder commits one publicly. Robespierre warns the Assembly that displaying the bodies of executed men before the people breeds the ferocity it claims to punish. Dickens will quote that warning in 1846, and it will be in these pages, and it will not have been answered.

Error is final. Bentham's word for it is irreparable. Rush's is unatonable. It is Spee's argument from the last omnibus, restated by men who never saw a torture room.

Scripture is the battlefield in America. This is the hinge between the European and American halves of the series. Rush's *Reply to Theocratos*, printed here with the essay, is the first sustained American answer to Genesis 9:6, and it hands the next generation — Spear, O'Sullivan, Burleigh, Bovee — its ammunition.

THE TEXTS

Each volume keeps the apparatus of its own edition, and each carries its own account of sources on its copyright page. Two of them require a word here.

Against the Death Penalty is not a translation. Pelli's manuscript survives in the Archivio di Stato di Firenze and was first edited in 2014; that edition is under copyright and this series would not use it. The volume is instead an original composition that recreates the structure and argument of the treatise in new words. The reader gets Pelli's case. The reader does not get Pelli's sentences, and the volume says so plainly.

An Essay on Crimes and Punishments is modernized from the anonymous English translation of 1767 as corrected in the Albany edition of 1872. Voltaire's commentary, printed with the essay in that edition, is reserved for a separate volume and is not included here.

A word on the arrangement. Pelli precedes Beccaria in this book, which reverses the order of their fame and restores the order of their composition. That is deliberate. The point of putting the unpublished manuscript first is to make the reader meet the argument before meeting the celebrity, and to feel what it cost that the drawer stayed shut.

THE ABOLITION CLASSICS. V. III



AGAINST THE DEATH PENALTY

THE ARGUMENT OF GIUSEPPE PELLI

Florence, 1760-1761

RECREATED AND MODERNIZED BY

JEFF HOOD

COMPLICIT PRESS

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

AGAINST THE DEATH PENALTY

The Argument of Giuseppe Pelli

Jeff Hood

AGAINST THE DEATH PENALTY

THE ARGUMENT OF
GIUSEPPE PELLI

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THE ABOLITION CLASSICS

V. 3

The texts that built the case against the death penalty

COMPLICIT PRESS

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Giuseppe Pelli, unfinished dissertation on the death penalty, drafted c. 1760–1761. Manuscript held by the Archivio di Stato di Firenze, Archivio Pelli Bencivenni. First edited by Philippe Audegean in 2014 under the title *Contro la pena di morte*. Pelli died in 1808 and the work is in the public domain.

This book is an original composition. It recreates the argument of Pelli's treatise in new words. No text has been translated from the Italian, and no text has been reproduced or adapted from any modern edition or translation of the manuscript.

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CONTENTS

FRONT MATTER

Foreword.....	vii
A Note on This Edition.....	xi

PELLI'S ARGUMENT

Why Examine an Institution Everyone Accepts?.....	2
Human Beings Enter Society to Preserve Life.....	5
No One Can Transfer a Right He Does Not Possess. 8	
Original Sin Explains Crime but Does Not Justify Execution.....	11
Public Authority Is Not Divine Authority.....	14
Utility Does Not Require Death.....	17
Punishment Must Be Seen, and Death Cannot Be Seen for Long.....	20
Deterrence Is Uncertain.....	22
The Scaffold Is the Mark of a Bad Government.....	25
The Law of Retaliation Is Not Justice.....	27
Mercy Is a Political Virtue.....	30
Civilization Is Measured by Restraint.....	33
What the Proofs Establish.....	36

A MODERN ENGAGEMENT

I. The Question Nobody Asked.....	40
II. The Transfer That Cannot Happen.....	42
III. The Fallen Judge.....	44
IV. What God's Power Cannot Lend.....	46

V. The Necessity That Isn't.....	48
VI. What the Crowd Learns.....	49
VII. The Irreversible Mistake — Beyond Pelli.....	50
VIII. Imitation Is Not Justice.....	51
IX. Mercy as Strength.....	53
X. Civilization's Measure.....	54

EDITORIAL APPARATUS

Definitions and Terms.....	57
Further Reading.....	61

FOREWORD

Three years before Beccaria published the essay that would transform European criminal law, a Florentine nobleman in his early thirties sat down in his study and began writing a treatise against the death penalty. His name was Giuseppe Pelli. The treatise — drafted around 1760–1761 — he never finished and never published. It surfaced more than two centuries later, among family papers held by the Archivio di Stato di Firenze. When scholars finally examined it, they found a complete abolitionist argument built on foundations quite different from Beccaria's, and in some respects reaching further.

Pelli wrote when almost no one was writing this way. The death penalty was the unquestioned background condition of European justice. Courts imposed it for murder, for theft, for heresy, for sodomy, for a hundred lesser crimes. The question of whether the state had the right to execute had almost never been raised directly, because the answer was assumed. Pelli raised it. He organized his argument as a series of proofs, each one attacking a different foundation on which the claimed right to execute might rest. Natural law: the right cannot come from there. Social contract: nor from there. Necessity: nor there. Deterrence: the evidence does not support it. Proportionality: death breaks the principle entirely. Each proof stands on its own, and together they amount to a systematic dismantling of every justification that has ever been offered for state killing.

I came to Pelli through the work of scholars who found the manuscript and understood what they had. He

FOREWORD

was writing within a Catholic intellectual framework that Beccaria largely set aside, and that framework produces some of his most interesting arguments. Original sin, for Pelli, is not a reason to punish more severely. It is a reason to punish with less confidence. If human beings are morally damaged by nature, so are judges, legislators, and juries. The same fallen humanity that produces crime also produces legal systems. You cannot invoke the wickedness of the criminal as justification for the power of the court without applying the same standard to the court itself. Pelli applies it. The result is one of the most intellectually honest treatments of the problem in the entire abolitionist tradition.

I have spent years in rooms where the state's power over life and death is not a philosophical abstraction. I have sat with people who were scheduled to die by a process that functions, as Pelli saw, on assumptions that have never been adequately examined. The assumption that the state has this right. The assumption that the right, even if it exists, is being exercised correctly in this case. The assumption that the error, if there is one, is small enough to accept. Pelli attacks all three. He does it from a desk in Florence in 1761, and he does it with a rigor and a moral seriousness that I find, reading him across two and a half centuries, genuinely moving.

FOREWORD

Pelli's treatise survives, unfinished, and has been edited in Italian and translated into English. This book is neither of those things. What follows is my own recreation of his argument — his order of proofs, his premises, the objections he answers and the conclusions he reaches — worked out in my own words and at a length he never reached, and then brought into conversation with capital punishment in the United States. The argument is Pelli's. Every sentence is mine. Readers who want Pelli's own words in English should go to Peter Garnsey's translation, which is listed at the back of this book. What I have tried to give them here is something a translation cannot: the argument at full stretch, addressed to a country that still kills people.

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

A NOTE ON THIS EDITION

The Author

Giuseppe Pelli Bencivenni was born in Florence in 1729. He was the last of a patrician family. He studied law at Pisa but never took the doctorate. In 1758 he entered the service of the Grand Duchy of Tuscany under its Habsburg-Lorraine rulers and spent the rest of his working life inside that administration. In 1775 he was made director of the Uffizi. He held the post for eighteen years. It was the work he loved. He died in Florence in 1808.

He was also a man who wrote everything down. The *Efemeridi* run to eighty volumes. He began them in 1759 and kept them daily until he died. Almost fifty years of one man recording what he read, who he saw, what he thought, what Florence was doing around him. Nobody has left a fuller record of that world. He drafted his case against the death penalty in the same years he started the diary. He was in his early thirties. He was reading the natural-law writers hard. The argument came out of that reading.

Then it disappeared for two centuries. The Archivio di Stato di Firenze bought two large collections of Pelli family papers in 1968 and 1969. The draft sat in them, unread, until the end of the 1980s. Renato Pasta found it, identified it, brought it to scholarship in 1990. Philippe Audegean edited it and published it in Padua in 2014. That is when the record changed. The first systematic case against execution in the modern West

had been written. Nobody knew it for two hundred and thirty years.

The Manuscript and Its Significance

He wrote it around 1760 and 1761. He built it as a series of numbered proofs. That was his legal training showing. It was also the scholastic habit that still governed how Italians argued in the middle of the eighteenth century. The surviving draft carries six of them. The first holds that death cannot serve the purposes punishment exists to serve, which he says include neither satisfaction owed to divine justice nor vengeance — vengeance he calls useless, inhumane and vile. The second argues from self-preservation and the terms on which men left the state of nature. The third denies that killing is useful. The fourth observes that the worst-governed states execute the most. The fifth notes that peoples we call barbaric fined where we kill. The sixth takes up the objection that the practice is universal and therefore justified. Then he stopped. The last work on the draft dates to 1761. He never finished it. He never published it. We do not know why. What we know is that he had the whole argument and he put it in a drawer.

That fact changes the history. A complete case for abolition existed before Beccaria published *On Crimes and Punishments* in 1764. It was sitting in manuscript in Florence while Europe still believed the question had not been asked. This takes nothing from Beccaria. Beccaria published. Beccaria reached an enormous audience. Beccaria changed the criminal law of half the world. That is an achievement Pelli never came near. But the argument did not wait for Beccaria to be

thinkable. It was already thought. What 1764 supplied was nerve.

This volume runs those six proofs out to eleven. Where Pelli compresses two moves into one chapter I have given each its own. Where he states a premise and leaves the reader to draw the conclusion I have drawn it. One change of order should be declared: his sixth proof, that universal practice proves nothing, comes last in the manuscript as a reply to an anticipated objection. I have put it first, because a modern reader will not go further until it is answered. And one theme deserves more weight than the manuscript's structure gives it. Pelli was a staunch Catholic. Original sin runs through everything he wrote here. It is his explanation for why men commit crimes and for why the law that punishes them is built the way it is. That doctrine, turned against the executioner, is the most distinctive thing he did. This book treats it as such.

This Recreation

This volume is a recreation, not an edition. It reproduces no sentence of Pelli's and no sentence of any translator's. What it reproduces is the argument: the sequence of the proofs, the premises each one rests on, the objections each one takes up, the conclusions each one reaches. Those are Pelli's, and the scholarship on the manuscript documents them. The words are mine. Where his position is recorded in detail I have followed it closely. Where he left an outline — he abandoned the manuscript unfinished — I have developed it along the lines his method requires, drawing on the natural-law, social-contract and theological traditions he was

working within. Nothing in this book should be quoted as Pelli's words. It is written in the first person because an argument of this kind has to be made by someone, not reported about; the voice is a device for carrying the reasoning, not a claim to the historical record.

The second part of this volume, "A Modern Engagement," is my own commentary on Pelli's argument, bringing each of his major proofs into conversation with the contemporary American context. Pelli was writing about European criminal justice in 1761. The arguments he made apply with equal or greater force to the United States in 2026, and I have tried to show why.

The Series

The Abolition Classics is a series from Complicit Press, publishing the texts that built the case against the death penalty in contemporary language. Pelli belongs in this series because his treatise is the earliest systematic argument for abolition in the Western tradition — earlier than Beccaria, and in several respects more complete. He wrote from within the Catholic intellectual tradition, which gives his argument a range and texture that the secular Enlightenment tradition could not provide. And he wrote with the passion of someone who understood, at a deep level, that this was not an academic question. The people who were being executed were real.

“Custom is not proof. Antiquity is not proof. Universal practice is not proof.”

PELLI'S ARGUMENT AGAINST THE DEATH PENALTY

What follows is not a translation and not a text. It is Pelli's argument — his proofs, in his order, resting on his premises — composed in new words. The first person belongs to the argument rather than to a document. No sentence here should be quoted as Pelli's.

INTRODUCTION

Why Examine an Institution Everyone Accepts?

I write on a question that concerns not the details of law but its very foundation: whether the state may justly take the life of a citizen. This question has been treated lightly by legislators who assume that severity is synonymous with justice. Yet no principle of government is more in need of examination than the one that authorizes the destruction of human life in the name of law. If punishment is to be rational, it must be founded on necessity and not passion; on utility and not vengeance; on reason and not inherited custom. I therefore examine whether the death penalty can be justified under any coherent system of civil justice. I conclude that it cannot.

Let me begin with an observation that ought to unsettle anyone who thinks carefully about it. Almost every nation executes criminals. Almost every legal code authorizes death as a penalty. Almost every jurist who has written on criminal law assumes without argument that the practice is legitimate. The death penalty is so universal, so ancient, so deeply embedded in the institutions of every civilization, that it seems to require no justification. It is simply there, like the seasons or the tides, a feature of the legal landscape that one might describe and refine and administer but need not interrogate.

I propose to interrogate it. Not because I am certain of the answer before I begin, but because the question is

serious enough to demand the attempt. The life or death of human beings is at stake. If this penalty is wrong — if the state genuinely lacks the right it claims — then every execution is not an act of justice but an act of injustice dressed in judicial costume. If this penalty is right, then defenders of it should be able to demonstrate the right's source, its scope, its limits, and its necessity. Either way, the question cannot be avoided by those who are serious about justice.

I anticipate the objection that will be raised immediately against the whole enterprise. It will be said that the universal acceptance of a practice proves its legitimacy. All nations execute. All legal codes authorize death. Surely this universal consent must carry some weight. Surely the wisdom of centuries, accumulated across cultures and continents and legal traditions, amounts to something.

It does not amount to what is claimed. Universal practice is not proof of rightness. Slavery was universal. Torture was universal. The execution of heretics was universal. The burning of witches was universal. Trial by ordeal was universal. Each of these practices was backed by the authority of centuries, the consensus of learned men, the approval of religious institutions, and the acceptance of entire civilizations. Each of them was wrong. We know now that they were wrong because people were willing to ask questions that their contemporaries considered impertinent or dangerous or simply unnecessary.

Custom is not proof. Antiquity is not proof. Universal practice is not proof. What establishes the rightness of a practice is the quality of the reasons that can be offered for it — reasons drawn from natural law, from the

INTRODUCTION

purposes of civil society, from the requirements of justice, from the evidence of consequences. If such reasons exist for the death penalty, I want to find them. If they do not, I want to say so clearly. Either outcome is preferable to the comfortable assumption that no examination is needed.

The burden of proof in this examination falls upon the defenders of execution, not upon its critics. The death penalty is not a minor administrative matter. It is the deliberate killing of a human being by the authority of the state. No act more serious lies within the power of government. No act is more irreversible. No act demands more complete justification. Those who would defend it must demonstrate where the right to execute comes from, why it is necessary rather than merely convenient, why lesser punishments are genuinely insufficient, and why society benefits from it in ways that could not be achieved otherwise. If they cannot establish these points with rigor, the penalty collapses. An undemonstrated right is no right at all. A power claimed without foundation is tyranny, not justice. The following proofs examine each of the possible foundations, and find each of them wanting.

PROOF I

Human Beings Enter Society to Preserve Life

Every account of the origin of civil government, from the most ancient to the most recent, begins with the same observation: human beings in the state of nature are insecure. Life without political organization is, as Hobbes put it with characteristic bluntness, solitary, poor, nasty, brutish, and short. Whether one accepts Hobbes's particular account of the state of nature, the basic point is broadly agreed upon: government exists because human beings decided that living without it was worse than living with it. They traded some of their natural freedom for the security that organized society provides.

What security did they seek? The accounts vary in their details, but the core is consistent. Human beings want safety. They want peace. They want stable conditions under which they can work, build families, pursue the goods that make life worth living. They want, above all, protection from violent death. The fear of being killed is the most fundamental of all the fears that drive people out of the state of nature and into civil society. It is not the only fear, but it is the foundational one. All the other goods that government provides — security of property, freedom from arbitrary violence, stability of expectation — presuppose that the persons who enjoy them remain alive. Life is the precondition of every other interest that civil society protects.

This is not a marginal observation. It is the central claim of the natural-law tradition from Grotius and Pufendorf through Locke and beyond: government exists because human beings wish to preserve their lives, and preservation of life is the primary purpose of the political order. The state is created to protect life. Its authority derives from and is limited by that purpose.

The argument for the death penalty must therefore answer a challenge that goes to the root of political legitimacy. A power created to preserve life cannot easily claim a right to destroy it. If the state exists to protect citizens from violent death, on what basis does it claim the authority to inflict violent death? The question is not merely rhetorical. It demands a serious answer. And serious answers have been attempted: perhaps the state preserves life on the whole by killing some; perhaps the killing is necessary for protection; perhaps the condemned person has forfeited their claim to the state's protection. These answers will be examined in turn.

But the starting point must be established clearly: preservation of life is the primary purpose of civil society. Any claimed power to destroy life must justify itself in relation to that purpose. The burden of justification falls heavily on those who would derive the power to kill from an institution created to prevent killing. If they cannot bear that burden, the power does not exist. It is a usurpation, not a legitimate authority.

The defenders of execution sometimes respond that the state preserves life overall by executing murderers: it kills some to protect others. This is a consequentialist argument for the death penalty — the deterrence argument — and it will be addressed in detail later. For

now, it is enough to note that the argument assumes rather than demonstrates the conclusion it purports to support. If the state truly preserved life overall through execution, the consequentialist case might have some force. But does it? The evidence, examined carefully, does not support the claim. And the argument from consequences, even if valid, would not establish a right to execute in any particular case where the consequentialist calculation went wrong.

The most fundamental issue at this stage of the argument is the relationship between the purpose of government and its powers. A government created to protect life may possess the power to take life in some narrow circumstances — killing in defense of a citizen under immediate threat, for instance. These are edge cases, and they depend on necessity in a specific and demanding sense. What they cannot establish is a general power to execute as a regular instrument of criminal justice. The gap between the emergency case and the institutional practice is too wide to bridge by analogy. Necessity, if it justifies anything, justifies only what is genuinely necessary, only when it is necessary, and only when no other means will serve. Capital punishment as an institution fails this test.

PROOF II

No One Can Transfer a Right He Does Not Possess

The social contract, as understood by the natural-law tradition, is an agreement among individuals to form a political community and to delegate certain powers to a common authority. The exact nature of this agreement is contested in its details, but one principle is broadly accepted: the authority of government cannot exceed the authority that the individuals who constitute it could themselves legitimately exercise. A government is an agent of the people who created it. Its powers are derived from theirs. It cannot possess, by delegation, what none of them individually possesses.

This principle has a direct application to the death penalty. Does any individual, in the state of nature, possess an unlimited right over his own life? Does any individual possess a right to authorize another to kill him at will? The answer must be no. Even within the natural-law tradition, which generally recognizes broad natural rights, the right to life is treated as foundational and non-transferable. It is the condition of all other rights. To surrender it unconditionally would be to surrender everything. No rational account of the natural condition describes human beings as possessing an unlimited right to dispose of their own lives, and therefore no rational account can describe them as transferring such a right to the political authority they create.

The argument proceeds as follows. Suppose that a thousand individuals come together to form a political community. Each of them has certain natural rights, including the right to defend themselves from violence. This right of self-defense is one of the powers they delegate to the government they create: the government is authorized to defend them from violence on their collective behalf. But the right of self-defense, even in the natural condition, is a limited right. It extends as far as is necessary to repel the threat and no further. It does not include the right to kill at will, to destroy life as a matter of policy, or to take life when no threat requires it.

Now consider what is being claimed for the death penalty. The state claims the right to kill a person who has already been captured, confined, and rendered harmless. This person is not currently threatening anyone. The threat, if there was one, has been neutralized by confinement. The state is not acting in self-defense. It is acting in something else — revenge, perhaps, or policy, or the exercise of a claimed sovereign right. But where did this claimed right come from? Not from the individuals who constituted the state, because none of them possessed it. A million people cannot collectively grant what none of them individually possesses. The social contract cannot create powers that did not previously exist in the contracting parties. If no individual has the right to kill a neutralized, captured person simply because that person committed a crime, the state does not acquire that right by becoming the collective agent of all individuals.

This argument has a theological dimension that is important to Pelli and that distinguishes his treatise from Beccaria's. Life, in the Christian tradition, is a gift from God. It belongs to God in a sense that makes it unavailable for unconditional transfer or disposal. Human beings do not own their lives in the full sense that would be required for them to transfer absolute authority over those lives to any political institution. The state may regulate human activity. It may restrict freedom. It may impose burdens and obligations. But it cannot claim authority over what belongs to God and was only lent, as it were, to the person who lives it.

The consequence of this argument for the theory of sovereignty is significant. Sovereignty has limits. Not every power that a king or a legislature claims is a power that legitimately exists. The power to execute may be widely exercised, widely assumed, and never formally challenged in any court of law. But the absence of a formal challenge does not establish the power's legitimacy. What establishes legitimacy is derivation from a valid source of authority. And the valid sources — nature, contract, necessity — do not, as this series of proofs establishes, provide such derivation. Life marks one of the limits of sovereignty. A government that kills citizens when killing is not genuinely necessary is a government that has exceeded its authority. It is exercising a power it was never given. And power exercised without authorization is the definition of tyranny.

PROOF III

Original Sin Explains Crime but Does Not Justify Execution

This proof is distinctively Pelli's. It turns a standard theological defense of punishment against capital punishment in particular, and it is one of the most intellectually interesting moves in the entire treatise. The standard defense of criminal punishment, in Catholic theology, invokes the doctrine of original sin: human beings are prone to vice, passion, and wickedness because they are fallen. This condition requires that civil authority impose penalties on wrongdoing, both to protect the innocent from the wicked and to provide a corrective incentive for those who would otherwise yield to their lower impulses. Without punishment, fallen humanity would descend into chaos. The need for criminal law, on this account, is rooted in the reality of original sin.

Pelli accepts this argument as far as it goes. Yes, crime exists because human beings are morally damaged. Yes, the tendency toward passion, anger, greed, weakness, and violence is part of the condition in which every human person finds himself. Yes, civil society requires mechanisms to restrain these tendencies and address their consequences. Punishment is one such mechanism, and it exists because human nature requires it. So far, the theologian and the jurist are in agreement.

But Pelli presses a question that the standard account does not address. Who administers the punishment? Not angels. Not God himself. Human beings. Fallen, imperfect, passion-prone, morally damaged human beings. The same original sin that explains why criminals commit crimes also explains the legislators who draft criminal codes, the judges who preside over trials, the jurors who decide guilt, and the executioners who carry out the sentence. Every institution involved in the administration of punishment is constituted by fallen human beings exercising fallible human judgment in conditions of incomplete information and imperfect motivation.

This should produce, in any person who takes original sin seriously, a significant degree of epistemic humility about the legal system. Courts make mistakes. Judges are biased. Witnesses lie and misremember. Prosecutors have interests that are not identical with the interests of justice. Defense attorneys are sometimes incompetent. Juries are susceptible to prejudice and passion and the desire to give a community what it demands. All of this is not a criticism of any particular institution. It is a description of what fallen human nature produces when it is organized into legal systems.

Given this, what follows? Surely not that legal systems should be abolished — they are necessary, as the standard account correctly argues, precisely because of human fallenness. What follows is that legal systems should be designed to minimize the damage that their inevitable errors produce. And this means designing them so that errors can be corrected. Imprisonment — even long, severe imprisonment — is

correctable. An innocent person unjustly imprisoned can, in principle, be released, compensated, and restored to society. Death is not correctable. An innocent person unjustly executed is simply dead. No act of the legal system can undo that.

The doctrine of original sin therefore cuts against capital punishment rather than supporting it. A legal system that recognizes its own fallenness should be reluctant to exercise irreversible power. It should structure itself so that the inevitable errors of fallen human judgment can be identified and corrected. The death penalty is inconsistent with this requirement. It introduces a category of irrevocable action into a system that, by its nature, cannot be free of error. The theological case for criminal punishment is also, properly understood, a theological case against the death penalty.

There is a further dimension to this argument that Pelli develops in the context of the judging function specifically. The judge who exercises the power of life and death over another person is assuming a degree of moral authority that fallen human nature cannot support. To sentence someone to death with complete confidence — to be certain enough of guilt, certain enough of the absence of mitigating circumstances, certain enough that no later evidence will emerge, certain enough of the justice of the sentence — is to claim a degree of certainty that the judge, as a fallen human being, simply does not possess. The appropriate response to this condition is not the claim of certainty but the design of systems that do not require it: systems where the worst consequences of error can be reversed.

PROOF IV

Public Authority Is Not Divine Authority

A recurrent move in the defense of capital punishment is the invocation of divine authority. God ordered the execution of criminals in the Mosaic law. God declared, to Noah and his descendants, that whoever sheds human blood shall have his blood shed by man. Scripture records the execution of criminals and apostates without adverse comment. The church has historically acquiesced in capital punishment, and some theologians have explicitly endorsed it. The argument is that capital punishment is authorized, at some level, by the divine will.

Pelli engages this argument with care and seriousness. He does not dismiss the theological tradition; he works within it. And working within it, he identifies a distinction that the standard theological defense of execution tends to collapse: the distinction between divine authority and human authority.

God may judge souls. God may take life — indeed, God takes every life, since death is universal, and whatever its proximate causes its ultimate cause is in the divine will. God possesses perfect knowledge of every circumstance, every intention, every degree of guilt, every mitigating factor. God's judgment is unconditioned by ignorance, prejudice, the limits of evidence, or the fallibility of testimony. If God's judgment condemns, the condemnation is perfect and

complete. None of these conditions holds for human justice.

A human judge never knows everything. A human court never sees the entire truth of a case. A human ruler is not omniscient, not free of passion and interest, not in a position to make the kind of perfectly calibrated judgment that the gravity of a capital sentence would require. The argument from divine authority for human capital punishment therefore rests on an analogy that fails at its most important point. God's authority to take life derives from God's nature as creator, omniscient, perfectly just. Human authority does not share these attributes. To claim, therefore, that the state executes on God's behalf, as the instrument of divine justice, requires demonstrating that the state has access to the kind of knowledge and judgment that would make such a delegation appropriate. It does not have that access.

Pelli is also attentive to the way that scriptural arguments for capital punishment misread the texts they invoke. The Noahic covenant — whoever sheds the blood of man, by man shall his blood be shed — is, on careful reading, a prophecy or a description of what tends to happen, not a command for what must happen. The Mosaic law prescribed death for many offenses, but the Mosaic law also prescribed practices — from dietary regulations to temple sacrifice to slavery to the subordination of women — that Christian civilization had long since set aside as belonging to a particular moment in the history of divine revelation rather than as permanent moral requirements. To selectively invoke Mosaic capital punishment while setting aside the rest of the Mosaic code is not biblical theology; it is convenience dressed as exegesis.

PROOF IV

The conclusion of this proof is that human justice must remain modest because human knowledge remains incomplete. The state cannot claim the moral certainty required to destroy a human life irrevocably. Its judgments are always provisional, always potentially mistaken, always in need of the possibility of correction. A system of criminal justice that takes its own limitations seriously will, for this reason, avoid the one penalty that forecloses the possibility of correction permanently.

PROOF V

Utility Does Not Require Death

The utilitarian argument for capital punishment is the most popular in ordinary political discourse and the most amenable to empirical examination. It runs as follows: the state must protect its citizens from criminals. Execution permanently removes the criminal from society and thereby prevents any future harm that person might cause. The state is therefore justified in executing criminals because execution serves the goal of public safety.

Pelli accepts the general principle. The state has an obligation to protect citizens from harm. Criminal penalties are one of the instruments through which it discharges that obligation. But he presses a question that the utilitarian argument does not adequately address: Is execution necessary for the protection of citizens, or merely sufficient for it?

The difference is crucial. Necessity is a demanding standard. It requires not merely that a given measure would achieve the desired result, but that no less drastic measure would achieve the same result. A doctor is not justified in amputating a limb merely because amputation would cure the disease if the disease could be cured by lesser means. A government is not justified in executing criminals merely because execution would protect society if confinement would protect it equally well.

Pelli argues that confinement does protect society equally well. An imprisoned person cannot commit further crimes against the general public. A person subjected to forced labor under conditions of confinement cannot terrorize communities. A person held for life in a secure institution is, from the perspective of public safety, as effectively neutralized as a person who has been executed — and is so through a means that does not require killing and that preserves the possibility of correction if the original judgment proves to have been wrong.

The defender of execution must therefore show not merely that death works for the purpose of public safety, but that no lesser measure works. This burden is not satisfied by asserting that imprisonment might fail in some cases — that prisoners might escape, or that they might harm guards or fellow inmates. These are real concerns that should shape the design of the prison system, but they do not establish that the only alternative to escape risk is death. Secure confinement can be made genuinely secure. The history of imprisonment demonstrates that a determined society can confine even its most dangerous members without killing them.

There is a further utilitarian argument that Pelli anticipates and addresses. It might be claimed that execution produces utility not primarily through its effect on the person executed but through its effect on others who might be deterred from committing similar crimes by the knowledge that death awaits those who do. This is the deterrence argument, which Pelli addresses in more detail in the following proof. For now, it is enough to note that deterrence, even if it existed at

the level claimed, would be an argument for the appearance of severe punishment rather than for execution specifically. A sentence of life imprisonment without the possibility of parole, carried out visibly and consistently, provides a powerful deterrent signal without requiring the state to kill. If what deters is the certainty and severity of punishment, then the certainty and severity of a guaranteed life sentence should suffice.

The utility of the death penalty, examined carefully, is not greater than the utility of severe non-lethal punishment. It may well be less. The spectacle of execution, as Pelli argues elsewhere, can brutalize rather than deter. The certainty of punishment, which is the actual deterrent mechanism, is undermined by the death penalty's tendency to make juries reluctant to convict. The permanent elimination of the offender forecloses the possibility of information the offender might have provided, the labor the offender might have performed, and the restitution the offender might have made. Death achieves less, on the utilitarian calculus, than its defenders suppose. And it achieves what it does achieve at a cost — the irrevocable destruction of a human life — that no lesser alternative requires.

PROOF VI

Punishment Must Be Seen, and Death Cannot Be Seen for Long

Let me be clear about what I am not arguing. I do not say that punishment should be hidden. A punishment nobody sees teaches nobody anything. If the purpose of a penalty is to hold the community back from crime, then the community must be able to see the penalty being carried out. On this I hold the common opinion. I hold it firmly. Punishment must be public.

My objection is to what the public sees when the punishment is death. An execution lasts a few minutes. The procession, the scaffold, the drop, the body. Then it is finished and the crowd goes home. Whatever instruction was in it has to be delivered in that short span. A short span is exactly what the mind does not retain. The horror is intense. It is also brief. The brevity is the flaw.

Set beside it a man condemned to labour for the rest of his life. He is visible for years. Everyone who passes sees what the law has made of him. The lesson is not delivered once and then withdrawn; it is delivered every day, to everyone, for as long as he lives. If we are asking which penalty impresses itself more deeply on a population, the answer is not the one that ends quickly. A punishment that continues teaches more than a punishment that concludes.

There is worse. The execution does not merely fail to instruct. It instructs in the wrong direction. Look at

what the crowd does. They arrive early to get a good position. Vendors work the edges. Children are lifted onto shoulders. There is laughter. Whatever solemnity the magistrates intended, what actually assembles is a holiday. A people that gathers cheerfully to watch a man die has already learned something. It is not reverence for the law.

What it has learned is that a human life may be taken when the proper authority says so. It has learned that watching this happen is an ordinary afternoon. That lesson does not stay inside the scaffold. It goes home with them. The state meant to teach the gravity of killing. By making killing ceremonial, it taught the opposite.

So the spectacle argument does not run against public punishment. It runs against this punishment. Let the penalty be seen. Let it be long enough to be understood. Let it leave the watching population more careful of life rather than less. Execution fails all three tests. The third one it fails badly.

PROOF VII

Deterrence Is Uncertain

The claim that execution deters crime is the most common argument offered for capital punishment in ordinary political discourse, and it is the argument that the evidence has most consistently failed to support. Pelli's engagement with it is, for an eighteenth-century writer, remarkably sophisticated. He anticipates, in outline, arguments that would be confirmed by centuries of subsequent empirical research.

The deterrence argument assumes that potential criminals are deterred by the prospect of severe punishment. This assumption has a certain intuitive plausibility: people in general prefer pleasant outcomes to unpleasant ones, and if the unpleasant outcome of a crime is sufficiently terrible, people will presumably calculate that the crime is not worth committing. The argument runs: increase the severity of punishment, decrease the incidence of crime.

Pelli identifies the problem with this argument at its psychological core. The assumption that potential criminals calculate the severity of punishment before acting is, in the overwhelming majority of cases, false. Most crimes occur under conditions that are inimical to rational calculation: under the influence of alcohol or other substances; under the pressure of immediate passion, rage, or desperation; in circumstances of poverty and hopelessness that foreclose long-term thinking; in contexts where the likelihood of being

caught at all seems negligible; in moments of crisis that do not allow for the kind of cool weighing of consequences that the deterrence theory assumes.

Consider the circumstances of most murders. They are not, in the main, committed by people who have weighed the prospect of execution against the anticipated benefits of killing and decided the benefits outweigh the costs. They are committed by people who are not, at the moment of the act, in a state of mind that permits rational deliberation about future consequences at all. The man who kills in a moment of rage, the desperate person who kills during a robbery that went wrong, the person acting under the pressure of circumstance that allows no space for reflection — none of these people was deterred or not deterred by the prospect of execution, because none of them was performing the calculation that deterrence theory requires.

Pelli adds an observation that has been repeatedly confirmed by subsequent criminology: what actually deters crime, to the extent that deterrence works at all, is not the severity of punishment but the certainty of it. A criminal who is highly likely to be caught and punished, even moderately, is deterred more effectively than a criminal who faces a small chance of being caught and a large threatened punishment if caught. The death penalty, precisely because of its severity, tends to reduce the certainty of punishment: juries are reluctant to convict when the consequence is death, witnesses are reluctant to testify, prosecutors are reluctant to proceed in cases where the evidence is uncertain. The expected punishment — calculated as severity multiplied by probability — may therefore be lower under a death

penalty regime than under a regime of certain but non-lethal punishment.

Furthermore, the comparative evidence — even the limited evidence available to Pelli in 1761, which has been vastly expanded in the centuries since — does not support the deterrence hypothesis. Jurisdictions that have abolished capital punishment do not experience increases in the crimes for which death was previously the penalty. Jurisdictions that retain capital punishment do not have lower crime rates than those that have abolished it. The pattern, examined across multiple countries, multiple crimes, and multiple time periods, is consistent: the presence or absence of the death penalty does not measurably affect homicide rates.

The deterrence argument for capital punishment was always an argument from intuition rather than from evidence. It appealed to a common-sense psychology of rational self-interest that does not accurately describe the psychology of people who commit crimes. Two and a half centuries of empirical criminology have confirmed that Pelli's skepticism was warranted. The deterrence argument fails not because it is philosophically confused but because its empirical premise — that severe punishment reduces crime — is simply not true. The certainty and visibility of punishment matter. The extremity of it does not.

PROOF VIII

The Scaffold Is the Mark of a Bad Government

I want to offer a new demonstration of my thesis. It rests on an observation anyone may verify who is willing to read history with an open eye. The government that executes most is the worst government. Not the safest. Not the most orderly. The worst.

Consider where the scaffold is busiest. It is busiest where power rests in a single will that answers to nobody. It is busiest under rulers who govern by fear because they cannot govern by consent. Where a prince is uncertain of his subjects, the executions multiply. Where a magistrate cannot command respect, he commands terror instead. The penalty travels with tyranny. It travels closely enough that you may use one to identify the other.

Now reverse the observation. Where laws are moderate, where the governed have some part in how they are governed, where authority does not fear its own people, the blood penalties thin out. They are reserved, then rare, then a scandal when they occur. This is not an accident of temperament. A government secure in its legitimacy does not need to kill in order to be obeyed.

The defenders of execution will say that harsh times require harsh remedies. They will say a disordered state must have recourse to the sword. I say they have the causation backwards. The sword does not restore the order. It advertises its absence. A state that must

repeatedly kill its own members to maintain itself is telling us precisely how weak its hold on them is.

There is a consequence here that ought to trouble anyone who is proud of his own country. If the frequency of executions is a measure of how badly a people is governed, then every scaffold erected in a supposedly enlightened nation is an accusation against that nation. We cannot call ourselves civilised and go on doing the thing that marks the despot. One of the two claims has to be given up.

I do not say this to insult the magistrates of any state. I say it because the argument runs in one direction only. If the death penalty were a mark of good order we would expect to find it concentrated among the best-governed peoples. We find it concentrated among the worst. That is not the pattern a just and necessary institution leaves behind.

PROOF IX

The Law of Retaliation Is Not Justice

The oldest and most intuitive argument for the death penalty is the principle of retaliation: like for like, death for death. A murderer takes a life, and justice requires that he forfeit his own. This is what the ancient texts called the *lex talionis* — the law of the talon, of proportional retribution. It appeals to a deep human intuition about fairness: that the punishment should somehow correspond to the offense. It has religious sanction in its most famous formulation: an eye for an eye, a tooth for a tooth. It seems like the natural response to the gravest crimes.

Pelli attacks it with a consistency that is one of the most admirable features of his treatise. He does not soften the argument or make exceptions for particularly heinous cases. He argues that the principle of retaliation, applied consistently, produces conclusions that no civilized society is willing to accept — and that the selective application of the principle to murder is therefore revealed as special pleading rather than as a coherent theory of punishment.

Consider what consistent application of the *lex talionis* would require. A thief steals your property: we steal from him in return. A kidnapper abducts your child: we abduct his child. If a torturer inflicts suffering on an innocent person: we torture him in the same manner. An arsonist burns down your house: we burn down his. No modern legal system accepts these

consequences. No defender of the death penalty seriously proposes them. And yet all of them follow from the principle that punishment should mirror the offense.

The reason these consequences are rejected is that they would require the legal system to do precisely what it condemns. A state that tortures torturers has not risen above torture; it has institutionalized it. A state that kidnaps kidnappers has not condemned kidnapping; it has performed it under legal authority. The rejection of these consequences implies a recognition, however unarticulated, that punishment cannot simply replicate the offense. Justice is something different from symmetrical retaliation.

But if the principle of retaliation is rejected for torture, for kidnapping, for sexual assault, on what basis is it retained for murder? The answer usually given — that murder is uniquely heinous and therefore uniquely warrants retaliation in kind — is not a principle. It is a preference. It says: the logic of retaliation is acceptable here but not elsewhere. But if the logic is acceptable here, why not elsewhere? And if it is not acceptable elsewhere, what justifies it here? The selective application of a principle reveals that the principle is not actually doing the work. Something else is doing the work: a desire for vengeance against murderers specifically, dressed in the language of principled justice.

Pelli's deeper argument is that retaliation is precisely what civil society was designed to transcend. In the state of nature, retaliation is the response to injury: you harmed me, so I harm you in return. This is the logic of the blood feud, of vendetta, of primitive vengeance. Civil society replaces this logic with something more

sophisticated: proportional punishment calibrated to the social harm caused by the offense, designed not to replicate the harm but to prevent future harm and maintain social order. The state rises above private vengeance precisely because it abandons the logic of revenge. To retain the death penalty is to preserve, within the apparatus of civilized law, a remnant of primitive vengeance. It represents not the maturity of the legal order but its failure to fully transcend its origins.

This does not mean that murderers deserve sympathy or that their crimes should be treated lightly. They deserve severe punishment. They deserve to spend years or decades or the rest of their lives deprived of the liberty that they abused. But punishment is not the same as retaliation. Punishment, in a rational legal system, is designed to serve the ends of justice — to protect society, to express the community's condemnation, to provide a measure of accountability — without requiring the state to do what the criminal did. The death penalty requires the state to kill. It is not justice. It is imitation. And a legal system premised on imitation of the worst acts of the worst people is a legal system that has confused its purposes.

PROOF X

Mercy Is a Political Virtue

In the long tradition of arguments for capital punishment, mercy plays a curiously ambivalent role. Defenders of execution often acknowledge its force in individual cases: they argue for mercy in specific circumstances, for clemency when the case is particularly sympathetic, for the executive pardon as a safety valve on a system that would otherwise be too rigid. But they treat mercy as an exception to justice — a departure from the rule, a concession to human feeling rather than a requirement of reason. Pelli argues the opposite. Mercy is not weakness. It is not sentiment. It is a political virtue, integral to the idea of good government.

The case for mercy as a political virtue begins with a distinction between power and authority. A government that can kill has power. A government that chooses not to kill when killing is not necessary has something more: it has demonstrated that its power is subject to principle. It has shown that it is capable of restraint. The capacity for restraint is the mark of genuine authority, as opposed to mere force. A government that kills when it could instead confine demonstrates that it has mistaken power for authority, destruction for justice.

In the Christian tradition, mercy is not opposed to justice but is one of its highest expressions. A purely retributive justice — one that gives every person exactly what they deserve, no more and no less — is a form of

justice. But the tradition also recognizes a higher standard: the justice that incorporates mercy, that recognizes the possibility of redemption, that treats even the guilty as persons rather than as objects to be disposed of. This is the justice of the parable of the prodigal son, of the woman taken in adultery, of the dying thief on the cross. It does not abolish the consequences of wrongdoing, but it refuses to treat the wrongdoer as simply the sum of his worst act.

For Pelli, the mercy argument has both a theological and a political dimension. Theologically, mercy reflects the divine character in a way that pure retribution does not. A government that practices mercy imitates God more faithfully than one that practices only strict retributive justice. Politically, a government that exercises restraint in its use of the most extreme power available to it demonstrates its legitimacy to those it governs. Citizens who see that their government is willing to limit its own power for reasons of principle are more likely to trust it, to cooperate with it, and to accept its authority than citizens who see a government that kills whenever it can.

There is also a practical political argument. Governments that rely on extreme punishment to maintain order are governments that lack the moral authority to achieve order by less coercive means. Severity in punishment is often a symptom of weakness in governance: a government that cannot command genuine respect and cooperation falls back on terror. A strong, legitimate government — one that has earned the trust and cooperation of its citizens — does not need to kill. It governs through law, through persuasion,

through the genuine moral authority that comes from principled and restrained use of power.

The best ruler, Pelli argues, is not the ruler who kills most effectively but the ruler who governs with the least violence necessary. The measure of a great legal system is not the severity of its punishments but the justice of its procedures, the fairness of its applications, and the wisdom with which it calibrates the force it uses to the social ends it serves. Mercy — the principled decision not to exercise the most destructive power available — is central to this measure. It is not an addition to justice. It is a component of it.

PROOF XI

Civilization Is Measured by Restraint

The final proof is not an argument from principle but from history, and it is one that Pelli felt with particular force in the intellectual climate of the mid-eighteenth century, when the idea of progress was not merely a hope but a demonstrated reality. Earlier ages had done terrible things in the name of justice. Earlier ages had tortured. Earlier ages had mutilated. Earlier ages had executed for theft, for debt, for heresy, for witchcraft, for crimes against property that a later generation would treat as misdemeanors or not crimes at all. The Enlightenment that Pelli inhabited was, in part, defined by its recognition that these practices were wrong and by its project of eliminating them.

The trajectory of this history is unmistakable, and Pelli reads it correctly. Civilization advances — not smoothly, not inevitably, not without reversals and catastrophes — but over time, in the direction of reduced cruelty, reduced arbitrariness, and reduced reliance on extreme violence as an instrument of order. What each generation recognizes, looking back, is that the punishments its predecessors administered with such confidence were disproportionate, often unjust, and frequently productive of the very disorder they were meant to prevent. And what each generation fails to see with equal clarity is that its own practices will be subject to the same judgment by those who come after.

Pelli was confident that the death penalty belonged in the category of practices that a later, more enlightened age would regard as barbarous. He was writing in 1761. He could not have known how long it would take. But the direction he identified has proven to be correct. The number of capital offenses in European legal codes has contracted from hundreds to a handful to, in most countries, none. The use of torture as a standard element of criminal procedure has been abolished. The public execution has given way, in most of the world, to private or entirely eliminated execution. More than a hundred nations have abolished capital punishment in law or in practice. The trajectory is exactly what Pelli predicted.

The United States is an anomaly in this trajectory. It is the only established democracy in the Western world that still carries out executions. It finds itself, on this question, not among the democracies of Europe, Canada, Australia, and Japan but among Iran, Saudi Arabia, and North Korea. The company is instructive. There is something about the maintenance of capital punishment that tends to coexist with other features of political culture — concentrated executive power, weak judicial independence, limited procedural protections for defendants — that a democracy committed to the rule of law should find uncomfortable.

Pelli's historical argument does not establish that abolition is inevitable. Moral progress is not inevitable. It requires advocates, arguments, political will, and the willingness of individuals and societies to recognize that what they have been doing is wrong. What the historical argument establishes is that the direction of moral progress, on this question, is clear. Every generation

that has looked seriously at the death penalty and had the political courage to act on what it found has moved toward abolition. No nation that has abolished it has reinstated it. No society that has eliminated capital punishment has found that it cannot maintain public order without it. The historical record, as Pelli understood it, points in one direction. The question is not whether to follow it but when.

CONCLUSION

What the Proofs Establish

From the foregoing examination of the foundations, purposes, effects, and history of capital punishment, the following conclusions emerge.

The right to execute cannot be derived from natural law. Nature provides no principle that authorizes deliberate killing as an act of justice against a person already captured and rendered harmless. The self-defense analogy fails because there is no ongoing threat to defend against.

The right to execute cannot be derived from the social contract. No individual possesses an unconditional right over his own life that he could transfer to the political authority. The social contract cannot create powers that did not exist in the contracting parties.

The right to execute cannot be justified by necessity. Imprisonment and other non-lethal penalties accomplish every legitimate goal of public safety that execution accomplishes. Necessity requires that no less drastic measure would serve. That condition is not met.

The right to execute cannot be justified by deterrence. The evidence, both empirical and psychological, does not support the claim that execution deters crime more effectively than severe non-lethal punishment. The deterrence argument was always intuition rather than evidence. The evidence has not confirmed it.

CONCLUSION

The right to execute cannot be justified by retaliation. The *lex talionis*, applied consistently, produces consequences that no civilized society accepts. Its selective application to murder reveals it as revenge rather than principle. The state's purpose is to transcend the logic of private vengeance, not to institutionalize it.

Capital punishment conflicts with Christian morality. It contradicts the teaching of mercy, the recognition of human fallenness as a reason for humility rather than severity, the insistence that divine authority and human authority are categorically distinct, and the trajectory of the gospel toward life rather than death.

Capital punishment creates irreversible injustice. Human courts make mistakes. Innocent people are condemned. The death penalty ensures that these mistakes cannot be corrected. No legitimate system of justice can accept this consequence.

Capital punishment degrades the moral character of society. It habituates citizens to violence. It teaches that life is conditionally available for destruction by authority. It produces the opposite of the civic virtue it claims to support.

Therefore: the death penalty must be rejected as incompatible with rational justice, with the purposes of civil society, with Christian morality, and with the moral progress of civilization. Lesser punishments can accomplish every legitimate goal of law. The life of a citizen is not the property of the state. It is the boundary of its authority.

A MODERN
ENGAGEMENT

PELLI IN THE TWENTY-FIRST
CENTURY

I. The Question Nobody Asked

Pelli's starting point — that the right to execute has simply been assumed rather than demonstrated, and that the burden of proof falls on its defenders — is as accurate in 2026 as it was in 1761. The American death penalty operates today in a remarkable state of intellectual dormancy. Its defenders rarely engage with the philosophical literature on its justification. Its administrators rarely ask whether the institution they are running has an adequate foundation. Legislators who vote to retain it rarely do so after examining the question of where the state's right comes from. It is simply there, inherited, assumed, defended with gestures toward justice and safety and closure that almost never constitute a serious argument.

I have been in courtrooms where men and women were sentenced to death. I have heard the language of justice invoked to describe what was being done. I have never, in any of those contexts, heard a serious examination of whether the state actually has the right it is exercising. The assumption is always already in place. Pelli's challenge — examine the assumption, demand its justification, refuse to accept universal practice as proof of legitimacy — has never been more needed.

Custom is not proof. Two and a half centuries after Pelli wrote it, this sentence is still the most important single contribution that any abolitionist can make to the public debate. The American tradition of capital punishment is not, by virtue of its antiquity, legitimate. It needs to be examined. It needs to be justified. And

THE QUESTION NOBODY ASKED

when it is examined seriously, as Pelli showed, it cannot sustain the examination.

II. The Transfer That Cannot Happen

Pelli's argument that the state cannot possess, through the social contract, a power that no individual possesses resonates in a particular way in the American context, where the social contract tradition — Locke, especially — is supposed to be foundational to the political theory of the republic. The Declaration of Independence grounds the authority of government in the consent of the governed. The Bill of Rights limits what government can do to individuals on the basis of rights that preexist the state.

If these premises are taken seriously, Pelli's argument follows directly. The Eighth Amendment prohibits cruel and unusual punishments. The question of whether the death penalty is cruel and unusual has been before the courts for decades, and the courts have consistently declined to find that it is, on the grounds that it has historically been practiced and therefore cannot be unusual. But this is precisely the error Pelli identifies at the outset: treating universal practice as proof of legitimacy. The fact that cruel punishments have been universally practiced does not establish that they are not cruel. It establishes only that cruelty has been widely tolerated.

The deeper point is about the scope of sovereignty. A government grounded in the consent of the governed cannot claim powers that the governed could not themselves possess. Individuals cannot, in Pelli's account, legitimately delegate the unconditional power over life. The American state has been exercising a power that was never legitimately delegated to it. The

THE TRANSFER THAT CANNOT HAPPEN

authority has always been claimed. It has never been adequately grounded.

III. The Fallen Judge

Pelli's use of the doctrine of original sin to argue for humility in the exercise of judicial power is one of his most distinctively Catholic contributions to the abolitionist tradition, and it has a contemporary resonance that deserves more attention than it receives. The American legal system is administered by fallen human beings who are subject to the same biases, passions, errors, and failures of judgment that afflict human beings everywhere.

The empirical record of American capital punishment demonstrates this with painful specificity. The decisions about who faces a capital charge, who is convicted, who is sentenced to death, and who is ultimately executed are shaped, at every stage, by factors that have nothing to do with the gravity of the offense: the race of the victim, the county where the crime occurred, the quality of the legal representation available to the defendant, the political climate at the time of trial, the personal characteristics of the judge and jury. These are not isolated failures. They are systemic features of a system administered by fallen human beings in conditions that make impartial judgment very difficult.

Pelli's argument is that a genuinely Christian legal system — one that takes seriously the theological anthropology it claims to be based on — would build into its design a recognition of human fallenness and its consequences. It would design for correction. It would avoid the irreversible. It would be structured on the assumption that it will make mistakes, not on the assumption that it will not. The American death penalty

is structured on the opposite assumption: that the procedures surrounding capital cases are sufficiently rigorous that the system can be trusted to get them right, and that the cost of occasionally getting them wrong can be accepted. Pelli's response, from within the tradition that produced that claim, is: no. The fallen judge cannot trust himself that much.

IV. What God's Power Cannot Lend

The invocation of divine authority for capital punishment is common in American political discourse, particularly in the South, where the death penalty is most practiced and where the Christian tradition is most publicly prominent. Genesis 9:6, Romans 13, and various passages from the Old Testament law are regularly cited in defense of execution. The argument that God has authorized the state to kill, and that human law is implementing divine justice when it does so, is taken seriously by many people.

Pelli's response is worth stating in full force: the distance between divine authority and human authority is not a matter of degree but of kind. God's justice is perfect. Human justice is approximate, imperfect, provisional, and subject to the biases of fallen human nature. To claim divine sanction for human executions is to claim that the American criminal justice system — with its documented racial disparities, its wrongful convictions, its dependence on the quality of legal representation available to the defendant, its variation by county and region and political climate — is implementing God's judgment. This claim should make anyone who has observed that system blush. It does not implement God's judgment. It implements the judgments of fallen human beings in imperfect conditions, with predictably imperfect results.

The use of scripture to defend capital punishment is also, as Pelli notes, highly selective. The same tradition that produces Genesis 9:6 also produces the Sermon on the Mount, the parable of the prodigal son, the woman

taken in adultery, the dying thief on the cross, and the entire trajectory of the New Testament toward mercy and reconciliation. A biblical theology of punishment that takes all of this seriously arrives at a very different place from one that selects the passages most convenient for the conclusion it has already reached.

V. The Necessity That Isn't

Twenty-three American states have abolished capital punishment. Not one of them has been unable to maintain public safety. Not one has experienced an increase in murder that can be attributed to abolition. Not one has been forced to reinstate the death penalty because it discovered that confinement was insufficient to protect the public from dangerous offenders. The experiment has been running for long enough, across enough jurisdictions, to be considered definitive. Death is not necessary for public safety. Confinement is sufficient.

Pelli's argument from necessity stands completely confirmed by the evidence of the past two centuries. He argued, without the benefit of the data we now have, that the burden of proof falls on those who claim that death is the only measure that will serve. That burden has not been met. It cannot be met, because the evidence of jurisdictions that have abolished execution and maintained public order is overwhelming. The claim of necessity was always a claim of habit, not of logic. Pelli saw this in 1761. The data makes it undeniable in 2026.

VI. What the Crowd Learns

Executions in the United States are no longer public in the eighteenth-century sense. They happen behind prison walls, before a handful of official witnesses. Pelli would have objected to that. Not for the reason people expect. He believed punishment had to be visible or it taught nothing. By his standard a hidden execution is the worst of both arrangements: it keeps the killing and discards whatever instruction the killing was supposed to carry.

But the spectacle has not disappeared. It has moved. It is in the countdown coverage, the last-meal reporting, the live updates from the media witnesses, the crowd outside the fence. I have stood at that fence. I have seen both crowds, the celebrating one and the grieving one. What they share is the knowledge that a man is dying inside the building behind them on a published schedule.

So the question Pelli asked is still the right question. What does the watching population learn? A society that debates which of its members should be killed, that treats an execution as a policy outcome, that counts a completed death as an accomplishment, is teaching itself that life is conditional on the state's satisfaction. Pelli thought a punishment should leave the public more careful of life. Ours leaves it less.

VII. The Irreversible Mistake — Beyond Pelli

This is the one place in this book where I go past Pelli rather than with him. The argument from error is not in his manuscript. He did not write about wrongful conviction. I will not put the words in his mouth. What follows is his method applied to evidence he never had.

Since 1973 more than two hundred people have been exonerated from death rows in the United States. They were convicted by procedures the system called adequate. They were sentenced by juries the system called competent. They were innocent. And for every exoneration that arrived in time there are cases where it did not. Cameron Todd Willingham was executed in Texas in 2004 for a fire that later forensic analysis indicates was almost certainly accidental.

Pelli's own argument gives us everything we need to finish this one. He held that human beings are fallen and that the fallenness reaches the law as much as the crime. A fallen court will convict wrongly. That much is his. The rest is arithmetic he did not have to do: a wrongly imprisoned man can be released and a wrongly executed man cannot. A penalty that forecloses correction is a penalty that requires a court to be right every time. No court has ever been.

VIII. Imitation Is Not Justice

The retributive argument for capital punishment — that murder deserves death because justice requires like for like — is probably the argument that resonates most powerfully with the largest number of people. It appeals to something deep in human psychology: the sense that the most terrible crimes demand the most extreme response, that anything less than death for murder is a failure to take murder seriously.

I have sat with the families of murder victims. I understand the desire for the harshest possible response to the worst possible thing that can happen to a family. I do not dismiss that desire, and I do not think Pelli dismisses it either. What he challenges is the claim that executing the killer is what justice requires, as opposed to what grief demands. These are not the same thing. Grief is not justice. The desire for the killer to suffer in the most extreme way is a natural human response to the worst kind of loss. But a legal system that simply implements whatever grief demands is not a legal system at all. It is a vengeance system with procedural trappings.

What the families of murder victims actually need — what grief actually requires, as opposed to what the legal system claims to offer them — is not always execution. Research on survivors of violent crime suggests that many of them do not find the closure they are promised in the death of the person who killed their loved one. The execution is another death. It does not undo the first. It does not restore what was taken. It produces, in many cases, not resolution but a renewal of

the original trauma: another court case, another verdict, another death, another family destroyed. The legal system has been serving its own institutional logic under the name of the victims' interest. Pelli's challenge to the *lex talionis* is also, in this respect, a challenge to the way that the victims' interest has been invoked to justify a practice that does not serve it.

IX. Mercy as Strength

The political discourse around capital punishment in the United States has, for decades, treated mercy as weakness. The accusation that a politician is “soft on crime” has been one of the most effective political weapons available. The image of the tough prosecutor who pursues death, versus the soft defender who argues against it, has dominated the political framing of this issue in ways that have made serious public argument very difficult.

Pelli’s argument that mercy is a political virtue is therefore not merely a philosophical claim. It is a direct challenge to the political culture that has sustained American capital punishment for a generation. A government that can choose not to kill and chooses instead to confine — that exercises the restraint to impose a severe penalty without destroying the person on whom it is imposed — is not weak. It is demonstrating something more difficult than the willingness to kill: the capacity to govern by principle rather than by the satisfaction of public rage.

The states that have abolished capital punishment are not governed by weak politicians who were afraid to pursue justice. They are governed by people who examined what the evidence showed, recognized what the practice cost in terms of wrongful executions, racial disparities, and financial burden, and decided that a justice system could serve its purposes without killing. That decision required more courage, not less, than the decision to retain the death penalty because it has always been there.

X. Civilization's Measure

Pelli was optimistic. He believed that the trajectory of history was toward abolition, and he was right. He could not have known how slow the movement would be, how many setbacks it would suffer, how tenaciously the practice he argued against would cling to existence in some corners of the world long after it had been abandoned in others. But the direction he identified has proven correct.

The United States is one of those corners. It is a country that prides itself on its commitment to human rights and the rule of law, that holds up its legal tradition as a model for the world, that has contributed enormously to the development of international human rights norms — and that still executes people, in numbers that make it an outlier among established democracies. The gap between the self-image and the practice is one of the most striking facts about American political culture.

Pelli wrote to future generations — to us. He despaired of persuading his own contemporaries, just as the abolitionists who come after him despaired of persuading theirs. But he believed that the argument was correct, that the evidence would accumulate, that the practice would eventually become impossible to defend. He was right about all of this. What he could not provide was the political will. That is what each generation must supply for itself.

The measure of a civilization is how it treats those who have fallen furthest from its ideals. Not how it treats the successful, the innocent, the powerful — but

how it treats the condemned, the guilty, the ones who have done the worst things. A civilization that can say, even to these: we will not destroy you, we will confine you, we will hold you accountable, we will take seriously what you have done, and we will not kill you — that civilization has achieved something. It has placed the dignity of the human person above the satisfaction of public anger. It has recognized that the life of the condemned is not the state's property to dispose of. Giuseppe Pelli understood this in Florence in 1761. The task, for those of us writing and reading in 2026, is to act on it.

DEFINITIONS AND TERMS

Giuseppe Pelli Bencivenni (1729-1808). Florentine nobleman and civil servant, trained in law at Pisa. Director of the Uffizi from 1775 to 1793. Diarist of the *Efemeridi*, eighty volumes kept daily across half a century. Around 1760 he wrote the first systematic case against the death penalty in the modern West. He never published it. It sat in a family archive until the 1980s.

Natural law. The claim that some moral principles bind everyone and can be found by reason, whatever the statute books of a given country happen to say. Grotius, Pufendorf and Locke are the names usually attached to it. Pelli works inside this tradition. He uses it to ask where, in the nature of things, the right to kill a captive man is supposed to come from.

Social contract. The idea that government is legitimate because people agreed to it, giving up some freedom in exchange for protection. Hobbes, Locke and Rousseau built the versions we still argue about. Pelli finds the flaw. A contract can only hand over what the parties had to give. No man owns his own life the way he owns a field. The power to execute was never in the contract because it was never in the people who made it.

Original sin. The doctrine that human beings have come damaged ever since the fall of Adam. Defenders of execution have long used it to explain why criminals do what they do. Pelli turns it around. If we

are all fallen, then so are the judges, the juries, the witnesses. The doctrine that explains the crime also explains the verdict. A fallen court needs a punishment it can take back. Death is the one punishment it cannot.

Lex talionis. The law of retaliation. Punishment should match the offense in kind: an eye for an eye, a life for a life. It is the oldest justification for capital punishment and the one Pelli spends the longest stretch of the treatise dismantling. Applied consistently it would have us torture torturers, kidnap kidnappers, maim those who maim. We apply it to murder and nowhere else, which for Pelli is the evidence that it was never a principle at all.

Deterrence. The theory that punishment prevents crime by making the cost too high. Pelli rejected it with nothing but reason to go on. Most killing happens in conditions where nobody is calculating anything. Where the comparison could be made, the harshest penalties did not produce the safest places. Two and a half centuries of criminology have since reached the same conclusion.

Necessity. The standard that does more work in Pelli's argument than anything else. A penalty is justified only if it is needed. If something less drastic protects the public just as well, the more drastic thing is not justice but surplus. Prison, Pelli argues, achieves every legitimate purpose execution claims for itself.

Beccaria, Cesare (1738-1794). Milanese nobleman, author of *On Crimes and Punishments* in 1764, the

book that carried abolition into European law and changed criminal statutes across two continents. Pelli reached the same conclusion a few years earlier by a different road, through natural law and Catholic theology rather than the French Enlightenment. Neither man needed the other to see it.

The Innocence Project. Founded in 1992. Uses DNA and other evidence to free people convicted of crimes they did not commit. It has helped exonerate hundreds. More than two hundred people have now walked off American death rows. Pelli made no argument from wrongful conviction and had no cases to point to. What he supplied was the premise: a fallen humanity produces fallen courts. The list of the exonerated is what that premise looks like with two hundred and sixty years of evidence attached.

FURTHER READING

On Pelli

Pelli, Giuseppe, and Cesare Beccaria. *Against the Death Penalty: Writings from the First Abolitionists*. Edited and translated by Peter Garnsey. Princeton University Press, 2020. The first complete English translation, printed with Beccaria and with the letters the two men exchanged. Garnsey shows how far apart their foundations were. Start here if you want Pelli's own words.

Pelli Bencivenni, Giuseppe. *Contro la pena di morte*. Edited by Philippe Audegean. Padua: Cleup, 2014. The Italian edition of the manuscript. This is the book that put Pelli into the record.

Audegean, Philippe. Introduction to *Contro la pena di morte*. Padua: Cleup, 2014. Audegean's introduction is the best guide there is to what Pelli was doing and what he was reading.

Audegean, Philippe, trans. *Contre la peine de mort, précédé de Correspondance avec Beccaria*. Paris, 2016. The French edition. Audegean lays out Pelli's three lines of attack: death does not prevent, no man can have consented to it in advance and the penalty is a habit of authoritarian states.

On the Abolitionist Tradition

Beccaria, Cesare. *An Essay on Crimes and Punishments*. 1764. Edited and modernized by Jeff Hood. *Complicit*

FURTHER READING

Press, 2026. The book that made abolition famous, written a few years after Pelli wrote his. Read them together and you get the whole eighteenth century.

Lactantius. *On the Sacred Animal: A Modern Engagement with Lactantius Against the Death Penalty*. Edited and modernized by Jeff Hood. Complicit Press, 2026. The earliest sustained Christian argument against killing prisoners. Pelli's Catholicism runs straight back to it.

Rush, Benjamin. *Considerations on the Injustice and Impolicy of Punishing Murder by Death*. 1792. Edited and modernized by Jeff Hood. Complicit Press, 2026. The American founding-era case. Rush welds natural rights to Christian theology exactly the way Pelli does.

Mittermaier, Karl Joseph Anton. *Capital Punishment*. 1865. Edited and modernized by Jeff Hood. Complicit Press, 2026. The great nineteenth-century survey of the evidence. Mittermaier assembled the numbers for what Pelli had worked out from reason alone.

On the Italian Enlightenment

Venturi, Franco. *Italy and the Enlightenment: Studies in a Cosmopolitan Century*. Translated by Susan Corsi. London: Longman, 1972. The essential study of the Italian Enlightenment. This is the world Pelli lived and worked in.

Woolf, Stuart J. *A History of Italy 1700–1860: The Social Constraints of Political Change*. London: Methuen, 1979. For the conditions Pelli was writing under. Also for the reasons a man in his position might think twice about publishing.

On the History of Capital Punishment

Banner, Stuart. *The Death Penalty: An American History*. Harvard University Press, 2002. The definitive history of the American death penalty, colonial period to now. The country Pelli's argument has to be aimed at.

Garland, David. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Harvard University Press, 2010. On why the United States kept the death penalty when comparable democracies gave it up. The politics underneath the philosophy.

Related Volumes in This Series

Darrow, Clarence. *An Eye for an Eye*. 1905. Edited and reset by Jeff Hood. Complicit Press, 2026. The companion volume. Pelli gives you the argument. Darrow gives you the man the argument is about.

Plato. *The Apology*. Edited and modernized by Jeff Hood. Complicit Press, 2026. Where the tradition starts. Pelli reasons his way to the conclusion. Socrates stands in a courtroom and lives it.

AGAINST THE DEATH PENALTY

The Argument of Giuseppe Pelli

Jeff Hood

THE ABOLITION CLASSICS. V. V



AN ESSAY ON CRIMES AND PUNISHMENTS

THE ARGUMENT OF CESARE BECCARIA

Milan, 1764

EDITED AND MODERNIZED BY

JEFF HOOD

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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This edition is a modernization of the anonymous English translation of 1767, as corrected in *An Essay on Crimes and Punishments. By the Marquis Beccaria of Milan. With a Commentary by M. de Voltaire. A New Edition Corrected* (Albany: W. C. Little & Co., 1872). The underlying text is in the public domain.

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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C O M P L I C I T P R E S S

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

BECCARIA

CONTENTS

Foreword	vii
A Note on This Edition	ix
AN ESSAY ON CRIMES AND PUNISHMENTS	1
Introduction	2
I. The Origin of Punishment	3
II. The Right to Punish	4
III. Consequences	6
IV. Interpreting the Law	8
V. Obscure Laws	11
VI. Proportion Between Crimes and Punishments	13
VII. Measuring the Gravity of Crimes	15
VIII. The Division of Crimes	17
IX. Honor	19
X. Dueling	21
XI. Crimes Against Public Order	22
XII. The Purpose of Punishment	24
XIII. The Credibility of Witnesses	25
XIV. Evidence, Proof, and the Form of Judgment	27
XV. Secret Accusations	29
XVI. Torture	31
XVII. Fines	36
XVIII. Oaths	38
XIX. The Advantage of Immediate Punishment	39
XX. Acts of Violence	41
XXI. Punishing the Powerful	42
XXII. Theft	44
XXIII. Infamy as Punishment	45
XXIV. Idleness	47

CONTENTS

XXV. Banishment and Confiscation	48
XXVI. The Spirit of Family in the State	50
XXVII. Mildness in Punishment	53
XXVIII. The Punishment of Death	55
XXIX. Imprisonment	62
XXX. Prosecution and Time Limits	64
XXXI. Crimes Difficult to Prove	66
XXXII. Suicide	69
XXXIII. Smuggling	71
XXXIV. Bankruptcy	73
XXXV. Sanctuaries and Extradition	76
XXXVI. Rewards for Capturing or Killing	78
XXXVII. Attempts, Accomplices, and Pardon	79
XXXVIII. Leading Questions	81
XXXIX. A Certain Class of Crimes	82
XL. False Ideas of Utility	84
XLI. Preventing Crime	86
XLII. Knowledge	88
XLIII. Magistrates	90
XLIV. Rewards	91
XLV. Education	92
XLVI. Pardons	93
XLVII. Conclusion	95
EDITORIAL APPARATUS	96
Definitions and Terms	97
Further Reading	100

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

O B S C U R E L A W S

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

H O N O R

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.

CHAPTER XXXV

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

PARDONS

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.

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

THE ABOLITION CLASSICS. V. XXIV



**AN EXCERPT,
A SPEECH & A PAMPHLET**

THE WORKS OF BENTHAM, ROBESPIERRE & HAUGHTON

Paris, 1791
London, 1830
Dublin, 1850

EDITED AND MODERNIZED BY JEFF HOOD

AN EXCERPT, A SPEECH
& A PAMPHLET

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V. 24

AN EXCERPT,
A SPEECH
& A PAMPHLET

1791 · 1830 · 1850

JEREMY BENTHAM
MAXIMILIEN ROBESPIERRE
JAMES HAUGHTON

Edited and Modernized by
JEFF HOOD

THE ABOLITION CLASSICS
V. 24

COMPLICIT PRESS

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Paris, 1791 · London, 1830 · Dublin, 1850.
Bentham text from the 1830 Robert Heward edition of
The Rationale of Punishment. Haughton text from the 1850
Hodges and Smith printing for the Dublin Statistical Society.
This edition newly set and modernized.

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CONTENTS

Front Matter

Foreword	vii
Editor's Note	ix

The Works

I. The Excerpt — Jeremy Bentham, 1830	3
Simple and Afflictive Death	4
The Most Severe Punishment Ever Devised	6
What the Punishment Has in Its Favor	8
The Irreparable Error	11
Recapitulation	14
II. The Speech — Maximilien Robespierre, 1791	19
A Defeated and Powerless Enemy	20
Is It Necessary?	21
The Voice of Justice and Reason	22
The Legislator's First Obligation	23
III. The Pamphlet — James Haughton, 1850	25
The Statistics of the Question	27
The Case of Murder Itself	29
Belgium's Experiment	29
The Spirit of Revenge	31
A Postscript from Liverpool	33

Editorial Apparatus

Definitions and Terms	35
Further Reading	37

FOREWORD

This is the only volume in the series with three names on the spine instead of one. A philosopher's excerpt from London, a revolutionary's speech from Paris, a merchant's paper from Dublin — 1830, 1791, 1850. This series began with a simple premise: that the case against the death penalty was already complete, sitting in the public domain, waiting to be read. This volume is the premise in miniature. Three genres, three countries, three generations. One argument.

Bentham gets there by arithmetic. No scripture, no tears — a ledger. He grants the gallows every honest credit it can claim and then shows that the account still doesn't balance. The pages I can't shake are the ones on the hook: the punishment reserved for enslaved people in the West Indies, hung on iron to die over days while the law forbade anyone to help them. Bentham wrote it as philosophy. I read it as prophecy. The death penalty and slavery were one instrument then, and in this country they never entirely stopped being one.

In the Dickens volume, you heard Robespierre secondhand — the warning to the National Assembly that legal killing breeds killing. Here is the speech entire, and I won't pretend the ending away: the man who said human judgments are never certain enough to kill later signed the lists of the Terror, and the argument he made in 1791 convicts no one so completely as its author. Print it anyway. An argument doesn't become false because the man who made it failed it. If it did, there would be no scripture.

And then Haughton — because the movement that filled these volumes was mostly not famous. For every Dickens there were a hundred Haughtons: ordinary members of provincial societies, standing up after dinner with parliamentary returns in hand, counting committals, refusing to let the question stagnate. I have spent my life around their descendants — the ones who hold

vigil outside prison gates at midnight, who file the petitions, who count. This volume belongs to them on purpose.

The argument was done long before this series was — Bentham finished his part of it before the United States had a constitution. What remains is not writing; it is the film on men's minds, as Haughton called it, and the machinery that film protects. Somewhere tonight that machinery is being tested and made ready. Everything these three men had to say against it was in print before anyone now living was born. I know what they would make of the argument, because they already made it. I'm just the one passing it along.

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

EDITOR'S NOTE

THE AUTHORS

Jeremy Bentham (1748–1832), the founder of utilitarianism, wrote his analysis of capital punishment as a young man in the 1770s. The manuscripts were assembled and translated into French by his editor Étienne Dumont as *Théorie des peines* (1811), and reached English — corrected against the original manuscripts — as *The Rationale of Punishment*, published by Robert Heward in London in 1830, two years before Bentham's death. The excerpt in this volume is the whole of his treatment of the punishment of death.

Maximilien Robespierre (1758–1794) was a thirty-two-year-old deputy from Arras when he rose in the Constituent Assembly, then rewriting France's penal code, to demand that death be erased from it. The Assembly kept the guillotine, and the reader already knows the rest: within three years the author of this speech presided over the Terror and died under the blade himself. The speech is printed here because it was right when he made it, right when he abandoned it, and right now.

James Haughton (1795–1873) was a Dublin merchant and social reformer — a tireless worker in the causes of temperance, anti-slavery, and abolition of the gallows — and a member of the Dublin Statistical Society, before which this paper was read. It was published for the Society by Hodges and Smith in 1850.

THE WORKS

The three works are arranged as an excerpt, a speech, and a pamphlet — the three containers in which the abolitionist argument actually traveled. Bentham supplies the analysis: a clause-by-clause audit of what the punishment of death

accomplishes, what it lacks, and what it makes impossible. Robespierre supplies the oratory: the case compressed for a legislature deciding, that season, whether France would kill. Haughton supplies the evidence: the parliamentary returns, crime by crime, showing that every offense England stopped hanging people for declined, and the experience of Belgium, France, Prussia, Tuscany, and Bombay besides.

Each work is preceded by a short editorial introduction — “A Note on the Work” — explaining what the reader is looking at and where it came from.

THE MODERNIZATION

This edition presents all three works in modernized form. Bentham's long periodic sentences have been simplified and his Latin translated; the Robespierre speech, which survives in translation, has been lightly smoothed; Haughton's paper has been condensed. Every statistic, every case, and every name has been preserved, along with the order of each argument. Obvious printing errors in the source texts have been corrected silently, and footnote markers removed. Nothing has been added to the record.

THE SERIES

This volume is part of *The Abolition Classics*, published by Complicit Press to make the essential texts of the abolitionist tradition available in contemporary language. It is the twenty-fourth of the series' twenty-five volumes. The series talks to itself here: Robespierre's warning is quoted by Dickens in *V.* 23; Sir James Mackintosh's Bombay experiment, cited by Haughton, appears in the Burleigh and Dickens volumes as well; Lord Wynford, who promised England would be “murdered in our beds,” is one of the law lords Dickens catalogues; and the text of Genesis 9:6, answered by Burleigh at chapter length and by Dickens in a paragraph, is answered here a third time by the Archbishop of Dublin. One argument, passed from hand to hand.

“Human judgments are never certain enough to justify a society of men, themselves subject to error, in putting a man to death.”

— MAXIMILIEN ROBESPIERRE
Constituent Assembly, 1791

THE WORKS

AN EXCERPT, A SPEECH & A PAMPHLET

By Jeremy Bentham, Maximilien Robespierre & James Haughton

London, 1830 · Paris, 1791 · Dublin, 1850. Modernized and condensed for
this edition.

I

THE EXCERPT

JEREMY BENTHAM

from The Rationale of Punishment

London, 1830

For death there is no remedy.

— from the excerpt

A NOTE ON THE WORK

What follows is not a pamphlet but a dissection. Bentham wrote these pages in the 1770s, working alone; they reached print only in 1830, assembled from his manuscripts by his editor Dumont. He proceeds the way he always proceeds — no appeals to sentiment, no scripture, just a ledger: what the punishment accomplishes, what it costs, what it forecloses. He grants the gallows everything it can honestly claim, and then shows that the account still does not balance.

Two passages deserve particular attention. The first is the description of the hook — the punishment reserved for enslaved people in the West Indies — where the death penalty and slavery stand exposed as a single instrument. The second is the section on irreparable error, which compresses into a few pages the argument every later abolitionist would make. Readers should also note where Bentham stops: he leaves a narrow exception for rebellion, and, failing abolition, for aggravated murder. The argument he built reaches further than he was willing to follow it.

Capital punishment may be divided into two kinds: simple and afflictive. I call it simple when no more bodily pain is produced than is necessary to produce death. I call it afflictive when any degree of pain is added beyond what that purpose requires.

SIMPLE AND AFFLICTIVE DEATH

There is no need, on this occasion, to catalogue every possible way of producing death with the least collateral suffering. The task would be nearly endless, and its only use would be to let us pick out of the catalogue the method that does the job best — which can be done without any such survey.

The method in use in England is far from the best that could be devised. In strangulation by hanging, the weight of the body alone is seldom enough to shut off breathing immediately and entirely. The condemned, left to himself, struggles for some time; it is not uncommon for the executioner, to shorten the suffering, to add his own weight to the body. Strangling by the bowstring may strike some as the severer method — partly from prejudice against anything used by despotic governments, partly because of the greater exertion of the executioners. In fact it is much less painful, because it is much quicker: the force is applied directly along the line it must take, and the force of two men pulling is greater than the weight of one man hanging.

Even in hanging, however, sensation stops before long, as is well enough known from the accounts of people who have survived the operation — and probably a good while before the convulsive struggling ends, so that in appearance the sufferer endures more than he does in reality. With beheading, there is reason to think the stop to sensation is not immediate: some sensibility may persist in the spinal cord a considerable time after it is separated from the brain, as appears to be the case, for different lengths of time, in animals that continue to move after their heads are off.

AFFLICTIVE PUNISHMENTS

To exhaust the subject of afflictive punishments would require a catalogue of every such punishment ever practiced, together with whatever the imagination could add — and once that ungrateful task was done, of what use would it be?

We may the more willingly decline it because the more modern European codes have discarded these punishments altogether, and where they have not been formally abolished they have long fallen into disuse. Let us rejoice in the improvement; the philosopher has few occasions to offer the governors of the world more just or more honorable congratulations. But the subject cannot be passed over in total silence. The system was established too long, and has had too many apologists and too many great names among its supporters. And it may be useful to show that reason agrees with humanity in condemning such punishments — not merely as useless, but as producing effects contrary to the legislator's intention.

Examine the several species of this class — those long since abolished, like crucifixion and exposure to wild beasts, and those used in various parts of modern Europe, like burning, impaling, tearing to pieces, and breaking on the wheel — and you will find that in all of them the most afflictive part is their duration. And that circumstance defeats the purpose. When a punishment is announced, what seizes the imagination is its intensity; its duration makes a much feebler impression. A slight visible addition of bodily suffering to the ordinary mode of execution produces a strong effect on the mind, while the idea of how long the pain lasts is almost wholly swallowed up in the terror of the principal part.

In the legal description of a punishment, duration is seldom distinctly brought into view. It is not mentioned, because it is naturally uncertain — depending partly on the physical strength of the sufferer and partly on accident — and there is no way to fix attention upon it: on those who reflect, it makes no impression; on those who do not, it is altogether lost. The law might, it is true, fix the duration — prescribe the hours and minutes to be spent in the prescribed operations. Even that would fail. Pictures can represent the intensity of a punishment more or less faithfully; they cannot represent time. The flames, the rack, all the engines of torture, the convulsions of the half-expiring sufferer can be depicted — but a punishment made to last two hours will look no different from one that lasts a quarter of an hour.

On bystanders, it is true, duration does make a strong impression — but even there, after a certain point, prolongation loses its effect and gives place to the very opposite of the intended feeling. Pity and sympathy for the sufferer succeed; the spectator's heart revolts at the scene; the cry of suffering humanity is heard. Nor is the suffering confined to the offender: the spectators share it —

faintings, dangerous convulsions, the most melancholy accidents accompany these tragic exhibitions. Such sanguinary executions, and the terrifying accounts spread about them, are the real causes of the deep-rooted antipathy felt against the laws and those who administer them — an antipathy which multiplies offenses by favoring the impunity of the guilty.

The only reason any government can give for persisting in so highly penal a mode of punishing is that the habitual condition of its people is so wretched that nothing gentler can restrain them. Will it be said that crimes are more frequent in countries where such punishments are unknown? The contrary is the fact. It is under such laws that the most ferocious robbers are found — and this is readily explained. The fate that threatens them hardens them against the feelings of others as well as their own; they become the bitterest of enemies, and every barbarity they inflict is regarded as a kind of reprisal.

On this subject, as on so many others, Montaigne was far beyond his age. All beyond simple death, he says, appears to me pure cruelty. The legislator should not expect that the offender who cannot be deterred by the fear of death — of being beheaded or hanged — will be more effectually deterred by the dread of the slow fire or the rack. It may well be that he is only made desperate.

The French Constituent Assembly abolished afflictive punishments. In the Code Napoléon, beheading is the prescribed mode of death, and only for parricide and attempts on the life of the sovereign is anything added to it. In this country, the only crime for which afflictive punishment remains in use is high treason. The judgment in high treason consists of seven distinct operations: dragging at a horse's tail through the streets from the prison to the place of execution; hanging by the neck, but not so as to destroy life; plucking out and burning the entrails while the sufferer still lives; beheading; quartering; and the exposure of the head and quarters wherever the King directs. The sentence is no longer executed in this form: in favor of the nobility it has usually been changed to beheading, and in favor of the lower classes, to hanging.

THE MOST SEVERE PUNISHMENT EVER DEvised

I wish we could end here. But there remains to be mentioned an afflictive punishment more excruciating and more hideous than any yet spoken of — and it is still in use. Not in Europe, but in European colonies: in our own West India islands.

The condemned is suspended from a post by a hook inserted under his shoulder or his breastbone. Hung this way, he can do nothing to help himself, and all persons are prohibited, under severe penalties, from relieving him. He remains there, exposed to the scorching heat of a nearly vertical sun by day and the chilling dews by night; his torn flesh draws swarms of insects that multiply his torments; and under the fever produced by these combined sufferings, joined to hunger and thirst raging at their utmost, he gradually expires. When we reflect that the intensity of this suffering surpasses anything the imagination can picture, and that its duration is measured not in hours but in days, it will be found by far the most severe punishment ever devised by the ingenuity of man.

The persons to whom this punishment has been appropriated are enslaved Africans, and their crime is what is called rebellion — called that because they are the weakest; if they were the strongest, it would be called self-defense. Their constitutions are, to their misfortune, in certain respects so much harder than ours that many are said to have lingered ten or twelve days under these frightful torments.

It is said this punishment is no more than is needed to restrain such a people and keep them in their servile state — that the general course of their lives is so miserable that simple death would be a relief, and a gentler death scarcely a restraint. Perhaps. It is certain that a punishment, to have any effect on a man, must bear a certain ratio to the ordinary condition of his life. But observe where this leads. The enslaved in these colonies outnumber the free by about six to one — some three hundred thousand against fifty thousand. Here, then, are three hundred thousand people kept in a way of life that appears to them, on the whole, worse than death, for the sake of keeping fifty thousand in a way of life not noticeably happier than the same number would enjoy where there is no slavery. Sugar and coffee and the other delicacies these islands produce add, no doubt, to the enjoyments of Europe. But taking everything into account — if they can be had only by keeping three hundred thousand human beings in a condition maintainable only by the terror of such executions, are there any considerations of luxury that can counterbalance such evils?

One thing, meanwhile, admits of very little doubt: the defenders of these punishments, to justify them, exaggerate the misery of slavery and the low value the enslaved set upon life. If they were really reduced to a misery that made such atrocious laws necessary, even such laws could not restrain them: having

nothing to lose, they would be regardless of all consequences, engaged in perpetual insurrection and massacre. But if existence is not a matter of indifference to them, the only pretense in favor of these laws falls to the ground. Let the colonists reflect on this. If such a code is necessary, the colonies are a disgrace and an outrage on humanity; if it is not necessary, the laws are a disgrace to the colonists themselves.

WHAT THE PUNISHMENT HAS IN ITS FAVOR

In examining capital punishment itself, I will consider first its advantageous properties, then the desirable qualities it lacks, and finally the collateral ill effects of its frequent use.

The most remarkable feature of the punishment of death — the property it possesses in the greatest perfection — is that it takes from the offender the power of doing further injury. Whatever is feared from the criminal's force or cunning vanishes at once. Society is promptly and completely delivered from all alarm.

It is analogous to the offense in the case of murder; but there its analogy ends. It is popular with respect to that same crime, and that crime alone. And it is exemplary — in a higher degree, perhaps, than any other punishment; in countries where it is sparingly used, an execution makes a deep and lasting impression.

Beccaria held that the impression made by a punishment is proportioned to its duration rather than its intensity. "Our sensibility," he observes, "is more readily and permanently affected by slight but repeated attacks than by a violent but passing one; for this reason, putting an offender to death is a less effectual check on crime than the spectacle of a man kept in confinement and hard labor, repaying by his exertions the injury he has done society." Notwithstanding such respectable authority, I am inclined to think the contrary. Death is regarded by most men as the greatest of all evils; they will submit to any other suffering to avoid it. And death as a punishment is almost universally reckoned too severe — men plead, as a mercy, for any substitute. With respect to the higher class of offenders, Beccaria is not without reason: for them, a laborious punishment may impress more than the most excruciating death that could be devised. But for the generality of men — for all who are attached to life by ties

of reputation, affection, enjoyment, and hope — capital punishment is more exemplary than any other.

Though the apparent suffering in the punishment of death is at the highest pitch, the real suffering is perhaps less than in the greater part of afflictive punishments, which leave behind them a train of evils that make the remainder of a life one complication of suffering. In death the suffering is momentary: it is the negation of all sensation. Considering the last moment only, penal death is often gentler than natural death. The true suffering lies earlier — in apprehension. It begins the moment the crime is committed; it redoubles at arrest; it grows at every stage that makes condemnation more certain; and it is at its height in the interval between sentence and execution.

The solid argument in favor of the punishment of death results from the combination of these considerations: to men in general it is, of all punishments, the greatest in apparent magnitude, the most impressive and the most exemplary; while to the wretched class of beings who furnish the most atrocious criminals, it is less rigorous than it appears — putting a speedy end to an uneasy, dishonored existence, stripped of everything that makes life worth having.

WHAT THE PUNISHMENT LACKS

The punishment of death cannot be turned to profit; it cannot serve the purpose of compensation. So far as compensation might be drawn from the labor of the offender, the very source of it is destroyed. In frugality it is preeminently defective: to the community it produces a certain loss, in wealth and in strength alike.

Equability — a most important point — is another in which it is eminently deficient. To a person taken at random it is, on average, a very heavy punishment. But to a person taken from the class of first-rate criminals it varies far more widely: to some it is as heavy as to anyone; to many it is next to nothing.

Death is the absence of all pleasures, but also of all pains. When a man feels himself tempted to a crime punishable with death, his determination is the result of a calculation. On one side he sets the clear portion of happiness he expects if he abstains; on the other, the clear happiness he expects if he commits the crime, allowing for the chance that the punishment will cut that happiness short. If, in the first case, no clear happiness appears likely to come to him —

still more, if what appears is a clear portion of unhappiness — then the pleasure that constitutes the profit of the crime acts on him with a force that has nothing to oppose it. The probability of an abrupt end by death will subtract something from the balance; but a balance there will be.

And this is precisely the case with a multitude of malefactors. Made averse to labor by natural indolence or by disuse, or swept along by some impetuous passion, they regard the pleasures of honest industry as not worth living for when set against its pains; or they regard life itself as not worth keeping without some pleasure which, for people in their situation, is attainable only by crime. I do not say the calculation is made with all the formality I have given it; I do not say every item is carefully entered in the account. But well or ill, the calculation is made — otherwise a man could not act as he does. And in all these cases, which are unhappily too frequent, it is plain the punishment of death can be of no use.

WOULD THEY NOT DESTROY THEMSELVES?

It may be said: then no punishment would be of use. For any other punishment, to answer its purpose, must reduce such a man to a condition in which — by the supposition — death would be welcome to him; and death being in his own power, he will produce it. The conclusion does not follow. There are several reasons why an impulse strong enough to make a man risk death at the hands of justice is not strong enough to make him bring it on himself with his own hand.

First, the infliction of death as a punishment is by no means certain — and the passion that governs him, drawing his attention away from the chances against him, makes it look less certain still. Second, even were it certain, it is at any rate distant, while the mortification of not possessing the object of his passion is present. Third, death costs far more pain when a man must inflict it on himself than when all he does is put himself in the way of receiving it from another. The latter requires only a single, sudden act of will, during which he may keep his eyes shut, as it were, against the prospect; to die by his own hand, his resolution must hold up through the whole time needed to bring the event about — the manner foreseen, the moment immediate. Accordingly, when people are resolved on death, they commonly choose, when they can, to die by

another's hand: Saul by his armor-bearer's, Tiberius Gracchus by his freedman's, Nero by a servant's.

Fourth, when a man is prompted to seek relief in death, it is usually not by the sudden vehemence of some tempestuous passion but by a settled persuasion that the miseries of his life will outweigh its enjoyments — and when the resolution is once taken, he commonly rests satisfied for a while with the power, without proceeding, perhaps ever, to the act. This is likely enough to be the condition of those sentenced, instead of death, to some other punishment. They defer the execution of their design from hour to hour — now for want of means, now for want of inclination — until some incident starts a train of thought that turns them from it altogether. For in the mental as in the material frame of man there is, happily, a strong disposition to accommodate itself by degrees to forced and calamitous situations. When a great artery is disabled, the smaller vessels stretch and take on the whole duty of supply; loss of sight sharpens touch; a left hand learns the offices of the right. The mind has no less elasticity in accommodating itself to situations that at first appeared intolerable. In all sufferings there are remissions which, by force of contrast, become pleasures. How many men, fallen suddenly from the pinnacle of grandeur into the gulfs of misery, have gradually detached themselves from every recollection of their old enjoyments and created fresh sources of happiness — the Comte de Lauzun and his spider, the straw-work of the Bicêtre, the carved pieces of the French prisoners of war.

Variability is the point in which the punishment of death is more deficient than in any other. It subsists in one degree only; its quantity of evil can be neither increased nor lessened.

THE IRREPARABLE ERROR

And the punishment of death is not remissible. Other afflictive punishments are open to the same objection; but though irremissible, they are not irreparable. For death there is no remedy.

No man who has paid the least attention to criminal procedure can have failed to be struck by the very slight circumstances on which a man's life may depend, or to recall instances in which a man owed his safety to some unlooked-for accident that brought his innocence to light. The risk is greater under some systems than others — greatest where torture supplies the insuffi-

ciency of evidence, or where proceedings are secret; such systems are surrounded with precipices. But is there, or could there be, any system of procedure that would insure the judge against false evidence or the fallibility of his own judgment? No. Judges will continue fallible; witnesses will continue to lie, or to be deceived; however many swear to the same fact, its existence is not made certain. Circumstantial evidence that seems to admit of no explanation but guilt may be the effect of chance, or of arrangements made on purpose to deceive. The only evidence that seems entitled to perfect conviction is the voluntary confession of the accused — and even that does not produce certainty, since there have been instances, as in the case of witchcraft, of people confessing themselves guilty of impossible crimes.

These are not imaginary apprehensions drawn from the region of possibility. The criminal records of every country supply instances of these melancholy errors; and the instances that have become notorious, through the concurrence of extraordinary events, cannot fail to raise the suspicion that many other innocent victims have perished unknown.

Nor should it be forgotten that the cases in which the word *evidence* is most confidently used are often those in which the testimony deserves most suspicion. When the alleged crime is of the kind that produces antipathy toward the offender, or excites party feeling against him, the witnesses become accusers almost without knowing it. They are the echoes of the public clamor; the fermentation rises; all doubt is laid aside. It was such a concurrence of circumstances that seduced first the people and then the judges in the melancholy affair of Calas.

Cases in which the most violent presumptions, falling little short of certainty, accumulate against a person afterward recognized as innocent carry their own excuse: they are the cruel effects of chance. But something more must be said of the judge himself. A judge whose business is with human nature in its worst forms — who has daily before his eyes the false pretenses and lies of the guilty, and is perpetually contriving expedients for unmasking imposture — gradually ceases to believe in the innocence of the accused, and expects in advance to find a criminal using all his arts to deceive him. I am far from thinking this the character of all judges. But when the question is whether to arm men with the power of inflicting death, it should not be forgotten, before the fatal weapon is put into their hands, that they are not exempt

from the weaknesses of humanity — that arming them adds nothing to their wisdom, and does not make them infallible.

The danger appears in a still more striking light when we reflect on the use that men in power may make of this punishment to gratify their passions, through a judge easily intimidated or corrupted. Iniquity robed in justice may then escape, if not all suspicion, at least all possibility of proof. Capital punishment offers the corrupt prosecutor and judge an advantage no other punishment affords: security against detection, by stifling in the death of the victim all danger of discovery from that quarter. While he lives, to whatever misery he is reduced, the oppressed man may meet some fortunate event that proves his innocence; he may become his own avenger. A judicial assassination, justified in the public eye by a false accusation, assures with almost complete certainty the triumph of its authors. In a lesser crime they would have everything to fear; the death of the victim seals their security.

Reflect, too, on those rare periods — which may nevertheless recur at any time — when government degenerates into anarchy or tyranny, and you will find that the punishment of death, established by law, is a weapon lying ready, more susceptible of abuse than any other. A tyrannical government may, it is true, re-establish the punishment after the legislature has abolished it; but such an innovation is not accomplished without difficulty — the violence it heralds is too much exposed; the alarm is sounded. Tyranny is far more at its ease when it operates under the sanction of law, with no appearance of departure from the ordinary course of justice, and finds the people already reconciled and accustomed to this mode of punishment. The Duke of Alba, ferocious as he was, would not have dared to sacrifice so many thousand victims in the Low Countries had it not been the received opinion that heresy deserved death. Biren, not less cruel — Biren, who peopled the deserts of Siberia with exiles — had them mutilated first, mutilation being the severest punishment in use in that country, and very rarely ventured to kill, because capital punishment was not in use. So little do even the most arbitrary despots dare to violate established custom. Here is a strong reason for seizing periods of tranquility to destroy these dangerous instruments — which, rusted and no longer dreaded, are brought back into use with such facility when passion invites their employment.

The objection arising from irremissibility applies to all cases, and can be removed only by complete abolition. Two branches of security must be provid-

ed for: security against crime, and security against the errors and corruptions of judicial procedure. Crime is to be feared from everyone capable of committing one — that is, from all men, at all times; the errors and corruptions of justice are the exceptions, the accidental and rare occurrences. But for the man they fall upon, there is no remedy at all.

AN UNPOPULAR PUNISHMENT

Finally, this punishment is far from popular, and becomes less so every day as mankind grows more enlightened and manners more gentle. The people flock in crowds to an execution; but this eagerness, disgraceful as it may at first appear to humanity, does not proceed from pleasure in the sight of men in the agonies of death — it arises from the pleasure of having the passions strongly excited by a tragic scene. In one case only does the punishment seem genuinely popular, and that in a high degree: the case of murder. The attachment is grounded partly on the fondness for analogy, partly on the principle of vengeance, and partly, perhaps, on the fear the character of the criminal inspires. Blood, it is said, will have blood; and the imagination is flattered by the resemblance between the suffering the punishment produces and the suffering the criminal inflicted.

In all other cases the punishment of death is unpopular — and its unpopularity produces dispositions all equally contrary to the ends of justice: a disposition in the injured not to prosecute, for fear of bringing the offender to the scaffold; in the public, to favor his escape; in witnesses, to withhold their testimony or weaken its effect; in judges, to allow a merciful prevarication in favor of the accused. All these anti-legal dispositions make the execution of the laws uncertain — to say nothing of the loss of respect that follows when preventing their execution comes to be considered meritorious.

RECAPITULATION

The punishment of death, then, possesses four desirable properties. In one case it is analogous to the offense. In that same case it is popular. It is in the highest degree efficacious in preventing further mischief from the same source. And it is exemplary, producing a livelier impression than any other punishment. Are these sufficient reasons for keeping it? Certainly not.

Analogy is a good recommendation, but not a justification. If a punishment is otherwise eligible, analogy is an added advantage; if it is otherwise ineligible, analogy alone cannot save it — and even for murder, other punishments can be devised whose analogy is sufficiently striking. As for popularity: any other punishment seen to be equally or more efficacious will become equally or more popular, for the approbation of the multitude naturally follows the efficacy of the punishment.

The third property — that it prevents further mischief from the same source — is more specious, but no better founded. It has been asserted that for murder it is absolutely necessary, there being no other means of averting the danger from that class of criminals. The assertion is greatly exaggerated, and its groundlessness may be seen in the most dangerous species of homicide: assassination for money, a disposition that puts every man's life indiscriminately in jeopardy. Even these criminals are less dangerous, and less difficult to manage, than the violently mad; for they kill only when there is something to be gained and a probability of safety, while the mischief to be feared from the mad is narrowed by neither circumstance. Yet it is never thought necessary to put the mad to death. They are not put to death; they are kept in confinement — and confinement is found effectually to answer the purpose.

I can see but one case in which death can ever be necessary, and that only occasionally: the case Beccaria himself allowed — rebellion, or offenses of a rebellious tendency, when discontent has spread so widely through a community that imprisonment may not answer the purpose of safe custody, the keepers being won over to the insurgent party, or overpowered. And even here the legislator should remember what an aged Irishman answered the executioner who showed him the bleeding head of a man just executed for rebellion. "Look at the head of your son." "My son," he replied, "has more than one head." By destroying one dangerous enemy, the punishment of death may only make an opening for a more formidable successor.

The fourth reason is the strongest: no other punishment makes so strong an impression. This is true of the majority of mankind; it is not true of the greatest criminals. For them, I believe the contemplation of perpetual imprisonment, with hard labor and occasional solitary confinement, would make a deeper impression than death itself — and on precisely the minds where the impression is most wanted. Life does not offer them what it offers the innocent and industrious; their very trade leads them to put their existence continually

at hazard, and the intemperance almost natural to them inflames a brutal, uncalculating courage. Every circumstance that makes death less formidable to them makes laborious restraint more irksome. The more their habitual existence is wandering, independent, and hostile to steady industry, the more they are terrified by a life of passive submission and laborious confinement — a mode of life supremely repugnant to their inclinations.

Weighing all these circumstances, the conclusion appears to be that the prodigal use legislators have made of the punishment of death has proceeded less from any blamable cause than from an error natural to their situation. Those who make laws belong to the highest classes of the community, among whom death is counted a great evil, and an ignominious death the greatest of evils. Were the punishment confined to that class, the intended effect might be produced. But it shows a total want of judgment and reflection to apply it to a degraded and wretched class of men who do not set the same value on life — to whom indigence and hard labor are more formidable than death, and whom the habitual infamy of their lives has made insensible to the infamy of the punishment.

If, despite these reasons — which appear to be conclusive — it is determined to preserve the punishment of death for the terror it produces, it ought at least to be confined to the offenses that shock the public feeling in the highest degree: to murders accompanied by circumstances of aggravation, above all where numbers may be destroyed. And in those cases, whatever can give the punishment the most tragic appearance may safely be employed — without recourse to complicated torments.

COLLATERAL EVILS

The punishment of death, applied to offenses in opposition to public opinion, far from preventing them, tends to increase them by the hope of impunity. The proposition may appear paradoxical, but the paradox vanishes when we consider the effects of the punishment's unpopularity. It relaxes prosecution in criminal matters; and it foment three vicious principles. It makes perjury appear meritorious, by founding it on humanity. It breeds contempt for the laws, by making it notorious that they are not executed. And it renders convictions arbitrary and pardons necessary. The relaxation of procedure results from a series of transgressions by the several public functionaries whose concurrence is

necessary to the execution of the laws: each alters the part allotted to him, weakening or breaking the legal chain that binds him and substituting his own will for the legislator's — and every cause of uncertainty in criminal procedure is one more encouragement to malefactors.

II

THE SPEECH

MAXIMILIEN ROBESPIERRE

On the Death Penalty

The Constituent Assembly, Paris — June 22, 1791

The horror of crime is diminished when the law punishes it with another crime.

— from the speech

A NOTE ON THE WORK

In the summer of 1791, the Constituent Assembly was rewriting France's penal code, and a thirty-two-year-old deputy from Arras rose to demand that death be erased from it. What he delivered is the most concentrated statement of the abolitionist case ever made in a legislature: the state that kills a captive is not doing justice but executing a defeated enemy; blood laws are the invention of tyrants; and the penalty teaches the very contempt for human life it claims to punish. The Assembly kept the guillotine.

The reader already knows the rest. Within three years the author of this speech presided over the Terror and died under the blade himself — the fate Dickens points to in the volume preceding this one, quoting Robespierre's warning from before he was “in blood steeped in so far.” The speech is printed here entire, because the argument was right when he made it, right when he abandoned it, and right now. Arguments are not disproved by the men who betray them.

When the news reached Athens that citizens had been condemned to death in the city of Argos, the people ran to the temples and called on the gods to turn Athenians away from such cruel and deadly thoughts. I come to ask — not the gods, but legislators, who should be the organs and interpreters of the eternal laws the divinity dictated to men — to erase from the code of the French the blood laws that command judicial murder, laws rejected alike by their morals and by their new constitution. I want to prove two things: first, that the death penalty is essentially unjust; and second, that it is not the most repressive of penalties, and that it multiplies crimes far more than it prevents them.

A DEFEATED AND POWERLESS ENEMY

Outside civil society, if a bitter enemy attacks my life — or if, driven off twenty times, he returns again to ravage the field I have cultivated with my own hands — then, having only my individual strength to oppose to his, I must perish or kill him, and the law of natural defense justifies and approves me. But in society, when the force of all is armed against a single man, what principle of justice can authorize it to kill him? What necessity can absolve it? A victor who kills his captive enemies is called a barbarian. A grown man who kills a child he could disarm and punish seems to us a monster. An accused man condemned by society is nothing to it but a defeated and powerless enemy. Before it, he is weaker than a child before a grown man.

In the eyes of truth and justice, then, these scenes of death that society orders with so much ceremony are nothing but cowardly assassinations — solemn crimes, committed not by individuals but by entire nations, using legal forms. However cruel, however extravagant such laws may be, do not be surprised: they are the work of a few tyrants; they are the chains with which they weigh down the human race; they are the weapons with which they subjugate it; they were written in blood. It was not permitted to put a Roman citizen to death: that was the law the people passed. But Sulla conquered, and said: all those who bore arms against me are worthy of death. Octavian, and his companions in crime, confirmed the law.

LAWS WRITTEN IN BLOOD

Under Tiberius, it was a crime worthy of death to praise Brutus. Caligula condemned to death those sacrilegious enough to undress before the image of the emperor. Once tyranny had invented the crime of *lèse-majesté* — out of actions that were either indifferent or heroic — who would have dared suggest it deserved any penalty gentler than death, without becoming guilty of the same crime himself?

And when fanaticism, born of the monstrous union of ignorance and despotism, invented in its turn the crime of divine *lèse-majesté* — when it conceived, in its delirium, the project of avenging God himself — was it not obliged to offer him blood, and to drag him down to the level of the monsters who called themselves his image?

IS IT NECESSARY?

The death penalty is necessary, say the partisans of ancient and barbarous routine; without it there is no brake strong enough on crime. Who told you so? Have you counted all the levers by which penal laws can act on human sensibility? Alas — short of death, how much physical and moral pain can a human being endure?

The desire to live yields to pride, the most imperious of all the passions that master the human heart. The most terrible of punishments for social man is disgrace — the overwhelming sight of public execration. When the legislator can strike the citizen in so many sensitive places and in so many ways, why should he stoop to employing death? Punishments are not imposed to torment the guilty; they are imposed to prevent crime through the fear of incurring them.

The legislator who prefers death and atrocious penalties to the gentler means in his power outrages public feeling and blunts the moral sentiment of the people he governs — like a clumsy tutor who, by the frequent use of cruel punishments, stupefies and degrades the soul of his student. He wears out and weakens the springs of government by trying to wind them too tight. And the legislator who establishes this penalty renounces the salutary principle that the most effective way to repress crime is to adapt the punishment to the character of the passion that produces it — to punish the passion, so to speak, by itself.

He confounds all ideas, disturbs all relations, and openly contradicts the purpose of penal law.

The death penalty is necessary, you say. If that is true, why have several peoples done without it? By what fatality have those peoples been the wisest, the happiest, and the freest? If the death penalty is the fittest to prevent great crimes, then great crimes should be rarest among the peoples who adopted and lavished it. The facts are precisely the contrary. Witness Japan: nowhere are death and torture more widely used, and nowhere are crimes so frequent and so atrocious — as if the Japanese meant to rival, in ferocity, the barbarous laws that outrage and provoke them. Did the Greek republics, where penalties were moderate and the death penalty either infinitely rare or absolutely unknown, show more crime and less virtue than the countries governed by blood laws? Do you believe Rome was soiled by more crimes in the days of its glory, when the Porcian laws had wiped out the severe penalties of the kings and the decemvirs, than under Sulla, who revived them, or under the emperors, who carried their rigor to an excess worthy of their infamous tyranny? Has Russia been overturned since the despot who governs it entirely suppressed the death penalty — as if by this act of humanity and philosophy she wished to expiate the crime of holding millions of men under the yoke of absolute power?

THE VOICE OF JUSTICE AND REASON

Listen to the voice of justice and reason. It cries out to you that human judgments are never certain enough to justify a society of men, themselves subject to error, in putting a man to death. Imagine the most perfect judicial order; find the most upright and enlightened judges — there will still remain some room for error or for haste. Why forbid yourselves the means of repairing it? Why condemn yourselves to helplessness before oppressed innocence? What good are sterile regrets and illusory reparations to a vain shadow, to insensible ashes? They are the sad testimony of the barbarous temerity of your penal laws. To take from a man the possibility of expiating his crime by repentance or by acts of virtue; to close off pitilessly every return to virtue and to self-respect; to hasten his descent, so to speak, into the tomb while it is still covered with the fresh stain of his crime — this is, in my eyes, the most horrible refinement of cruelty.

THE LEGISLATOR'S FIRST OBLIGATION

The first obligation of the legislator is to form and preserve public morals — the source of all freedom, the source of all social happiness. When, in running toward a particular goal, he turns away from this general and essential one, he commits the grossest and most deadly of errors. The law must present to the people the purest model of justice and reason. If, in place of that powerful, calm, and moderate severity which should characterize it, the law puts anger and vengeance; if it spills human blood that it could spare and has no right to shed; if it spreads before the people's eyes cruel scenes and corpses wounded by torture — then it alters, in the hearts of citizens, the very ideas of justice and injustice, and plants in the midst of society the seed of ferocious prejudices that will breed others in their turn. Man ceases to be so sacred an object to man; his dignity is held cheaper when public authority makes free with his life. The idea of murder inspires less fear when the law itself gives the example and the spectacle of it. The horror of crime is diminished when the law punishes it with another crime. Do not confuse the effectiveness of a penalty with an excess of severity: the one is absolutely opposed to the other. Everything works with moderate laws; everything conspires against cruel ones.

It has been observed that in free countries crime is rarer and penal laws are gentler. All ideas hold together. Free countries are those where the rights of man are respected, and where, in consequence, the laws are just. Wherever the laws offend humanity by an excess of rigor, it is proof that the dignity of man is not known there — that the dignity of the citizen does not exist; it is proof that the legislator is nothing but a master commanding slaves, punishing them pitilessly according to his whim. I conclude that the death penalty should be abolished.

III

THE PAMPHLET

JAMES HAUGHTON

Death Punishments

Read before the Dublin Statistical Society — Dublin, 1850

In no single instance in which the death penalty has been repealed, for any crime, in any country, has any other result followed than a decrease of the crime.

— from the pamphlet

A NOTE ON THE WORK

The third work belongs to neither a philosopher nor a revolutionary. James Haughton was a Dublin merchant — a temperance man, an anti-slavery man, an abolitionist of the gallows — and a member of the Dublin Statistical Society, founded “to promote the study of statistical and economical science.” This paper, read before the Society and published for it in 1850, does what the Society was founded to do: it counts. Horse-stealing, burglary, forgery — every crime England stopped hanging people for declined. Belgium abolished, prospered, relapsed, and paid for it. Tuscany, France, Prussia, and Mackintosh's Bombay all told the same story.

The paper shows the movement as it actually lived. For every famous name in this series there were a hundred men and women like Haughton — ordinary members of provincial societies, standing up after dinner with parliamentary returns in hand. By 1850, as he demonstrates, the statistics were settled. What remained, in his phrase, was the film woven by prejudice over men's minds.

The many public executions which have taken place in these kingdoms within a short and recent period have forcibly drawn renewed public attention to the subject of capital punishment. The subject is acknowledged by all to be one of deep importance, and, like every important question that touches the feelings and exercises the judgment of men, it is the cause of great difference of opinion. That is not to be wondered at; it would be surprising if it were otherwise — and if the life of man were not at stake, the delay incident to such difference of opinion would be little cause for regret. It is by the collision of sentiment, and the attrition of minds one against another, that true principles of action are discovered and laid down; and to make such principles our own, and graft them onto the practice of our lives, is no hasty work. But the friends of reform must take care that no indecision or want of perseverance on their part sanctions unnecessary delay in changes that man's increasing knowledge, advancing civilization, and purer views of the Divine government demand.

On this question of capital punishment, it does seem to me that those in this land who favor its entire abolition want the zeal and activity so great a work calls for. The public mind has been permitted to stagnate too much upon this great question of human duty and human responsibility. While we sleep, criminals are constantly being hurried out of existence; and instead of being always awake, and actively engaged in taking the film off men's minds — a film woven by prejudice in favor of ancient usage, and by erroneous views of our duty to God and our fellow man — we are roused to energetic action only when some horrible event takes place, and we hear the indignant cry of outraged humanity ringing in our ears, telling us there is a chord in man's inmost soul attuned to humanity, which cannot vibrate in harmony when the gallows strikes the key.

When a great principle is at stake, we should not wait for extraordinary occurrences to prompt us; the value of the object itself should be a never-ceasing motive for action. Believing that the entire abolition of death punishment would be advantageous to society, I bring the question before you so that it may receive ample discussion at your hands, and so add to that growing volume of public opinion which will, I expect, at no distant day erase from our statute-book this relic of a barbarous age. I am aware that many intelligent and

good men still hold that the safety of society demands the violent death of the murderer. It shall be my object to prove this an erroneous idea — to show that the safety of society will be best secured by a contrary course: by a resort to the law of kindness, instead of those notions of full justice, or vengeance, handed down to us by preceding generations. The statistics I mean to lay before you will, I expect, carry your judgment with me.

THE STATISTICS OF THE QUESTION

In the reign of George III, one hundred and sixty offenses were punishable with death — among them sheep-stealing, robbery, forgery, burglary, and horse-stealing. In those days it was considered that the safety of society required the death of everyone guilty of these crimes. The law has been altered; willful murder and high treason may now be considered the only capital offenses. What has been the consequence? Has society been injured? The parliamentary returns exhibit exactly the contrary result.

In the Reverend Mr. Pyne's *Plea for the Abolition of Capital Punishments*, the following results, extracted from official parliamentary returns down to the end of 1838, will be found. For horse-stealing, forty-six criminals were executed in the nine years ending December 1829, the committals being 1,626. In the next nine years, ending 1838, there were no executions for the crime — and the committals fell to 1,565.

For burglary and house-breaking — of which Lord Wynford said that if the capital penalty were repealed, “we should all be murdered in our beds” — fifty-six persons were executed in the six years ending December 1832, with 5,199 committals in the same period. In the next six years, ending December 1838, there were but three executions for these offenses, and the committals fell to 4,621.

For forgery — a crime some mercantile men would still visit with the extreme punishment of the law — sixty-four criminals were executed in the ten years ending December 1829, and 746 committed. In the next ten years none were executed, and the committals were 731.

I might readily multiply facts of this nature. Indeed, I believe that in no single instance in which death punishment has been repealed, for any crime, in any country, has any other result been realized.

THE PARLIAMENTARY RETURN OF 1846

By a parliamentary return dated the 14th of May, 1846, I find the following facts stated with reference to seventeen crimes there enumerated. During the five years ending with the last year of an execution, 7,726 individuals were committed, of whom 196 were executed. During the five years immediately following, in which capital punishment was not resorted to, the committals had fallen to 7,120. The committals for burglary and house-breaking in the five years ending with 1832 were 4,327, and the executions forty-six; during the following five years the executions were three, and the committals had fallen to 3,734.

Here are indisputable statistics — I could add to the catalogue without difficulty, but the recital would only weary you and add nothing to the argument — and they prove, to the satisfaction of every candid inquirer, that the safety of society, instead of being endangered by milder treatment of criminals than was the policy of our forefathers, is placed on a more secure foundation. It may reasonably be inferred that applying the milder rule in place of the sterner, even in the case of deliberate murder, would be attended by the same happy exemption from danger.

Lest any should say that this decrease of crime was caused by a better system of police deterring men from its commission, I must disabuse their minds of the idea; for the official records — the Home Office annual returns, from which some of these statistics are drawn — distinctly show that crimes of all inferior grades considerably *increased* during the very periods when the crimes relieved of the capital penalty grew less frequent.

SEVERITY OR CERTAINTY?

Some may doubt the force of my conclusions, and allege that it is contrary to common sense to suppose men will be more effectually deterred from great crimes by milder than by severe punishments. They overlook the consideration that the certainty of punishment has a greater effect than its severity in deterring from crime. Facts support my argument; false theory alone is the basis of the contrary view.

The true solution of this apparent anomaly, I apprehend, lies in a morbid feeling in many minds, which stimulates the performance of acts that are punished in a manner which, though severe, makes their perpetrators objects of

notoriety. Whatever the cause, we find from the history of man in all ages and countries that the infliction of death punishment — attended, as it necessarily is, with the excitement of an interest in the criminal — has tended to call this morbid feeling into activity, and to place the lives and property of men in jeopardy instead of affording them security.

THE CASE OF MURDER ITSELF

The death penalty is still resorted to in these countries in cases of willful murder; so some may say that here my argument falls to the ground for want of proof — that but for the severity of our law, we might have many more horrible murders, accompanied by even more revolting circumstances than those which now occur.

It is difficult to meet such reasoners; indeed they would be more correctly called opposers than reasoners. The analogy of other cases weighs nothing with them; they refuse to open their minds to the value of the evidence those cases afford; they incline to doubt facts which are undeniable. The ameliorations of our criminal law that have produced such blessed results were opposed by similar reasoners, on exactly similar grounds — the safety of society — and they still contend against the relinquishment of the gallows on the alleged, and oft-refuted, ground that it would be unsafe to try the experiment with murder. Our legislators have not permitted us to prove that in the case of murder, as in that of all other crimes, other means than legalized life-taking would be a surer guarantee of life. Yet we are not left without good evidence of the safety of abolition, even in the case of murderers.

BELGIUM'S EXPERIMENT

Other countries have gone beyond England in the career of benevolent — and wise, because benevolent — legislation, and the results have fully sustained the principles I am contending for. Belgium abolished death punishment altogether; and the facts there are of peculiar interest, for they prove the correctness of every opinion held by the advocates of abolition in these countries. Belgium then returned to the gallows as a protection to life and property, and the result was, as might have been predicted, increased danger to both. The following statistics are taken from official returns.

During the five years ending with 1829, twenty-two persons were executed out of thirty-four convicted of murder. During the five years ending with 1834, none were executed — and only twenty were convicted of the same offense. In 1835, death punishment was resorted to again, to allay the fears of those who alleged its necessity in defiance of plain proof to the contrary. In that year two criminals were executed, and between 1836 and 1839 two more. And what followed? Capital condemnations, which in the five years from 1830 to 1834 — the years without executions — numbered sixty-four, rose in the five years from 1835 to 1839, with four executions, to eighty: an increase of just twenty-five per cent. In this instance of mis-legislation — of going back toward barbarism instead of forward to a higher civilization — the revengeful feelings of our nature were stimulated into dangerous activity.

FRANCE, PRUSSIA, TUSCANY, AND BOMBAY

In France and in Prussia, where a comparatively mild administration of this penal law prevails, the anticipated results are experienced: as death punishment was relaxed, the committals for murder steadily decreased. The returns show that while executions diminished by two-thirds, the crime decreased by one-third.

In Tuscany, where death punishment was for a length of time entirely discontinued, the reigning grand duke declared, after an experience of twenty-three years, that the alteration, “instead of increasing the number of crimes, considerably diminished the smaller ones, and rendered those of an atrocious nature very rare.” Under the ascendancy of Napoleon — a man of violence, who appears to have had no faith in any law except the law of violence — death punishments were re-enacted, and were followed by an increase in atrocious crimes.

Again, view the effect of these principles when carried into operation in India by Sir James Mackintosh, who says, in a charge delivered at Bombay in 1811: “Two hundred thousand men have been governed for the last seven years without capital punishment, and without any increase of crime.” “Add to these,” says Mr. Pyne, “the well-known facts that delinquencies in the army and navy were of much more frequent occurrence when death was the award of each breach of duty than they are now, when a milder system prevails.”

THE SPIRIT OF REVENGE

For the foregoing statistics I am indebted to an admirable pamphlet by Frederick Rowton, entitled *The Punishment of Death Reviewed*, which I strongly recommend to all who hear me. It treats the subject in a masterly manner, and proves to demonstration that the safety of society would be best secured by the entire abandonment of capital punishment. Without referring at all to the moral and religious aspects of the question, it seems to me extraordinary that, in the face of the most incontestable evidence of the fallacy of a resort to violence for the prevention of murder, intelligent men are still found to advocate its necessity. The solid reasoning, sustained by statistics and experience, is all on the side of mercy; and yet men still advocate and pursue the vengeful course. They endeavor, it is true, to conceal from themselves that revenge forms any part of their feeling toward the criminal; when pressed, they repudiate the idea most strongly. And yet it seems to me the system rests altogether on that feeling.

It will be said that the act is done by government, and that government can feel no revenge. But government is made up of individual men; and however these may persuade themselves that in their collective capacity they consider only the good of the community, the facts prove that other feelings must operate in their minds — for if they judged intelligently and dispassionately, they would be forced to conclude that the course hitherto pursued has been a wrong one, and they would move in a better direction. It is clear to all that death punishment has not secured society from the most horrible of crimes, deliberate murder. This our opponents admit; but they support the law on the negative argument that without it the crime would be more frequent, rejecting altogether the positive evidence of its hurtful tendencies.

PROFESSOR HANCOCK AND THE JURORS

In the *Transactions of the Dublin Philosophical Society* for 1843 there is an abstract of an essay on capital punishment by Professor Hancock, urging an examination of the propriety of inflicting it — since, as Blackstone remarks, criminal law should be founded on principles that are “permanent, universal, always conformable to the dictates of truth and justice, the feelings of humanity and the indelible rights of mankind.” It requires no argument to prove that death punishment does not conform to those principles, and that, if we assume them correct, all such punishments should be abandoned. So long as human judg-

ment is fallible, some or all of those principles are outraged when we take the life of man.

The feelings of humanity, or some kindred sensation, in the minds of jurors have frequently — of late years, I might almost say universally — rendered the punishment of our greatest criminals so uncertain that there is good reason to suppose murderers are influenced by that consideration when balancing the chances in their minds. It often happens that jurors cannot bring themselves to be in any degree instrumental in inflicting an irremediable punishment; and a full justification of that course is found in the fact that innocent men have been found guilty and executed on evidence apparently so clear that no man could have entertained a reasonable doubt. This is one of the grounds on which I contend that death punishment must always render the conviction of the accused more uncertain than where that extreme penalty is not present to the jurors' minds — which is itself proof of the uncertainty of any punishment for the crime of murder.

Professor Hancock maintained that the justice of inflicting death depends on its expediency — that is, on whether it is the most effectual punishment for preventing certain crimes. Without entering at large into that view, I think I have proved, in the earlier portions of this paper, that by the learned professor's own definition the punishment cannot be just, since it is never expedient: there is sound reason for believing that it tends to increase, and not diminish, the crime of murder. Indeed, this may be taken as a fact proved by the statistics I have given.

THE TEXT OF GENESIS

Professor Hancock also noticed the objection frequently made to abolition from the text of Scripture, "Whoso sheddeth man's blood, by man shall his blood be shed." He answered it as the Archbishop of Dublin answered a similar objection to political economy: that Scripture was intended to reveal religious truths, not to teach a complete system of jurisprudence any more than of any other science; that the passage should be read as teaching the sacred inviolability of human life, commanding what was, in the state of mankind when it was revealed, the most expedient and therefore the justest punishment for murder; and that in applying it to the present state of society, it must be understood as

commanding us to inflict whatever punishment we can discover to be most effectual in preventing murder.

In this passage, with one exception, I entirely concur — an ingenious, and may I say beautiful, interpretation of that much-used, and much-abused, text. The exception is that I do not believe the death penalty was ever expedient. The Archbishop observes, in his second lecture on that subject, that the complaint of political economy as hostile to religion will probably be regarded a century hence with the same wonder, almost incredulity, with which we now hear of men sincerely opposing the Copernican system on religious grounds; and that until the advocates of Christianity become universally better acquainted with the true character of their religion, every new branch of study will be assailed on religious grounds by those who have not studied it, or are incompetent judges of it, or wish to take advantage of the ignorant. I gladly avail myself of these enlightened sentiments, and apply them to the subject in hand, in full confidence that men will yet see in this light the present opinion of many concerning scriptural declarations on death punishment.

NO REPENTANCE IN THE GRAVE

There is one other point to which my time permits me only to allude. It is to me a matter of deep astonishment how men who believe in an eternity of punishment so severe that we have no words to convey an adequate idea of its horrors can be found advocating the hastening of their guilty brethren out of life, and away from the possibility of repentance — for they say there is no repentance in the grave. The point is of deep importance, and should be seriously considered by all who have any doubts about the propriety and expediency of abolishing capital punishment.

I commend this great question to your warmest feelings and to your soundest judgment, and from both I confidently anticipate a favorable verdict.

A POSTSCRIPT FROM LIVERPOOL

Since I wrote the foregoing lines, the following evidence of the inefficacy of death punishment has been placed in my hands. It is taken from the charge of Judge Wightman to the grand jury at Liverpool on the 10th of December last, in which he stated that although the assizes had been held not four calendar months before, with a general jail delivery in the county, there was now an ac-

cumulation of no fewer than eighty-seven prisoners for trial — requiring the special commission then assembled — and that among them were seven distinct charges of willful murder and seven of manslaughter: fourteen distinct cases of homicide.

Is it not clear from this statement that death punishment is no deterrent from the crime of murder, and affords no adequate safety to society? The scaffold has reeked with blood in these lands during the past year, and yet murder is rife among us notwithstanding. To what cause does Judge Wightman attribute this recklessness of human life? Here are his own words, and to a great extent they give the true solution: in almost all the cases, “the violence exhibited appears to be the result of mere intemperance, operating on minds wholly unaccustomed to forbearance or moral restraint, yielding to every impulse of their wicked feelings when exasperated.” Of those eighty-seven prisoners, twenty-five could neither read nor write; thirty-one could read and write imperfectly; fifteen could only read; three could read and write in a superior manner; of thirteen, no account was given.

Gentlemen, intemperance and ignorance are the great promoters of crime. So long as these predisposing causes are allowed to exist, so long will the statistics of murder fearfully attest the inefficacy of the scaffold as a deterrent from crime.

DEFINITIONS AND TERMS

Jeremy Bentham (1748–1832): English philosopher and legal reformer, founder of utilitarianism. He wrote his analysis of capital punishment in the 1770s; it reached English print as *The Rationale of Punishment* in 1830, two years before his death.

Étienne Dumont (1759–1829): Genevan editor who assembled Bentham's manuscripts into readable French. His *Théorie des peines* (1811) is the book through which Bentham's penal theory reached the world; the English *Rationale* was corrected against Bentham's original manuscripts.

Maximilien Robespierre (1758–1794): Deputy from Arras to the Constituent Assembly, later the dominant figure of the Terror, under which thousands went to the guillotine before he did. Dickens invokes his early warning against legal killing in V. 23 of this series; the speech itself appears here.

The Constituent Assembly: France's revolutionary legislature of 1789–1791, which rewrote the nation's laws — abolishing afflictive punishments, as Bentham notes with approval, but keeping the death penalty over Robespierre's objection.

James Haughton (1795–1873): Dublin merchant and social reformer — a life-long worker for temperance, anti-slavery, and the abolition of the gallows — and a member of the Dublin Statistical Society, before which his paper was read.

The Dublin Statistical Society: Founded in 1847 “to promote the study of statistical and economical science.” It survives today as the Statistical and Social Inquiry Society of Ireland.

Michel de Montaigne (1533–1592): French essayist whose verdict Bentham adopts: all beyond simple death is pure cruelty.

Cesare Beccaria (1738–1794): Author of *On Crimes and Punishments* (1764), V. 5 of this series. Bentham argues with him here — accepting his conclusion while disputing his claim that duration impresses more than intensity.

The Calas affair: Jean Calas, a Protestant merchant of Toulouse, was broken on the wheel in 1762 for the murder of a son who had in fact died by his own hand. Voltaire's campaign won his posthumous exoneration; Bentham cites the case as the pattern of judicial error driven by public clamor.

Lord Wynford: The law lord who warned that repealing the capital penalty for burglary would leave England “murdered in our beds” — and one of the four law lords Dickens catalogues, in V. 23, as opposing the repeal of death for forgery. The committals fell anyway.

Sir James Mackintosh (1765–1832): Scottish jurist who governed two hundred thousand people at Bombay for seven years without an execution and without an increase of crime — the experiment cited in the Burleigh and Dickens volumes, and by Haughton here.

Frederick Rowton: Author of *The Punishment of Death Reviewed* (1846), the pamphlet from which Haughton draws his statistics.

Richard Whately (1787–1863): Archbishop of Dublin, logician and political economist, whose reading of Genesis 9:6 — as teaching the inviolability of life, not commanding the gallows — Haughton adopts. The same text is answered by Burleigh in V. 22 and by Dickens in V. 23.

William Neilson Hancock (1820–1888): Irish economist and professor whose essay on capital punishment, abstracted in the *Transactions of the Dublin Philosophical Society* for 1843, Haughton engages at length.

FURTHER READING

ON THE THREE WORKS

- Bentham, Jeremy.** *The Rationale of Punishment*. Robert Heward, London, 1830. Translated and assembled from Étienne Dumont's *Théorie des peines* (1811) and Bentham's original manuscripts. The source of the excerpt.
- Robespierre, Maximilien.** Speech on the death penalty, delivered in the Constituent Assembly, Paris, June 22, 1791. The source of the speech.
- Haughton, James.** *Death Punishments*. A paper read before the Dublin Statistical Society. Hodges and Smith, Dublin, 1850. The source of the pamphlet.
- Rowton, Frederick.** *The Punishment of Death Reviewed*. London, 1846. The pamphlet from which Haughton draws his statistics.

RELATED VOLUMES IN THE ABOLITION CLASSICS

- Beccaria, Cesare.** *An Essay on Crimes and Punishments*. V. 5. 1764. Edited and modernized by Jeff Hood. Complicit Press, 2026. The book Bentham answers, extends, and in one place disputes.
- O'Sullivan, John L.** *Report in Favor of the Abolition of the Punishment of Death by Law*. V. 12. 1841. Edited and modernized by Jeff Hood. Complicit Press, 2026. The fullest legislative statement of the argument made here in a legislature by Robespierre.
- Burleigh, Charles C.** *Thoughts on the Death Penalty*. V. 22. 1845. Edited and modernized by Jeff Hood. Complicit Press, 2026. Cites Mackintosh's Bombay experiment and answers Genesis 9:6 at chapter length.

Dickens, Charles. *Capital Punishment*. V. 23. 1846. Edited and modernized by Jeff Hood. Complicit Press, 2026. Quotes Robespierre's warning, catalogues Lord Wynford among the gallows' defenders, and closes the argument this volume's three authors began.

THE ABOLITION CLASSICS. V. IV



CONSIDERATIONS ON THE INJUSTICE AND IMPOLICY OF PUNISHING MURDER BY DEATH

THE ARGUMENT OF BENJAMIN RUSH

Philadelphia, 1792-1793

EDITED AND MODERNIZED BY

JEFF HOOD

CONSIDERATIONS

*On the Injustice and Impolicy of
Punishing Murder by Death*

BENJAMIN RUSH

A Modern Adaptation

Edited and Modernized by

JEFF HOOD

THE ABOLITION CLASSICS

V. 4

The texts that built the case against the death penalty

COMPLICIT PRESS

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Original text: Benjamin Rush, *Considerations on the Injustice and Impolicy of Punishing Murder by Death*, Philadelphia, 1792, and *A Reply to Theocratos*, Philadelphia, 1793.

This edition newly set and modernized from the original.

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CONTENTS

FRONT MATTER

Foreword.....	vii
Editor's Note.....	xi

RUSH'S ESSAY

Considerations on the Injustice and Impolicy of Punishing Murder by Death.....	1
I. The Natural Right to Life.....	2
II. The Harms of the Penalty.....	3
III. The Argument from Scripture.....	6
IV. Objections Answered.....	9
A Reply to Theocratos.....	13

EDITORIAL APPARATUS

Definitions and Terms.....	23
Further Reading.....	27

FOREWORD

Benjamin Rush wrote this essay in 1792, a few years after he had watched the new republic he helped found enact its first federal criminal statutes. The Constitution was fresh. The Bill of Rights had just been ratified. The founders were deciding, among other things, what kind of punishment a self-governing people would impose on those who violated its laws. Rush looked at what they were deciding and said: not this.

Rush is not a familiar name in the history of abolitionism, though he deserves to be. He was a physician, a signer of the Declaration of Independence, a founder of the first American antislavery society, the first American to write systematically against the public punishment of criminals, and the first American to argue in print that capital punishment should be abolished entirely. He made this argument to a nation that had just declared all men created equal and then built a constitution that protected the enslavement of human beings. He was aware of the contradiction. He spent much of the rest of his life trying to address it.

I came to Rush through the other books in this series. Every abolitionist argument I encountered pointed backward, and Rush was always near the beginning of the American thread. He knew Beccaria's work. He corresponded with the European reformers. He understood that the argument against capital punishment was not a new one, not a soft one, and not a marginal one — it was the argument that the best legal and moral minds of the Enlightenment had been making

for decades, and that governments were beginning, however slowly, to take seriously.

What strikes me most about Rush is his impatience. He was writing in 1792 and he already knew the deterrence argument was false. He already knew that executions normalized violence rather than reducing it. He already knew that the death penalty made conviction harder and therefore made murderers more likely to escape punishment altogether. He already knew that the penalty fell on the poor and the friendless with a consistency that made a mockery of equal justice. He knew all of this two hundred and thirty years ago. He wrote it down. He published it. He made the argument available. And then the republic he helped build kept executing people anyway.

I have been in the rooms where that happens. I have sat with men who were scheduled to die by the state and watched the weeks count down. I have held the hands of people whose names would eventually appear in the statistics that researchers use to study whether executions deter crime — people who became, after their deaths, data points in an argument about whether the state's killing of them had any measurable effect on anyone else's behavior. The research says it didn't. Rush said it wouldn't. He was right then and he is right now.

Rush ends his essay by addressing himself to future generations. He despairs of persuading his own contemporaries. He writes to those who will come after, who will have knowledge he can only glimpse, who will look back on execution with the same contempt and horror with which he looked back on torture. I am part of the generation he was writing to. So are you. The

FOREWORD

knowledge he predicted we would have, we have. The question is whether we will use it.

He was addressing us. It is time we answered him.

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

EDITOR'S NOTE

The Author

Benjamin Rush (1746–1813) was a Philadelphia physician, a signer of the Declaration of Independence, and one of the most consequential public intellectuals of the founding era. He was a founder of Dickinson College, a professor of medicine at the University of Pennsylvania, and the Surgeon General of the Middle Department of the Continental Army during the Revolutionary War. He was a founder of the Philadelphia Society for Alleviating the Miseries of Public Prisons, the first such organization in America, and a founder of the first American antislavery society. He was the first American to argue systematically against public punishment of criminals and the first American to publish a sustained argument for the abolition of capital punishment.

Rush's abolitionist essay arose from a dinner party. In 1787, he attended a gathering at the home of Benjamin Franklin at which the subject of criminal punishment was discussed. Rush argued against public punishment; the essay he subsequently wrote on that subject, *An Enquiry into the Effects of Public Punishments upon Criminals and upon Society* (1787), was the first American work to make that argument in print. The *Considerations* appeared in 1792, in the *American Museum*, and was expanded with a *Reply to Theocratos* in 1793. Together they constitute the founding document of American abolitionism.

Rush was a complex figure. He supported the American Revolution with full conviction and signed the Declaration of Independence. He opposed slavery publicly and early, though his own household employed enslaved people at various points in his life — a contradiction he appears to have recognized and struggled with. He was a man of his era in many respects, and a century ahead of his era in others. His medical theories included ideas we now know to be wrong. His abolitionist arguments have never been successfully refuted.

The Original Text

The *Considerations on the Injustice and Impolicy of Punishing Murder by Death* first appeared in the *American Museum* in 1792. The following year Rush published a Reply to an essay by a respondent who signed himself “Theocratos” — widely assumed to have been a minister — who had argued for retaining capital punishment on scriptural and philosophical grounds. Rush’s reply refutes Theocratos’s arguments point by point and adds considerable new material, particularly on the international movement toward abolition and on the theological argument for mercy.

The essay belongs to the tradition of Beccaria’s *On Crimes and Punishments* (1764), which Rush had read and which informed his framework. Where Beccaria made the argument primarily in terms of social contract theory and utility, Rush made it in terms of natural rights, Christian theology, and the specific requirements of republican government. He was writing for an American audience that combined Enlightenment

rationalism with Protestant Christianity, and he addressed both registers simultaneously.

The Modernization

This edition presents Rush's argument in contemporary language. The original prose of the 1790s combines the formal structures of eighteenth-century rhetoric with the specific theological and political idiom of the founding era. Sentence structures have been simplified, archaic constructions updated, and some examples replaced or supplemented with contemporary evidence. The chapter divisions are editorial; Rush's original is a numbered argument and a separate reply, and the headings in this edition indicate the logical structure of that argument.

What has not been changed: Rush's arguments. Every position he takes, every objection he answers, every scriptural passage he interprets, every empirical claim he makes — all are preserved exactly as he set them down, updated where the evidence he cited has been supplemented by two centuries of additional data that confirms his conclusions. Where Rush could point to a handful of European nations moving toward abolition, we can now point to more than a hundred. The trajectory he identified has continued in exactly the direction he predicted.

The Series

This volume is part of *The Abolition Classics*, a series published by Complicit Press dedicated to making the essential texts of the abolitionist tradition available in contemporary language to students, practitioners,

EDITOR'S NOTE

clergy, and anyone willing to think seriously about the state's right to kill. Rush's essay is among the oldest in the series and one of the most important: it is the founding document of American abolitionism, written by a man who helped found the republic and immediately recognized that the republic was failing one of its most basic tests.

*“The Son of Man is not come to destroy
people’s lives, but to save them.”*

— Luke 9:56, cited by Benjamin Rush, 1793

RUSH'S ESSAY

*Considerations on the Injustice and
Impolicy of Punishing Murder by Death*

I. The Natural Right to Life

In an earlier inquiry into the effects of public punishment upon criminals and upon society, I suggested briefly that executing people for murder is unjust. I will attempt in the following essay to support that position and to answer every objection that has been raised against it.

Every person possesses absolute power over their own liberty and property, but not over their own life. When a person enters into political society, they commit the disposal of their liberty and property to their fellow citizens. But because no person has the right to dispose of their own life, they cannot surrender that power to any governing body. To take life for any crime, therefore, is a violation of the first political compact.

II. The Harms of the Penalty

The punishment of murder by death is contrary to reason and to the order and happiness of society.

It lessens the horror of taking human life and thereby tends to multiply murders. The state, by performing killing as ceremony, normalizes the act it claims to condemn. We cannot teach the sanctity of life by destroying it. We cannot model the rejection of violence through violence. Every execution is a lesson in the logic of death — and that lesson is absorbed.

It produces murder through its influence upon people who are exhausted by life. Those who have determined to die, and who believe murder to be a lesser transgression than suicide, destroy the life of another — often of someone close to them — then surrender themselves to the law, seeking the state's hand to accomplish what they could not bring themselves to do themselves. Law enforcement officers have documented this phenomenon for decades. We call it suicide by cop. It is also, sometimes, suicide by execution. The state obliges. No reckoning has ever been made of the lives lost this way, because no such reckoning serves the interests of those who administer the death.

The punishment of murder by death multiplies murders by making conviction more difficult. When jurors know that their verdict will end a human life, they recoil. They look for doubt where they would otherwise find certainty. They accept lesser charges. They acquit altogether. The result is that many killers who would have been convicted under a system of confinement and labor walk free entirely, or face consequences so

diminished as to constitute no consequence at all. If murder were punished by long imprisonment and hard labor, every member of society would be invested in detection and prosecution. The punishment would feel proportionate. The instinct for justice, which is universal, would engage rather than resist.

The punishment of murder by death obstructs universal justice by preventing the prosecution of every form of murder. Corporate executives who knowingly release defective products — pharmaceutical companies that suppress lethal side effects — executives who authorize the disposal of toxic waste into the water supplies of communities too poor to fight back — employers who ignore safety conditions they know will eventually kill workers — these people commit murder. The malice is often as premeditated as any committed by a man with a weapon. But who will attempt to define these killings as murder, or prosecute those responsible as murderers, when death is the punishment that must follow? The machinery of the law stops before it reaches them. Only alter the punishment of murder, and these crimes will assume their proper names. They will become prosecutable. And the number of lives saved will exceed by orders of magnitude the number supposedly protected by the spectacle of execution.

The punishment of murder by death has been proved contrary to the order and happiness of society by the experiments of the wisest governments on earth. More than two-thirds of the world's nations have abolished capital punishment in law or in practice. The data from those nations is not ambiguous. Abolition does not increase homicide rates. In many cases, homicide rates decline. Within the United States itself, states without

the death penalty consistently report lower murder rates than those that retain it. The National Research Council, after a comprehensive review of decades of deterrence research, concluded in 2012 that existing studies were fundamentally unsuitable as a basis for concluding that capital punishment reduces or increases homicide rates. The deterrence argument, the oldest and most persistent justification for execution, rests on nothing. It has always rested on nothing. The research simply confirmed what reason had long since established.

III. The Argument from Scripture

The punishment of murder by death is contrary to divine revelation. A religion that commands us to forgive and even to do good to our enemies cannot authorize the punishment of murder by death. "Vengeance is mine," said the Lord; "I will repay." It is no answer to say that this vengeance is directed against the criminal not by an individual but by the machinery of government. It remains an equal usurpation of the prerogative of heaven, whether inflicted by a single person or by the whole of a society acting through its institutions.

I anticipate an appeal here from the gospel to the law of Moses, which declares that whoever kills a person shall surely be put to death.

Forgive, indulgent heaven, the ignorance and cruelty of human beings — who by the misapplication of this text have so long and so often stained the religion of Jesus Christ with folly and revenge.

The following considerations will demonstrate, I hope, that no argument can be drawn from that law to justify the execution of murderers. On the contrary, several arguments against it may be derived from a just and reasonable reading of the Levitical institutions.

There are many things in Scripture above reason, but nothing in Scripture contrary to reason. The punishment of murder by death is contrary to reason. It cannot, therefore, be consistent with the will of God.

The order and happiness of society cannot fail to be consistent with the will of God. But the punishment of

murder by death destroys the order and happiness of society. It must therefore be contrary to the will of God.

Many of the laws given through Moses were accommodated to the ignorance, wickedness, and hardness of heart of the people to whom they were given. Hence their divine legislator declares explicitly: "I gave them statutes that were not good, and judgments whereby they should not live." The law of divorce and the law of retaliation — an eye for an eye, a tooth for a tooth — are the most cited examples. We do not stone adulterers. We do not practice retaliation as jurisprudence. We understand that these ordinances belonged to a particular people in a particular moment of moral development. The death penalty belongs to the same category.

We are told that the punishment of murder by death rests not only on the law of Moses, but on a precept given to Noah and his descendants: "whoever sheds the blood of man, by man shall his blood be shed." The most careful reading of this passage finds in it not a command but a prophecy — a declaration of what will generally happen rather than an instruction for what must. The form of expression is identical to other passages we read as denunciations rather than commandments. "He who leads into captivity shall go into captivity." "He who takes up the sword shall perish by the sword." If those passages bind no magistrate to act, neither does this one. And even if it is taken as a command, the context explains it. In the infancy of the world, after the flood, no structure existed by which murder could be punished by confinement. The only choices were execution or impunity. God permitted in that condition a lesser evil to prevent a greater one. The precept belongs to that

moment. It does not bind societies that possess every other means of addressing violent crime.

Every part of the Levitical law is understood to contain types of the Messiah. The cities of refuge prefigured the mediating offices of Christ. May not the penalty of death, inflicted by that law, be similarly understood to represent the consequence of sin rather than to mandate a practice for all societies in all ages? The shadow does not require literal reproduction.

The severity and imperfection of those laws were further intended to illustrate by contrast the perfection and mercy of the gospel. God created darkness first, that light might be understood by comparison. He permits sin and suffering in this world that righteousness and wholeness might be revealed in greater glory. Paul says it plainly: the law made nothing perfect, and it was a shadow of good things to come. The death penalty belongs to the shadow. The gospel calls us into the light.

How delightful to discover such a harmony between the dictates of reason, the order and happiness of society, and the precepts of the gospel. There is a perfect unity in truth. Upon all subjects — in all ages — and in all nations — truths of every kind agree with one another.

IV. Objections Answered

It has been said that the common sense of all nations, and particularly of less developed ones, is in favor of punishing murder with death.

The common sense of all nations has been used to justify slavery. The common sense of all nations has been used to justify torture. The common sense of all nations has been used to justify conquest and the extermination of peoples who stood in the way of the powerful. Universal acceptance does not establish moral validity. If anything, the record of human history suggests that practices embraced by all nations should be examined with particular care.

It has been said that the anguish of a guilty conscience proclaims the justice and necessity of death as a punishment for murder. I draw a different argument from this fact. If the torment of conscience is the punishment God visits upon murder, why do we shorten or destroy that torment by death? We are taught to direct even the most atrocious murderers toward the expectation of pardon in the world to come. Let us not counteract the governance of God in the human soul. Let the murderer live — but let it be to suffer the reproaches of a conscience that cannot be silenced. Let him live to make restitution to society for the injury done by robbing it of a citizen. Let him live to support the family of the person he has killed. Let him live, that the punishment of his crime may be visible and continuous. And let him live — that murder may be extirpated at last from the catalog of human offenses.

Consider the conduct of the moral Ruler of the world toward the first murderer. See Cain returning from the field with the blood of his brother on his hands. Do the heavens gather darkness and does lightning strike him down? No. Does Adam, the natural legislator and judge of the world, impose upon him the sentence of death? No. The infinitely wise God becomes his judge and his executioner. He expels him from the society of which he was a member. He fixes in his conscience a deathless torment. He subjects him to the necessity of labor. And to secure a duration of punishment proportioned to the crime, he places upon him a mark or prohibition to prevent his being put to death by weak and angry men — declaring at the same time that whoever slays Cain, vengeance shall be taken on them sevenfold.

Judges, prosecutors, witnesses, juries, and wardens — whose office it is to punish murder by death — I implore you to pause and listen to the voices of reason and religion before you convict or execute another human being for murder.

But I despair of making such an impression upon the present citizens of the United States as shall abolish this absurd and unchristian practice. This essay will likely descend to those who come after us. To you, therefore, the generations yet unborn, I consecrate this modest tribute to justice. You will enjoy a knowledge that we can only glimpse from where we stand. You will look back with both contempt and horror upon the indolence, the ignorance, and the cruelty of those who came before you. The worst crimes will not exclude their perpetrators from your pity. You will understand fully the scope of the gospel's discoveries and precepts, and you will be moved, I hope, by its gentle and forgiving

spirit. You will see many of our certainties in religion and government turned upside down. You will see many connections established between cause and effect that we could not perceive. From the importance and destiny of every human soul, you will have acquired ideas about the dignity of human nature and the infinite value of every act of mercy that takes as its object the bodies, the souls, and the lives of your fellow creatures. You will love the whole human race, because you will have understood that you share a common origin — and you will have learned to imitate your Creator by converting the punishments to which human folly and wickedness have exposed people into the means of their reformation and happiness.

A Reply to Theocratos

Soon after the above inquiry was published, a reply to it appeared under the signature of Theocratos, which has produced the following answer. The principal arguments in favor of punishing murder by death, contained in the reply, are addressed below.

I have read a reply, subscribed Theocratos, to an inquiry into the justice and policy of punishing murder by death. The author has attempted to justify public and capital punishments, as well as war, by the precepts of the gospel. Let not my readers suppose that this author is a skeptic — or a secularist — or that he is in any degree hostile to Christianity. Far from it. He is a minister of the gospel — and a man of worthy private as well as public character.

Our author begins his reply by asserting that the objection to the death penalty for murder originated in a rejection of the doctrine of the atonement. Here I must acknowledge my obligations to our author for providing me with a new argument in favor of my principles. I believe in the doctrine of the atonement, not only because it is clearly revealed in the old and new testaments, but because it is consistent with nature and reason. Life is the product of death throughout every part of the created order. Reason likewise confirms the necessity of the atonement, because certainty of consequence — rather than severity of punishment — is what actually deters crime. The demands of the divine law, which made the shedding of blood necessary for the remission of sin, constitute a sublime illustration of the

perfection of divine governance and the love of the Supreme Being for intelligent creatures. But in the demand of life for disobedience, let the divine law stand alone. Human beings stand in a very different relation to one another from that which God holds toward humanity. We are all fallible, and deficient in a thousand duties we owe to one another. We are bound, therefore, by the precept of doing to others as we would have them do to us — to forgive without requiring a satisfaction, inasmuch as we constantly require the same forgiveness to be extended toward ourselves. To punish murder, or any crime, by death under the gospel dispensation is to elevate the angry and vindictive passions of human beings to an equality with the perfect law of God. It places imperfect individuals and corrupted human governments upon the throne of the righteous Judge of the universe. And it does more than that: it makes the death of Christ of no effect. Every time we punish murder by death, we practically deny that Christ's death was a full expiation for every sin — and thereby exclude ourselves from deriving any benefit from it. For he has made the forgiveness of injuries, without any exceptions, whether committed against us in our private capacities or as members of a community, the express condition of our title to the forgiveness that he has purchased for us.

The arguments against the punishment of murder by death from reason remain on an immovable foundation. Our author has contradicted them. He has not refuted one of them. I affirmed in my earlier essay that the punishment of murder by death had been abolished in numerous nations. The data now available to us goes far beyond anything I could have cited then. Over 100

nations have abolished capital punishment in law or in practice. Among nations that retain it, the company is instructive: authoritarian governments, failed states, and a small number of democracies that are, by the measure of every social index, outliers in the developed world. The United States executes people alongside China, Iran, Saudi Arabia, and Egypt. This is not the company that a nation conceived in liberty ought to keep.

The research is conclusive on deterrence. The most sophisticated studies, controlling for variables that earlier research could not, find no relationship between the presence or use of the death penalty and homicide rates. The states in this country with the highest rates of execution are not the states with the lowest rates of murder. The states that have abolished the death penalty have not watched their murder rates rise. The deterrence argument was always an argument from intuition rather than evidence. Now we have the evidence, and the intuition was wrong.

I derived my information on international abolition from sources I am prepared to defend at length. The movement against capital punishment in Europe was not the product of a synod or a religious convocation. It arose from the combined influence of cultivated reason and the slow permeation of gospel values into the structures of civil society. Reason and religion have the same objects. They are in no instance opposed to each other. On the contrary, reason is imperfect religion — and religion is perfect reason.

It becomes Christians to be careful how readily they condemn the virtue of mercy because it is recommended by those they consider insufficiently orthodox. Voltaire

taught the princes of Europe the duty of religious toleration before Christians had worked out the theology. The Marquis of Beccaria, writing in 1764, established the connection between the abolition of capital punishment and the order and happiness of society before the church was prepared to acknowledge it. If anything in the scriptures appeared to contradict these discoveries, one could foresee that the principles of humane legislation would soon have a just preference to the principles and precepts of those who appealed to scripture in defense of the gallows.

Our author attempts to support his sanguinary conclusions by an appeal to revelation. And here I will make two preliminary observations.

First: there is no opinion so absurd or impious that it cannot be supported by isolated texts of scripture. To understand what the Bible teaches on any subject, we must be governed by its whole spirit and tenor, not by the texts most convenient to the conclusion we have already reached.

Second: the design of Christianity at its first proclamation was to reform the world by its spirit rather than by its positive precepts. Our Savior did not forbid slavery in direct terms. He bore an indirect testimony against it by commanding us to do to others what we would have them do to us in like circumstances. He did not aim to produce a sudden revolution in human affairs. He knew too well the power and efficacy of his religion for that purpose. It was unnecessary, therefore, to expose it to additional opposition by direct attacks upon the prejudices and interests of humanity — interests that were closely woven into the fabric of civil government. The gospel works like leaven. It takes time.

The church's slowness to see what the gospel requires is not evidence that the gospel does not require it.

After these observations, I will add only that the statements of Paul before Festus regarding the penalty of death, and the words of the dying thief on the cross, prove only that death was the punishment prescribed by Roman law. They by no means prove that this was sanctioned by the gospel. Human life was extraordinarily cheap under the Roman government. The sword was considered an emblem of public justice — but to suppose from the presence of that emblem, or from any of our Savior's parables, that capital punishment is approved in the new testament is as absurd as supposing that competitive athletics constitutes a Christian exercise because Paul frequently referenced the Olympic games.

The conduct and words of our Savior should outweigh every argument that has been or can be offered in defense of capital punishment for any crime. When the woman taken in adultery was brought before him, he evaded inflicting the prescribed sentence of the Jewish law. Even physical harm to the body appears to have been offensive to him: when Peter drew his sword and struck the servant of the high priest, Jesus replaced the ear by miracle and declared that all who take the sword shall perish by the sword. He forgave the crime of murder from the cross. After his resurrection, he commanded his disciples to preach the gospel of forgiveness first at Jerusalem — a city where he knew his murderers still resided. These striking facts are recorded for our imitation. They seem intended to show that the Son of God died not only to reconcile God to humanity, but to reconcile human beings to one another.

There is one passage more in the history of our Savior's life which would by itself overturn the justice of the death penalty for murder, even if every other part of the Bible had been silent on the subject. When two of his disciples, animated by the spirit of vindictive legislators, requested permission to call down fire from heaven to consume the inhospitable Samaritans, he answered them: "The Son of Man is not come to destroy people's lives, but to save them." I wish those words formed the motto of every nation on the face of the earth. They encompass every duty calculated to preserve — restore — or prolong human life. They stand against war. They stand against capital punishment. The objects of both are the unprofitable destruction of human lives.

How precious does a human life appear from these words, in the sight of heaven. Pause, legislators, when you cast your votes for the punishment of death for any crime. You frustrate in that moment the design of the mission of the Son of God into the world — and thereby either deny his appearance in human flesh or reject the truth of his gospel. You strengthen the arguments of those who reject the particular doctrines of Christian revelation. You preserve a bloody fragment of the Jewish institution. The Son of Man came not to destroy people's lives, but to save them. Excellent words. I require no others to confirm my confidence in the truth and divine origin of the Christian religion. And while I am able to place a finger upon this text of scripture, I will not believe any voice from heaven that might declare that the punishment of death for any crime was inculcated or permitted by the spirit of the gospel.

It has been said that a person who has committed murder has revealed a malignity of heart that renders

them permanently unfit for human society. This is by no means true in many — and perhaps in most — cases of murder. Murder is most frequently the effect of a sudden storm of passion, and has sometimes been the only moral failure in an otherwise peaceable and inoffensive life. There are many crimes that unfit a person far more thoroughly for human society than a single act of murder. And there have been instances of murderers who escaped or outlasted the law who afterwards became peaceable and useful members of their communities. Let it not be supposed that I wish by this observation to minimize the enormity of murder. Far from it. It is precisely because I view murder with such horror that I wish to strip our laws of the power of perpetrating and encouraging it.

Our author has supplied us with a number of cases intended to show that the providence of God is particularly engaged in the detection of murder, and that the confessions of murderers have in many instances confirmed the justice of their punishment. I do not wish to diminish the influence of whatever cautionary beliefs tend to prevent crime. But I will venture to declare that far more murderers escape detection than are caught and punished. The history of wrongful conviction in this country — documented now by the Innocence Project and similar organizations in case after verifiable case — demonstrates not that providence protects us from executing the innocent, but that we have done it. We have done it repeatedly. We have done it to people who confessed under duress. We have done it to people whose cases never received the legal attention they deserved. We have done it in ways that align with every durable pattern of racial injustice

in American life. The acquiescence of condemned persons in the justice of their own execution is not the voice of conscience in harmony with reason and religion. It is the voice of a person who has been ground down by a system designed to produce exactly that result.

The world has certainly been changed for the better over the past two centuries. This change has been produced chiefly by the secret and often unacknowledged influence of Christianity upon the hearts and minds of people. It is instructive to trace the effects of the Christian religion in the extirpation of slavery — in the diminution of the number of capital crimes — in the mitigation of the horrors of war. There was a time when masters possessed power over the lives of their enslaved people. Christianity eventually ended this, though far too slowly and with far too much accommodation to those who wished to retain it. There was a time when torture was a standard element of criminal punishment, and when the number of capital offenses was measured in the hundreds. Christianity reduced them to a handful. It has done more. It has confined capital punishment in some places to the crime of murder alone — and in many countries abolished it altogether. The trajectory is unmistakable. The direction of the gospel is clear. That we have not yet arrived at our destination does not mean the destination has changed.

The influence of Christian values upon the conduct of war has been still more remarkable. Consider its progress: first in protecting women and children from the full violence of military conflict; then in preventing the execution of prisoners of war; then in protecting civilian populations from becoming targets of military action; then in establishing the exchange of prisoners

rather than condemning them to slavery; then in placing limits on the destruction of private property; then in declaring that offensive war is without moral justification. This is the only basis on which war now sustains any claim to legitimacy among Christian peoples. It requires little ingenuity to observe that a purely defensive war cannot be waged successfully without offensive operations. And if that is true, then even this last remnant of justified war must ultimately yield to the spirit of the gospel. Already we see in every international negotiation, every treaty framework, every appeal to international law, the struggle of conscience against the old logic of violence. These events indicate an improving state of human affairs. They lead us to look forward with expectation to the time when the instruments of war will be transformed into the instruments of cultivation — when rapine and violence shall be no more. These events are the promised fruits of the gospel. If they do not come to pass, the prophets have deceived us. And if they do — then war must be as contrary to the spirit of the gospel as fraud, or murder, or any other vice the gospel names and works to extirpate.

I cannot close this subject without remarking that capital punishment is the natural offspring of authoritarian government. Tyrants believe they possess their power by divine right. No wonder, therefore, that they assume the divine prerogative of taking human life. Tyrants regard the people they govern as their property. No wonder, therefore, that they shed the blood of the governed with as little emotion as a rancher sheds the blood of livestock. But the principles of republican government speak an entirely different language. They

expose the absurdity of the divine origin of kingly power. They draw the most distant ranks of citizens toward one another. They restore the human person to God — to society — and to themselves. They revive and establish the bonds of fellow-citizen, friend, and sibling. They affirm the value of human life and increase every public and private obligation to preserve it. They regard human sacrifice as no less offensive to the sovereignty of the people than to the majesty of heaven. They understand the attributes of government, like the attributes of God, to be more honored by destroying evil through merciful means than through exterminating punishments. The United States has adopted these peaceful and benevolent forms of government. It becomes this nation, therefore, to adopt their mild and benevolent principles as well.

An execution in a republic is a human sacrifice offered in the name of religion. It is an offering to monarchy — and to that malignant force which has gone by the name of murderer since the beginning, and which delights equally in killing whether it is perpetrated by the cold and vindictive arm of the law or by the furious hand of private revenge.

DEFINITIONS AND TERMS

Benjamin Rush (1746-1813): Physician, signer of the Declaration of Independence, and one of the most consequential public intellectuals of the founding era. Rush was a founder of the first American antislavery society, the first American to argue systematically against public punishment of criminals, and the first American to publish a sustained argument for the complete abolition of capital punishment. His medical and psychological theories, some of which we now know to be incorrect, should not obscure his moral and political arguments, which remain rigorous and unrefuted.

The first political compact: Rush's term for the foundational agreement by which individuals enter civil society. Drawing on social contract theory, Rush argues that this compact involves the surrender of certain natural liberties in exchange for the protections of organized government — but not the surrender of life, which no one possesses the right to surrender, and which the state therefore cannot claim. The argument is philosophically related to Beccaria's argument in *On Crimes and Punishments* (1764), which Rush had read.

Suicide by execution: Rush's identification, in 1792, of what we now call "suicide by cop" — the phenomenon of individuals who wish to die but cannot bring themselves to act, and who therefore commit murder in order to be executed by the state. Rush

documented this phenomenon from contemporary cases and used it as evidence that capital punishment produces the violence it claims to deter. Law enforcement researchers have confirmed the phenomenon in contemporary studies.

Theocratos: The pseudonym of the minister who wrote a reply to Rush's 1792 essay arguing for capital punishment on scriptural and philosophical grounds. Theocratos has never been identified with certainty. Rush's reply to him, published in 1793, constitutes the second half of the present volume and contains some of Rush's most developed arguments, including his extended treatment of the theological case for mercy and his argument that capital punishment contradicts the doctrine of the atonement.

The doctrine of the atonement: The Christian theological doctrine that Christ's death on the cross constitutes a full satisfaction for the sins of humanity, making possible the forgiveness and reconciliation of human beings with God. Rush's argument is that capital punishment contradicts this doctrine: if Christ's death is a full expiation for every sin, then the state's insistence on additional human death as punishment for murder effectively denies the sufficiency of the atonement and excludes its practitioners from the benefit of Christ's sacrifice. This is one of the most theologically sophisticated arguments in the abolitionist tradition.

The law of Moses and the Noahic covenant: Rush engages two primary scriptural arguments used to justify capital punishment: the Mosaic law

prescribing death for murder, and the command given to Noah (“whoever sheds the blood of man, by man shall his blood be shed”). His response to the Mosaic argument is that many Mosaic laws were accommodated to a particular people in a particular moment of moral development and do not bind later societies. His response to the Noahic argument is that the passage is properly read as a prophecy rather than a command, and that even if it were a command, its context — a world without prisons — does not apply to societies that possess other means of addressing violent crime.

Republican government: Rush’s argument that capital punishment is incompatible with republican principles is among his most distinctive contributions. He argues that execution is “the natural offspring of authoritarian government” — that tyrants execute because they view the people as their property, while republics, which derive their authority from the consent of the governed, have both a philosophical obligation and a practical incentive to preserve the lives of citizens rather than destroy them. The argument has lost none of its force.

The Innocence Project: An organization founded in 1992 that uses DNA evidence and other methods to identify and work toward the exoneration of wrongly convicted people. Since its founding, the Innocence Project has contributed to the exoneration of more than 200 people in the United States. Rush anticipated this argument in 1792 when he observed that “far more murderers escape detection than are caught and punished” and that confessions by

condemned persons are not reliable evidence of guilt. The Innocence Project's work has confirmed that wrongful conviction is systematic, not exceptional, and that it correlates with every durable pattern of racial injustice in American life.

The National Research Council (2012): The National Research Council's 2012 report, *Deterrence and the Death Penalty*, concluded after a comprehensive review of the existing research that studies of the deterrent effect of capital punishment were "fundamentally flawed" and that their results were "unsuitable" as a basis for policy decisions. The report is the most authoritative assessment of the deterrence question in the contemporary literature. Rush reached the same conclusion in 1792 by a combination of reason and limited empirical observation. Two hundred years of additional evidence have not changed the answer.

FURTHER READING

On Benjamin Rush

Hawke, David Freeman. Benjamin Rush: Revolutionary Gadfly. Bobbs-Merrill, 1971. The standard biography. Hawke is sympathetic to Rush's complexity and covers his abolitionist and penal reform work in the context of his broader public career.

Rush, Benjamin. The Autobiography of Benjamin Rush. Edited by George W. Corner. Princeton University Press, 1948. Rush's own account of his life and work, including his involvement in the penal reform movement and his correspondence with the European reformers.

Rush, Benjamin. Essays: Literary, Moral, and Philosophical. 1806. The collection in which Rush gathered his social essays, including the Considerations and other penal reform writings. Available through Early American Imprints and Google Books.

On the Abolitionist Tradition

Beccaria, Cesare. An Essay on Crimes and Punishments. 1764. Edited and modernized by Jeff Hood. Complicit Press, 2026. The foundational text of the modern abolitionist tradition, which directly influenced Rush. Beccaria's argument from social contract theory complements Rush's argument from natural rights and Christian theology.

FURTHER READING

Spear, Charles. *Essays on the Punishment of Death*. 1844. Edited and modernized by Jeff Hood. Complicit Press, 2026. The American antebellum abolitionist argument, which draws extensively on Rush and places his work in the context of the reform movement that Rush helped to found.

Livingston, Edward. *Argument Against Capital Punishment*. 1833. Edited and modernized by Jeff Hood. Complicit Press, 2026. Livingston's argument from Louisiana focuses on the constitutional and natural rights dimensions of abolition — arguments that extend Rush's framework into the specifically American legal context.

Mittermaier, Karl Joseph Anton. *Capital Punishment*. 1865. Edited and modernized by Jeff Hood. Complicit Press, 2026. The most comprehensive nineteenth-century survey of the empirical evidence on capital punishment. Mittermaier provides the comparative statistical foundation for claims that Rush could only make on the basis of limited observation.

On Punishment and American Criminal Justice

Banner, Stuart. *The Death Penalty: An American History*. Harvard University Press, 2002. The definitive historical account of capital punishment in the United States from the colonial period to the present. Places Rush's essay in its historical context and traces the abolitionist movement he helped to found through its subsequent development.

FURTHER READING

Masur, Louis P. *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865*. Oxford University Press, 1989. Examines the period during and after Rush’s advocacy, tracing how public attitudes toward execution changed and how the reform movement he helped initiate eventually succeeded in abolishing public executions and reducing the number of capital offenses.

Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press, 2010. Rush’s argument that the death penalty “aligns with every durable pattern of racial injustice in American life” is documented in detail in Alexander’s comprehensive account of how the criminal justice system has perpetuated racial hierarchy.

Related Volumes in This Series

Darrow, Clarence. *An Eye for an Eye*. 1905. Edited and reset by Jeff Hood. Complicit Press, 2026. The companion fiction volume — Darrow’s novella about a working-class man on death row. Where Rush provides the philosophical and theological argument, Darrow provides the human face of the condemned.

Hugo, Victor. *Under Sentence of Death*. 1829. Edited and reset by Jeff Hood. Complicit Press, 2026. The first-person diary of a condemned man — the fictional counterpart to Rush’s philosophical argument. Hugo’s novel makes the case through experience that Rush makes through reason.

FURTHER READING

Romilly, Samuel. *Observations on the Criminal Law of England*. 1810. Edited and modernized by Jeff Hood. Complicit Press, 2026. Romilly's argument for reducing capital offenses in England, written eighteen years after Rush's essay. The two men were working on parallel tracks — Rush in the American context, Romilly in the English — and both were arguing from the same philosophical tradition.

CONCLUSION

*Is it not absurd that the laws, which punish murder, should
themselves commit it?*

— BECCARIA

By 1799 the argument in this omnibus had done two things that eighteen previous centuries had not managed. It had gotten into print, and it had gotten into law.

Tuscany, 1786: Leopold reads Beccaria and abolishes the death penalty outright — the first state in the modern world to do it, and it did not collapse. Austria, the same decade. Pennsylvania, 1794: murder divided into degrees, the capital list cut nearly to nothing, largely on arguments Rush had made two years before. The gallows was no longer a fact of nature. It had become a policy, and policies can be changed.

That is the achievement, and it is enormous, and it is also the beginning of the trap we are still in.

Because the other thing this period established is the lesser argument — that the death penalty should be *narrowed*. Fewer offenses. Better procedure. Degrees of murder. Private executions instead of public ones. Every one of those reforms was won by abolitionists using abolitionist arguments, and every one of them made the remaining gallows more defensible than the one it replaced. Kill fewer people, more carefully, out of sight, and the objection loses its edge. I have watched this happen in my own lifetime with lethal injection: a killing redesigned to look like medicine, defended on the ground that it is gentler than what came before.

Beccaria did not ask for a gentler scaffold. Pelli did not ask for a narrower list. Rush did not ask for a better rope. All three asked for the thing to stop.

And then France, which had heard the argument at full volume from Robespierre himself, built the guillotine and used it on a scale the Bourbons never dreamed of — including on the man who made the speech.

Whatever else the Enlightenment settled, it did not settle the question of whether reason can hold a state's hand once the state decides that killing is necessary. That question is open. It was open at Thermidor and it is open in Arkansas.

What the next omnibus records is the movement's discovery that arguments alone would not do it. After 1800 the work changes character: societies, committees, parliamentary returns, petitions, statistics, novels, newspapers. The philosophers hand the case to the organizers. It is the same case. It has simply stopped being an essay and started being a campaign.

Two hundred and thirty-four years after Rush, this country still kills people, and it still cannot answer him. Read the *Considerations* and then read a modern brief for the death penalty and see if you can find a single argument in the second that is not already refuted in the first.

INDEX

*Page numbers refer to the
sequential pages of this omnibus,
not to the internal pagination of
the individual volumes*

A

America, early republic, 18–303 passim
Assembly, French Constituent, 214, 216,
218, 225, 238, 254, 256
atonement, doctrine of, 286, 297

B

Beccaria, Cesare, 21–300 passim
Belgium, 212, 217, 244, 248
Bentham, Jeremy, 104, 210–212, 214–217,
220, 222, 254–256
Bombay, 217, 244, 249, 255, 256
brutalization of spectators, 20, 49–51, 79,
103, 126, 154, 159, 161, 162, 187, 203,
227, 242, 277

C

Catherine the Great, 103
clemency and pardon, 60, 101, 121, 172, 184,
185, 198, 199, 235, 282

D

Declaration of Independence, 72, 263, 267,
268, 296
deterrence, 19–299 passim
Dublin Statistical Society, 211, 214, 216, 217,
220, 244, 250, 251, 254–256
duration versus intensity of punishment,
161, 165, 224, 226, 227, 255, 283

E

England, criminal law of, 206, 217, 223,
244, 248, 255, 303

error, irreparable, 43, 57, 131, 132, 136–139,
168, 171, 212, 222, 230, 251

F

Florence, 17, 21, 22, 25, 26, 85, 87
France, 89, 91, 216, 217, 225, 230, 238, 239,
244, 249, 254, 255

G

Genesis 9:6, 76, 217, 251, 255, 256
guillotine, 206, 216, 238, 254

H

Haughton, James, 210–212, 214–217, 220,
244, 254–256
hulks and hard labor, 227, 234, 235, 277

I

imprisonment, perpetual, 49, 105, 159, 162,
203, 234

J

juries, reluctance of, 22–287 passim

L

Locke, John, 36, 72, 87

M

Milan, 88, 98
Montesquieu, 109, 135
Mosaic law, 44, 45, 279–281, 297, 298
murder, degrees of, 119

N

Noahic covenant, 44, 45, 280, 297, 298

P

Paris, 91, 181, 211, 214, 220, 238, 256
Pelli, Giuseppe, 15–104 passim
penitentiary, the, 234
Pennsylvania, 267
Philadelphia, 260, 267

proportion of punishment to crime, 21–283
passim

Q

Quakers, 130, 157, 166, 183, 245

R

religion and the scaffold, 40–300 passim

Robespierre, Maximilien, 210, 212, 214,
216–218, 220, 238, 254, 256, 257

Rush, Benjamin, 92, 104, 205, 206, 260,
261, 263, 264, 267–270, 272, 274,
296–303

S

social contract, 21, 38, 39, 66, 72, 87, 105,
109, 111, 112, 116, 179, 182, 185, 187, 193,
202, 268, 275, 296, 300

suicide, 101, 174, 175, 276, 296

T

Terror, the, 103, 161, 214, 216, 224, 226,
235, 238, 254

Theocratos, 260, 261, 267, 268, 286–295,
297

torture, 33–293 passim

Tuscany, abolition in, 25, 103, 217, 244, 249

V

vengeance, 19, 26, 32, 39, 57–59, 67, 81, 88,
153, 212, 233, 242, 246, 249, 250, 279,
280, 283, 295

Voltaire, 98, 105, 205, 255, 288

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