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BECCARIA

*On Crimes and Punishments
and Other Writings*

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Chapter 28 The death penalty

I am prompted by this futile excess of punishments, which have never made men better, to enquire whether the death penalty is really useful and just in a well-organised state. By what right can men presume to slaughter their fellows? Certainly not that right which is the foundation of sovereignty and the laws. For these are nothing but the sum of the smallest portions of each man's own freedom; they represent the general will which is the aggregate of the individual wills. Who has ever willingly given up to others the authority to kill him? How on earth can the minimum sacrifice of each individual's freedom involve handing over the greatest of all goods, life itself? And even if that were so, how can it be reconciled with the other principle which denies that a man is free to commit suicide, which he must be, if he is able to transfer that right to others or to society as a whole?

Thus, the death penalty is not a matter of *right*, as I have just shown, but is an act of war on the part of society against the citizen that comes about when it is deemed necessary or useful to destroy his existence. But if I can go on to prove that such a death is neither necessary nor useful, I shall have won the cause of humanity.

There are only two grounds on which the death of a citizen might be held to be necessary. First, when it is evident that even if deprived of his freedom, he retains such connections and such power as to endanger the security of the nation, when, that is, his existence may threaten a dangerous revolution in the established form of government. The death of a citizen becomes necessary,

therefore, when the nation stands to gain or lose its freedom, or in periods of anarchy, when disorder replaces the laws. But when the rule of law calmly prevails, under a form of government behind which the people are united, which is secured from without and from within, both by its strength and, perhaps more efficacious than force itself, by public opinion, in which the control of power is in the hands of the true sovereign, in which wealth buys pleasures and not influence, then I do not see any need to destroy a citizen, unless his death is the true and only brake to prevent others from committing crimes, which is the second ground for thinking the death penalty just and necessary.

Although men, who always suspect the voice of reason and respect that of authority, have not been persuaded by the experience of centuries, during which the ultimate penalty has never dissuaded men from offending against society, nor by the example of the citizens of Rome, nor by the twenty years of the reign of the Empress Elizabeth of Muscovy, in which she set the leaders of all peoples an outstanding precedent, worth at least as much as many victories bought with the blood of her motherland's sons, it will suffice to consult human nature to be convinced of the truth of my claim.

It is not the intensity, but the extent of a punishment which makes the greatest impression on the human soul. For our sensibility is more easily and lastingly moved by minute but repeated impressions than by a sharp but fleeting shock. Habit has universal power over every sentient creature. Just as a man speaks and walks and goes about his business with its help, so moral ideas are only impressed on his mind by lasting and repeated blows. It is not the terrible but fleeting sight of a felon's death which is the most powerful brake on crime, but the long-drawn-out example of a man deprived of freedom, who having become a beast of burden, repays the society which he has offended with his labour. Much more potent than the idea of death, which men always regard as vague and distant, is the efficacious because often repeated reflection that *I too shall be reduced to so dreary and so pitiable a state if I commit similar crimes.*

For all its vividness, the impression made by the death penalty cannot compensate for the forgetfulness of men, even in the most important matters, which is natural and speeded by the passions.

As a general rule, violent passions take hold of men but not for long; thus they are suited to producing those revolutions which make normal men into Persians or Spartans; whereas the impressions made in a free and peaceful state should be frequent rather than strong.

For most people, the death penalty becomes a spectacle and for the few an object of compassion mixed with scorn. Both these feelings occupy the minds of the spectators more than the salutary fear which the law claims to inspire. But with moderate and continuous punishments it is this last which is the dominant feeling, because it is the only one. The limit which the lawgiver should set to the harshness of punishments seems to depend on when the feeling of compassion at a punishment, meant more for the spectators than for the convict, begins to dominate every other in their souls.

{If a punishment is to be just, it must be pitched at just that level of intensity which suffices to deter men from crime. Now there is no-one who, after considering the matter, could choose the total and permanent loss of his own freedom, however profitable the crime might be. Therefore, permanent penal servitude in place of the death penalty would be enough to deter even the most resolute soul: indeed, I would say that it is more likely to. Very many people look on death with a calm and steadfast gaze, some from fanaticism, some from vanity, a sentiment that almost always accompanies a man to the grave and beyond, and some from a last desperate effort either to live no more or to escape from poverty. However, neither fanaticism nor vanity survives in manacles and chains, under the rod and the yoke or in an iron cage; and the ills of the desperate man are not over, but are just beginning. Our spirit withstands violence and extreme but fleeting pains better than time and endless fatigue. For it can, so to speak, condense itself to repel the former, but its tenacious elasticity is insufficient to resist the latter.

With the death penalty, every lesson which is given to the nation requires a new crime; with permanent penal servitude, a single crime gives very many lasting lessons. And, if it is important that men often see the power of the law, executions ought not to be too infrequent: they therefore require there to be frequent crimes; so that, if this punishment is to be effective, it is necessary that it not make the impression that it should make. That is, it must be

both useful and useless at the same time. If it be said that permanent penal servitude is as grievous as death, and therefore as cruel, I reply that, if we add up all the unhappy moments of slavery, perhaps it is even more so, but the latter are spread out over an entire life, whereas the former exerts its force only at a single moment. And this is an advantage of penal servitude, because it frightens those who see it more than those who undergo it. For the former thinks about the sum of unhappy moments, whereas the latter is distracted from present unhappiness by the prospect of future pain. All harms are magnified in the imagination, and the sufferer finds resources and consolations unknown and unsuspected by the spectators, who put their own sensibility in the place of the hardened soul of the wretch.}

A thief or murderer who has nothing to weigh against breaking the law except the gallows or the wheel reasons pretty much along the following lines. (I know that self-analysis is a skill which we acquire with education; but just because a thief would not express his principles well, it does not mean that he lacks them.) *What are these laws which I have to obey, which leave such a gulf between me and the rich man? He denies me the penny I beg of him, brushing me off with the demand that I should work, something he knows nothing about. Who made these laws? Rich and powerful men, who have never condescended to visit the filthy hovels of the poor, who have never mouldy bread among the innocent cries of starving children and a wife's tears. Let us break these ties, which are pernicious to most people and only useful to a few and idle tyrants; let us attack injustice at its source. I shall return to my natural state of independence; for a while I shall live free and happy on the fruits of my courage and industry; perhaps the day for suffering and repentance will come, but it will be brief, and I shall have one day of pain for many years of freedom and pleasure. King of a small band of men, I shall put to rights the iniquities of fortune, and I shall see these tyrants blanch and cower at one whom they considered, with insulting ostentation, lower than their horses and dogs. Then, religion comes into the mind of the ruffian, and makes ill-use of everything, and, offering an easy repentance and near-certainty of eternal bliss, considerably diminishes for him the horror of the last tragedy.*

But a man who sees ahead of him many years, or even the remainder of his life, passed in slavery and suffering before the eyes of his fellow citizens, with whom he currently lives freely and

socially, the slave of those laws by which he was protected, will make a salutary calculation, balancing all of that against the uncertainty of the outcome of his crimes, and the shortness of the time in which he could enjoy their fruit. The continued example of those whom he now sees as the victims of their own lack of foresight, will make a stronger impression on him than would a spectacle which hardens more than it reforms him.

The death penalty is not useful because of the example of savagery it gives to men. If our passions or the necessity of war have taught us how to spill human blood, laws, which exercise a moderating influence on human conduct, ought not to add to that cruel example, which is all the more grievous the more a legal killing is carried out with care and pomp. It seems absurd to me that the laws, which are the expression of the public will, and which hate and punish murder, should themselves commit one, and that to deter citizens from murder, they should decree a public murder. What are the true and most useful laws? Those contracts and terms that everyone would want to obey and to propose so long as the voice of private interest, which is always listened to, is silent or in agreement with the public interest. What are everyone's feelings about the death penalty? We can read them in the indignation and contempt everyone feels for the hangman, who is after all the innocent executor of the public will, a good citizen who contributes to the public good, as necessary an instrument of public security within the state as the valiant soldier is without. What, then, is the root of this conflict? And why is this feeling ineradicable in men, in spite of reason? It is because, deep within their souls, that part which still retains elements of their primitive nature, men have always believed that no-one and nothing should hold the power of life and death over them but necessity, which rules the universe with its iron rod.

What are men to think when they see the wise magistrates and the solemn ministers of justice order a convict to be dragged to his death with slow ceremony, or when a judge, with cold equanimity and even with a secret complacency in his own authority, can pass by a wretch convulsed in his last agonies, awaiting the *coup de grâce*, to savour the comforts and pleasures of life? Ah! they will say, these laws are nothing but pretexis for power and for the calculated and cruel formalities of justice; they are nothing but a concern-

tional language for killing us all the more surely, like the preselected victims of a sacrifice to the insatiable god of despotism. Murder, which we have preached to us as a terrible crime, we see instituted without disgust and without anger. Let us profit from this example. From the descriptions we have been given of it, violent death seemed to be a terrible thing, but we see it to be the work of a minute. How much the less it will be for him who, unaware of its coming, is spared almost everything about it which is most painful! This is the horrific casuistry which, if not clearly, at least confusedly, leads men — in whom, as we have seen, the abuse of religion can be more powerful than religion itself — to commit crimes.

If it is objected that almost all times and almost all places have used the death penalty for some crimes, I reply that the objection collapses before the truth, against which there is no appeal, that the history of mankind gives the impression of a vast sea of errors, among which a few confused truths float at great distances from each other. Human sacrifices were common to almost all nations; but who would dare to justify them? That only a few societies have given up inflicting the death penalty, and only for a brief time, is actually favourable to my argument, because it is what one would expect to be the career of the great truths, which last but a flash compared with the long and dark night which engulfs mankind. The happy time has not yet begun in which the truth, like error hitherto, is the property of the many. Up until now, the only truths which have been excepted from this universal rule have been those which the infinite Wisdom wished to distinguish from the others by revealing them.

The voice of a philosopher is too weak against the uproar and the shouting of those who are guided by blind habit. But what I say will find an echo in the hearts of the few wise men who are scattered across the face of the earth. And if truth, in the face of the thousand obstacles which, against his wishes, keep it far from the monarch, should arrive at his throne, let him know that it arrives with the secret support of all men, and let him know that its glory will silence the blood-stained reputation of conquerors and that the justice of future ages will award him peaceful trophies above those of the Tituses, the Antonines and the Trajans.

How happy humanity would be if laws were being decreed for the first time, now that we see seated on the thrones of Europe

benevolent monarchs, inspirers of the virtues of peace, of the sciences, of the arts, fathers of their peoples, crowned citizens. Their increased power serves the happiness of their subjects because it removes that crueler, because more capricious intermediary despotism, which choked the always sincere desires of the people which are always beneficial when they may approach the throne! If they leave the ancient laws in place, I say, it is because of the endless difficulty of removing the venerated and centuries-old rust. That is a reason for enlightened citizens to wish all the more fervently for their authority to continue to increase.

Chapter 29 Of detention awaiting trial

A mistake no less common for being against the purpose of society, namely a sense of one's own security, is to allow a judge, who is the executor of the law, to be free to detain citizens, to deprive an enemy of his freedom on the slightest pretexts, and to let a friend avoid punishment in spite of the strongest evidence of guilt. Unlike every other sort of punishment, detention necessarily precedes conviction for a crime. But this peculiar characteristic does not set aside that other essential principle, which is that the law alone should determine the cases in which a man deserves to be punished. The law, therefore, should indicate what kinds of criminal evidence justify the detention of the accused, and expose him to investigation and imprisonment. Public repute, flight, confession, denunciation by an accomplice, threats, and continued hostility to the crime's victim, the circumstances of the crime, and similar evidence are sufficient proofs to imprison a citizen. But such proofs have to be established by law and not by judges, whose rulings are always contrary to public safety when they are not particular applications of general rules laid down in statute. The laws can be satisfied with ever weaker evidence for imprisonment as the punishments become more humane, as prisons become less appalling and infamous places, as compassion and humanity enter their iron gates and take control of the inflexible and hardened ministers of justice.

A man accused of a crime, remanded in custody and acquitted should bear no mark of shame. How many Romans, who were accused of the most serious crimes and then found innocent, were