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CHAPTER XXVIII.

OF THE PUNISHMENT OF DEATH.

The useless profusion of punishments, which has never made men better, induces me to inquire, whether the punishment of *death* be really just or useful in a well-governed state? What *right*, I ask, have men to cut the throats of their fellow-creatures?

Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible, that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be obtained the greatest of all good, life? If it were so, how shall it be reconciled to the maxim which tells us, that a man has no right to kill himself? Which he certainly must have, if he could give it away to another.

But the punishment of death is not authorised by any right; for I have demonstrated that no such right exists. It is therefore a war of a whole nation against a citizen, whose destruction they consider as necessary or useful to the general good. But if I can further demonstrate, that it is neither necessary nor useful, I shall have gained the cause of humanity.

The death of a citizen cannot be necessary but in one case. When, though deprived of his liberty, he has such power and connections as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government. But even in this case, it can only be necessary when a nation is on the verge of recovering or losing its liberty; or in times of absolute anarchy, when the disorders themselves hold the place of laws. But in a reign of tranquillity; in a form of government approved by the united wishes of the nation; in a state fortified from enemies without, and supported by strength within, and opinion, perhaps more efficacious; where all power is lodged in the hands of the true sovereign; where riches can purchase pleasures and not authority, there can be no necessity for taking away the life of a subject.

If the experience of all ages be not sufficient to prove, that the punishment of death has never prevented determined men from injuring society; if the example of the Romans; if twenty years reign of Elizabeth, empress of Russia, in which she gave the fathers of their country an example more illustrious than many conquests bought with blood; if, I say, all this be not sufficient to persuade mankind, who always suspect the voice of reason, and who chuse rather to be led by authority, let us consult human nature in proof of my assertion.

It is not the intenseness of the pain that has the greatest effect on the mind, but its continuance; for our sensibility is more easily and more powerfully affected by weak, but by repeated impressions, than by a violent but momentary impulse. The power of

habit is universal over every sensible being. As it is by that we learn to speak, to walk, and to satisfy our necessities, so the ideas of morality are stamped on our minds by repeated impressions. The death of a criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continued example of a man deprived of his liberty, condemned as a beast of burden, to repair, by his labour, the injury he has done to society. *If I commit such a crime*, says the spectator to himself, *I shall be reduced to that miserable condition for the rest of my life*. A much more powerful preventive than the fear of death, which men always behold in distant obscurity.

The terrors of death make so slight an impression, that it has not force enough to withstand the forgetfulness natural to mankind, even in the most essential things; especially when assisted by the passions. Violent impressions surprise us, but their effect is momentary; they are fit to produce those revolutions which instantly transform a common man into a Lacedæmonian or a Persian; but in a free and quiet government they ought to be rather frequent than strong.

The execution of a criminal is, to the multitude, a spectacle which in some excites compassion mixed with indignation. These sentiments occupy the mind much more than that salutary terror which the laws endeavour to inspire; but in the contemplation of continued suffering, terror is the only, or at least, the predominant sensation. The severity of a punishment should be just sufficient to excite compassion in the spectators, as it is intended more for them than for the criminal.

A punishment, to be just, should have only that degree of severity which is sufficient to deter others. Now there is no man, who, upon the least reflection, would put in competition the total and perpetual loss of his liberty, with the greatest advantages he could possibly obtain in consequence of a crime. Perpetual slavery, then, has in it all that is necessary to deter the most hardened and determined, as much as the punishment of death. I say, it has more. There are many who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, which attends us even to the grave; others from a desperate resolution, either to get rid of their misery, or cease to live: but fanaticism and vanity forsake the criminal in slavery, in chains and fetters, in an iron cage; and despair seems rather the beginning than the end of their misery. The mind, by collecting itself and uniting all its force, can, for a moment, repel assailing grief; but its most vigorous efforts are insufficient to resist perpetual wretchedness.

In all nations, where death is used as punishment, every example supposes a new crime committed. Whereas, in perpetual slavery, every criminal affords a frequent and lasting example: and if it be necessary that men should often be witnesses of the power of the laws, criminals should often be put to death; but this supposes a frequency of crimes; and from hence this punishment will cease to have its effect, so that it must be useful and useless at the same time.

I shall be told, that perpetual slavery is as painful a punishment as death, and therefore as cruel. I answer, that if all the miserable moments in the life of a slave were collected into one point, it would be a more cruel punishment than any other; but

these are scattered through his whole life, whilst the pain of death exerts all its force in a moment. There is also another advantage in the punishment of slavery, which is, that it is more terrible to the spectator than to the sufferer himself; for the spectator considers the sum of all his wretched moments, whilst the sufferer, by the misery of the present, is prevented from thinking of the future. All evils are increased by the imagination, and the sufferer finds resources and consolation, of which the spectators are ignorant; who judge by their own sensibility of what passes in a mind by habit grown callous to misfortune.

Let us, for a moment, attend to the reasoning of a robber or assassin, who is deterred from violating the laws by the gibbet or the wheel. I am sensible, that to develop the sentiments of one's own heart, is an art which education only can teach; but although a villain may not be able to give a clear account of his principles, they nevertheless influence his conduct. He reasons thus: "What are these laws that I am bound to respect, which make so great a difference between me and the rich man? He refuses me the farthing I ask of him, and excuses himself by bidding me have recourse to labour, with which he is unacquainted. Who made these laws? The rich and the great, who never deigned to visit the miserable hut of the poor; who have never seen him dividing a piece of mouldy bread, amidst the cries of his famished children, and the tears of his wife. Let us break those ties, fatal to the greatest part of mankind, and only useful to a few indolent tyrants. Let us attack injustice at its source. I will return to my natural state of independence. I shall live free and happy on the fruits of my courage and industry. A day of pain and repentance may come, but it will be short; and for an hour of grief, I shall enjoy years of pleasure and liberty. King of a small number, as determined as myself, I will correct the mistakes of fortune; and shall see those tyrants grow pale and tremble at the sight of him, whom, with insulting pride, they would not suffer to rank with dogs and horses."

Religion then presents itself to the mind of this lawless villain, and promising him almost a certainty of eternal happiness upon the easy terms of repentance, contributes much to lessen the horror of the last scene of the tragedy.

But he who foresees that he must pass a great number of years, even his whole life, in pain and slavery; a slave to those laws by which he was protected; in sight of his fellow citizens, with whom he lives in freedom and society; makes an useful comparison between those evils, the uncertainty of his success, and the shortness of the time in which he shall enjoy the fruits of his transgression. The example of those wretches continually before his eyes, makes a much greater impression on him than a punishment, which, instead of correcting, makes him more obdurate.

The punishment of death is pernicious to society, from the example of barbarity it affords. If the passions, or necessity of war, have taught men to shed the blood of their fellow creatures, the laws which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, the more horrible, as this punishment is usually attended with formal pageantry. Is it not absurd, that the laws, which detect and punish homicide, should, in order to prevent murder, publicly commit murder themselves? What are the true and most useful laws? Those compacts and conditions which all would propose and observe, in those moments when private interest is

silent, or combined with that of the public. What are the natural sentiments of every person concerning the punishment of death? We may read them in the contempt and indignation with which every one looks on the executioner, who is nevertheless an innocent executor of the public will; a good citizen, who contributes to the advantage of society; the instrument of the general security within, as good soldiers are without. What then is the origin of this contradiction? Why is this sentiment of mankind indelible to the scandal of reason? It is, that in a secret corner of the mind, in which the original impressions of nature are still preserved, men discover a sentiment which tells them, that their lives are not lawfully in the power of any one, but of that necessity only, which with its iron sceptre rules the universe.

What must men think, when they see wise magistrates and grave ministers of justice, with indifference and tranquillity, dragging a criminal to death, and whilst a wretch trembles with agony, expecting the fatal stroke, the judge, who has condemned him, with the coldest insensibility, and perhaps with no small gratification from the exertion of his authority, quits his tribunal to enjoy the comforts and pleasures of life? They will say, “Ah! those cruel formalities of justice are a cloak to tyranny, they are a secret language, a solemn veil, intended to conceal the sword by which we are sacrificed to the insatiable idol of despotism. Murder, which they would represent to us as an horrible crime, we see practiced by them without repugnance or remorse. Let us follow their example. A violent death appeared terrible in their descriptions, but we see that it is the affair of a moment. It will be still less terrible to him, who, not expecting it, escapes almost all the pain.” Such is the fatal, though absurd reasoning of men who are disposed to commit crimes; on whom the abuse of religion has more influence than religion itself.

If it be objected, that almost all nations in all ages have punished certain crimes with death, I answer that the force of these examples vanishes, when opposed to truth, against which prescription is urged in vain. The history of mankind is an immense sea of errors, in which a few obscure truths may here and there be found.

But human sacrifices have also been common in almost all nations. That some societies only, either few in number, or for a very short time, abstained from the punishment of death, is rather favourable to my argument, for such is the fate of great truths, that their duration is only as a flash of lightning in the long and dark night of error. The happy time is not yet arrived, when truth, as falsehood has been hitherto, shall be the portion of the greatest number.

I am sensible that the voice of one philosopher is too weak to be heard amidst the clamours of a multitude, blindly influenced by custom; but there is a small number of sages, scattered on the face of the earth, who will echo to me from the bottom of their hearts; and if these truths should happily force their way to the thrones of princes, be it known to them, that they come attended with the secret wishes of all mankind, and tell the sovereign who deigns them a gracious reception, that his fame shall outshine the glory of conquerors, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antoninus, or a Trajan.

How happy were mankind, if laws were now to be first formed! now that we see on the thrones of Europe benevolent monarchs, friends to the virtues of peace, to the arts and sciences, fathers of their people, though crowned yet citizens; the increase of whose authority augments the happiness of their subjects, by destroying that intermediate despotism which intercepts the prayers of the people to the throne. If these humane princes have suffered the old laws to subsist, it is doubtless because they are deterred by the numberless obstacles which oppose the subversion of errors established by the sanction of many ages; and therefore every wise citizen will wish for the increase of their authority.