

An Essay on Crimes and Punishments

Cesare Beccaria

*By far the most important Enlightenment statement advocating reform of criminal justice was the *Essay on Crimes and Justice*, published in 1764 by the Italian economist Cesare Bonesana, marchese di Beccaria (1735-1794). It was translated immediately into English and French. Voltaire described Beccaria's criticism of capital punishment and torture a plea "in behalf of reason and humanity."*

The knowledge of the true relations between a sovereign and his subjects, and of those between different nations; the revival of commerce by the light of philosophical truths, diffused by printing; and the silent international war of industry, the most humane and the most worthy of rational men—these are the fruits which we owe to the enlightenment of this century. But how few have examined and combated the cruelty of punishments, and the irregularities of criminal procedures, a part of legislation so elementary and yet so neglected in almost the whole of Europe; and how few have sought, by a return to first principles, to dissipate the mistakes accumulated by many centuries, or to mitigate, with at least that force which belongs only to ascertained truths, the excessive caprice of ill-directed power, which has presented up to this time but one long example of lawful and cold-blooded atrocity! And yet the groans of the weak, sacrificed to the cruelty of the ignorant or to the indolence of the rich; the barbarous tortures, multiplied with a severity as useless as it is prodigal, for crimes either not proved or quite chimerical; the disgusting horrors of a prison, enhanced by that which is the cruelest executioner of the miserable—namely, uncertainty—these ought to startle those rulers whose function it is to guide the opinion of men's minds.

The immortal President, Montesquieu, has treated cursorily of this matter; and truth, which is indivisible, has forced me to follow the luminous footsteps of this great man; but thinking men, for whom I write, will be able to distinguish my steps from his. Happy shall I esteem myself if, like him, I shall succeed in obtaining the secret gratitude of the unknown and peaceable followers of reason, and if I shall inspire them with that pleasing thrill of emotion with which sensitive minds respond to the advocate of the interests of humanity.

To examine and distinguish all the different sorts of crimes and the manner of punishing them would now be our natural task, were it not that their nature, which varies with the different circumstances of times and places, would compel us to enter upon too vast and wearisome a mass of detail. But it will suffice to

indicate the most general principles and the most pernicious and common errors, in order to undeceive no less those who, from a mistaken love of liberty, would introduce anarchy, than those who would be glad to reduce their fellow men to the uniform regularity of a convent.

What will be the penalty suitable for such and such crimes?

Is death a penalty really useful and necessary for the security and good order of society?

Are torture and torments just, and do they attain the end which the law aims at?

What is the best way of preventing crimes?

Are the same penalties equally useful in all times?

What influence have they on customs?

These problems deserve to be solved with such geometrical precision as shall suffice to prevail over the clouds of sophistication, over seductive eloquence, or timid doubt. Had I no other merit than that of having been the first to make clearer to Italy that which other nations have dared to write and are beginning to practice, I should deem myself fortunate; but if, in maintaining the rights of men and of invincible truth, I should contribute to rescue from the spasms and agonies of death any unfortunate victim of tyranny or ignorance, both so equally fatal, the blessings and tears of a single innocent man in the transports of his joy would console me for the contempt of mankind....

It is not only the common interest of mankind, that crimes should not be committed, but that crimes of every kind should be less frequent, in proportion to the evil they produce to society. Therefore, the means made use of by the legislature to prevent crimes, should be more powerful, in proportion as they are destructive of the public safety and happiness, and as the inducements to commit them are stronger. Therefore there ought to be a fixed proportion between crimes and punishments.

It is impossible to prevent entirely all the disorders which the passions of mankind cause in society. These disorders increase in proportion to the number of people, and the opposition of private interests. If we consult history, we shall find them increasing, in every state, with the extent of dominion. In political arithmetic, it is necessary to substitute a calculation of probabilities, to mathematical exactness. That force, which continually impels us to our own private interest, like gravity, acts incessantly, unless it meets with an obstacle to oppose it. The effects of this force are the confused series of human actions. Punishments, which I would call political obstacles, prevent the fatal effects of private interest, without destroying the impelling cause, which is that sensibility inseparable from man. The legislator acts, in this case, like a skillful architect, who endeavors to counteract the force of gravity by combining the circumstances which may contribute to the strength of his edifice.

The necessity of uniting in society being granted, together with the conventions, which the opposite interests of individuals must necessarily require, a scale of crimes may be formed, of which the first degree should consist of those, which immediately tend to the dissolution of society, and the last, of the smallest possible injustice done to a private member of that society. Between these extremes will be comprehended, all actions contrary to the public good, which are called criminal, and which descend by insensible degrees, decreasing from the highest to the lowest. If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishments, descending from the greatest to the least: but it will be sufficient that the wise legislator mark the principal divisions, without disturbing the order, lest to crimes of the first degree, be assigned punishments of the last. If there were an exact and universal scale of crimes and punishments, we should there have a common measure of the degree of liberty and slavery, humanity and cruelty of different nations.

Any action, which is not comprehended in the above-mentioned scale, will not be called a crime, or punished as such, except by those who have an interest in the denomination. The uncertainty of the extreme points of this scale, hath produced a system of morality which contradicts the laws; a multitude of laws that contradict each other; and many, which expose the best men to the severest punishments, rendering the ideas of *vice* and virtue vague, and fluctuating, and even their existence doubtful. Hence that fatal lethargy of political bodies, which terminates in their destruction.

Whoever reads, with a philosophic eye, the history of nations, and their laws, will generally find, that the ideas of virtue and vice, of a good or a bad citizen, change with the revolution of ages; not in proportion to the alteration of circumstances, and consequently conformable to the common good; but in proportion to the passions and errors by which the different law-givers were successively influenced. He will frequently observe, that the passions and vices of one age, are the foundation of the morality of the following; that violent passion, the offspring of fanaticism and enthusiasm, being weakened by time, which reduces all the phenomena of the natural and moral world to an equality, become, by degrees, the prudence of the age, and an useful instrument in the hands of the powerful, or artful politician. Hence the uncertainty of our notions of honor and virtue; an uncertainty which will ever remain, because they change with the revolutions of time, and names survive the things they originally signified; they change with the boundaries of states, which are often the same both in physical and moral geography.

Pleasure and pain are the only springs of action in beings endowed with sensibility. Even amongst the motives which incite men to acts of religion, the invisible legislator has ordained rewards and punishments. From a partial distribution of these, will arise that contradiction, so little observed, because so common; I mean, that of punishing by the laws, the crimes which the laws have occasioned. If an equal punishment be ordained for two crimes that injure society in different

degrees, there is nothing to deter men from committing the greater, as often as it is attended with greater advantage....

The foregoing reflections authorize me to assert, that crimes are only to be measured by the injury done to society.

They err, therefore, who imagine that a crime is greater, or less, according to the intention of the person by whom it is committed; for this will depend on the actual impression of objects on the senses, and on the previous disposition of the mind; both which will vary in different persons, and even in the same person at different times, according to the succession of ideas, passions, and circumstances. Upon that system, it would be necessary to form, not only a particular code for every individual, but a new penal law for every crime. Men, often with the best intention, do the greatest injury to society, and with the worst, do it the most essential services.

Others have estimated crimes rather by the dignity of the person offended, than by their consequences to society. If this were the true standard, the smallest irreverence to the divine Being ought to be punished with infinitely more severity, than the assassination of a monarch.

In short, others have imagined, that the greatness of the sin should aggravate the crime. But the fallacy of this opinion will appear on the slightest consideration of the relations between man and man, and between God and man. The relations between man and man, are relations of equality. Necessity alone hath produced, from the opposition of private passions and interests, the idea of public utility, which is the foundation of human justice. The other are relations of dependence, between an imperfect creature and his creator, the most perfect of beings, who has reserved to himself the sole right of being both lawgiver, and judge; for he alone can, without injustice, be, at the same time, both one and the other. If he hath decreed eternal punishments for those who disobey his will, shall an insect dare to put himself in the place of divine justice, or pretend to punish for the Almighty, who is himself all-sufficient; who cannot receive impressions of pleasure, or pain, and who alone, of all other beings, acts without being acted upon? The degree of sin depends on the malignity of the heart, which is impenetrable to finite beings. How then can the degree of sin serve as a standard to determine the degree of crimes? if that were admitted, men may punish when God pardons, and pardon when God condemns; and thus act in opposition to the supreme Being....

We have proved, then, that crimes are to be estimated by the injury done to society. This is one of those palpable truths, which, though evident to the meanest capacity, yet, by a combination of circumstances, are only known to

a few thinking men in every nation, and in every age. But opinions, worthy only of the despotism of Asia, and passions, armed with power and authority, have, generally by insensible and sometimes by violent impressions on the timid credulity of men, effaced those simple ideas, which perhaps constituted the first philosophy of infant society. Happily the philosophy of the present enlightened age seems again to conduct us to the same principles, and with that degree of certainty, which is obtained by a rational examination, and repeated experience....

A cruelty consecrated among most nations by custom is the torture of the accused during his trial, on the pretext of compelling him to confess his crime, of clearing up contradictions in his statements, of discovering his accomplices, of purging him in some metaphysical and incomprehensible way from infamy, or finally of finding out other crimes of which he may possibly be guilty, but of which he is not accused.

A man cannot be called guilty before sentence has been passed on him by a judge, nor can society deprive him of its protection till it has been decided that he has broken the condition on which it was granted. What, then, is that right but one of mere might by which a judge is empowered to inflict a punishment on a citizen whilst his guilt or innocence are still undetermined? The following dilemma is no new one: either the crime is certain or uncertain; if certain, no other punishment is suitable for it than that affixed to it by law; and torture is useless, for the same reason that the criminal's confession is useless. If it is uncertain, it is wrong to torture an innocent person, such as the law adjudges him to be, whose crimes are not yet proved.

What is the political object of punishments? The intimidation of other men. But what shall we say of the secret and private tortures which the tyranny of custom exercises alike upon the guilty and the innocent? It is important, indeed, that no open crime shall pass unpunished; but the public exposure of a criminal whose crime was hidden in darkness is utterly useless. An evil that has been done and cannot be undone can only be punished by civil society insofar as it may affect others with the hope of impunity. If it be true that there are a greater number of men who either from fear or virtue respect the laws than of those who transgress them, the risk of torturing an innocent man should be estimated according to the probability that any man will have been more likely, other things being equal, to have respected than to have despised the laws.

But I say in addition: it is to seek to confound all the relations of things to require a man to be at the same time accuser and accused, to make pain the crucible of truth, as if the test of it lay in the muscles and sinews of an unfortunate wretch. The law which ordains the use of torture is a law which says to men: "Resist pain; and if Nature has created in you an inextinguishable self-love, if she has given you an inalienable right of self-defense, I create in you a totally contrary affection, namely, an heroic self-hatred, and I command you to accuse

yourselves, and to speak the truth between the laceration of your muscles and the dislocation of your bones.”

This infamous crucible of truth is a still-existing monument of that primitive and savage legal system which called trials by fire and boiling water, or the accidental decisions of combat, judgments of God, as if the rings of the eternal chain in the control of the First Cause must at every moment be disarranged and put out for the petty institutions of mankind. The only difference between torture and the trial by fire and water is, that the result of the former seems to depend on the will of the accused, and that of the other two on a fact which is purely physical and extrinsic to the sufferer; but the difference is only apparent, not real. The avowal of truth under tortures and agonies is as little free as was in those times the prevention without fraud of the usual effects of fire and boiling water. Every act of our will is ever proportioned to the force of the sensible impression which causes it, and the sensibility of every man is limited. Hence the impression produced by pain may be so intense as to occupy a man’s entire sensibility and leave him no other liberty than the choice of the shortest way of escape, for the present moment, from his penalty. Under such circumstances the answer of the accused is as inevitable as the impressions produced by fire and water; and the innocent man who is sensitive will declare himself guilty, when by so doing he hopes to bring his agonies to an end. All the difference between guilt and innocence is lost by virtue of the very means which they profess to employ for its discovery.

Torture is a certain method for the acquittal of robust villains and for the condemnation of innocent but feeble men. See the fatal drawbacks of this pretended test of truth—a test, indeed, that is worthy of cannibals; a test which the Romans, barbarous as they too were in many respects, reserved for slaves alone, the victims of their fierce and too highly lauded virtue. Of two men, equally innocent or equally guilty, the robust and courageous will be acquitted, the weak and the timid will be condemned, by virtue of the following exact train of reasoning on the part of the judge: “I as judge had to find you guilty of such and such a crime; you, A B, have by your physical strength been able to resist pain, and therefore I acquit you; you, C D, in your weakness have yielded to it; therefore I condemn you. I feel that a confession extorted amid torments can have no force, but I will torture you afresh unless you corroborate what you have now confessed.”

The result, then, of torture is a matter of temperament, of calculation, which varies with each man according to his strength and sensibility; so that by this method a mathematician might solve better than a judge this problem: “Given the muscular force and the nervous sensibility of an innocent man, to find the degree of pain which will cause him to plead guilty to a given crime.”