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On crimes and punishments

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If we glance at the pages of history, we will find that laws, which surely are, or ought to be, compacts of free men, have been, for the most part, a mere tool of the passions of some, or have arisen from an accidental and temporary need. Never have they been dictated by a dispassionate student of human nature who might, by bringing the actions of a multitude of men into focus, consider them from this single point of view: the *greatest happiness shared by the greatest number*. Happy are those few nations that have not waited for the slow succession of coincidence and human vicissitude to force some little turn for the better after the limit of evil has been reached, but have facilitated the intermediate progress by means of good laws. And humanity owes a debt of gratitude to that philosopher who, from the obscurity of his isolated study, had the courage to scatter among the multitude the first seeds, so long unfruitful, of useful truths.

The true relations between sovereigns and their subjects, and between nations, have been discovered. Commerce has been reanimated by the common knowledge of philosophical truths diffused by the art of printing, and there has sprung up among nations a tacit rivalry of industriousness that is most humane and truly worthy of rational beings. Such good things we owe to the productive enlightenment of this age. But very few persons have studied and fought against the cruelty of punishments and the irregularities of criminal procedures, a part of legislation that is as fundamental as it is widely neglected in almost all of Europe. Very few persons have undertaken to demolish the accumulated errors of centuries by rising to general principles, curbing, at least, with the sole force that acknowledged truths possess, the unbounded course of ill-directed power which has continually produced a long and authorized example of the most

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cold-blooded barbarity. And yet the groans of the weak, sacrificed to cruel ignorance and to opulent indolence; the barbarous torments, multiplied with lavish and useless severity, for crimes either not proved or wholly imaginary; the filth and horrors of a prison, intensified by that cruellest tormentor of the miserable, uncertainty – all these ought to have roused that breed of magistrates who direct the opinions of men.

The immortal Montesquieu has cursorily touched upon this subject. Truth, which is one and indivisible, has obliged me to follow the illustrious steps of that great man, but the thoughtful men for whom I write will easily distinguish my traces from his. I shall deem myself happy if I can obtain, as he did, the secret thanks of the unknown and peace-loving disciples of reason, and if I can inspire that tender thrill with which persons of sensibility respond to one who upholds the interests of humanity. [...]

THE ORIGIN OF PUNISHMENTS, AND THE RIGHT TO PUNISH [...]

No man ever freely sacrificed a portion of his personal liberty merely on behalf of the common good. That chimera exists only in romances. If it were possible, every one of us would prefer that the compacts binding others did not bind us; every man tends to make himself the centre of his whole world.

The continuous multiplication of mankind, inconsiderable in itself yet exceeding by far the means that a sterile and uncultivated nature could offer for the satisfaction of increasingly complex needs, united the earliest savages. These first communities of necessity caused the formation of others to resist the first, and the primitive state of warfare thus passed from individuals to nations.

Laws are the conditions under which independent and isolated men united to form a society. Weary of living in a continual state of war, and of enjoying a liberty rendered useless by the uncertainty of preserving it, they sacrificed a part so that they might enjoy the rest of it in peace and safety. The sum of all these portions of liberty sacrificed by each for his own good constitutes the sovereignty of a nation, and their legitimate depository and administrator is the sovereign. But merely to have established this deposit was not enough; it had to be defended against private usurpations by individuals each of whom always tries not only to withdraw his own share but also to usurp for himself that of others. Some tangible motives had to be introduced, therefore, to prevent the despotic spirit, which is in every man, from plunging the laws of society into its original chaos. These tangible motives are the punishments established against infractors of the laws. I say 'tangible motives' because experience has shown that the multitude adopt no fixed principles of conduct and will not be released from the sway of that universal principle of dissolution which is seen to operate both in the physical and the moral universe, except for motives that directly strike the senses. These motives, by dint of repeated representation to the mind, counter-balance the powerful impressions of the private passions that oppose the common good. Not eloquence, not declamations, not even the most sublime truths have

sufficed, for any considerable length of time, to curb passions excited by vivid impressions of present objects.

It was, thus, necessity that forced men to give up part of their personal liberty, and it is certain, therefore, that each is willing to place in the public fund only the least possible portion, no more than suffices to induce others to defend it. The aggregate of these least possible portions constitutes the right to punish; all that exceeds this is abuse and not justice; it is fact but by no means right.

Punishments that exceed what is necessary for protection of the deposit of public security are by their very nature unjust, and punishments are increasingly more just as the safety which the sovereign secures for his subjects is the more sacred and inviolable, and the liberty greater.

CONSEQUENCES

The first consequence of these principles is that only the laws can decree punishments for crimes; authority for this can reside only with the legislator who represents the entire society united by a social contract. No magistrate (who is a part of society) can, with justice, inflict punishments upon another member of the same society. But a punishment that exceeds the limit fixed by the laws is just punishment plus another punishment; a magistrate cannot, therefore, under any pretext of zeal or concern for the public good, augment the punishment established for a delinquent citizen.

The second consequence is that the sovereign, who represents the society itself, can frame only general laws binding all members, but he cannot judge whether someone has violated the social contract, for that would divide the nation into two parts, one represented by the sovereign, who asserts the violation of the contract, and the other by the accused, who denies it. There must, therefore, be a third party to judge the truth of the fact. Hence the need for a magistrate whose decisions, from which there can be no appeal, should consist of mere affirmations or denials of particular facts.

The third consequence is this: even assuming that severity of punishments were not directly contrary to the public good and to the very purpose of preventing crimes, if it were possible to prove merely that such severity is useless, in that case also it would be contrary not only to those beneficent virtues that spring from enlightened reason which would rather rule happy men than a herd of slaves in whom a timid cruelty makes its endless rounds; it would be contrary to justice itself and to the very nature of the social contract.

INTERPRETATIONS OF THE LAWS

A fourth consequence: Judges in criminal cases cannot have the authority to interpret laws, and the reason, again, is that they are not legislators. Such judges have not received the laws from our ancestors as a family tradition or legacy that leaves to posterity only the burden of obeying them, but they

receive them, rather, from the living society, or from the sovereign representing it, who is the legitimate depositary of what actually results from the common will of all [. . .]

Nothing can be more dangerous than the popular axiom that it is necessary to consult the spirit of the laws. It is a dam that has given way to a torrent of opinions. This truth, which seems paradoxical to ordinary minds that are struck more by trivial present disorders than by the dangerous but remote effects of false principles rooted in a nation, seems to me to be fully demonstrated. Our understandings and all our ideas have a reciprocal connection; the more complicated they are, the more numerous must the ways be that lead to them and depart from them. Each man has his own point of view, and, at each different time, a different one. Thus the 'spirit' of the law would be the product of a judge's good or bad logic, of his good or bad digestion; it would depend on the violence of his passions, on the weakness of the accused, on the judge's connections with him, and on all those minute factors that alter the appearances of an object in the fluctuating mind of man. Thus we see the lot of a citizen subjected to frequent changes in passing through different courts, and we see the lives of poor wretches become the victims of the false ratiocinations or of the momentary seething ill-humours of a judge who mistakes for a legitimate interpretation that vague product of the jumbled series of notions which his mind stirs up. Thus we see the same crimes differently punished at different times by the same court, for having consulted not the constant fixed voice of the law but the erring instability of interpretation.

The disorder that arises from rigorous observance of the letter of a penal law is hardly comparable to the disorders that arise from interpretations. The temporary inconvenience of the former prompts one to make the rather easy and needed correction in the words of the law which are the source of uncertainty, but it curbs that fatal licence of discussion which gives rise to arbitrary and venal controversies. When a fixed code of laws, which must be observed to the letter, leaves no further care to the judge than to examine the acts of citizens and to decide whether or not they conform to the law as written; when the standard of the just or the unjust, which is to be the norm of conduct for the ignorant as well as for the philosophic citizen, is not a matter of controversy but of fact; then only are citizens not subject to the petty tyrannies of the many which are the more cruel as the distance between the oppressed and the oppressor is less, and which are far more fatal than those of a single man, for the despotism of many can only be corrected by the despotism of one; the cruelty of a single despot is proportioned, not to his might, but to the obstacles he encounters. In this way citizens acquire that sense of security for their own persons which is just, because it is the object of human association, and useful, because it enables them to calculate accurately the inconveniences of a misdeed. It is true, also, that they acquire a spirit of independence, but not one that upsets the laws and resists the chief magistrates; rather one that resists those who have dared to apply the sacred name of virtue to that weakness of theirs which makes them yield to their self-interested and capricious opinions.



These principles will displease those who have assumed for themselves a right to transmit to their inferiors the blows of tyranny that they have received from their superiors. I would, indeed, be most fearful if the spirit of tyranny were in the least compatible with the spirit of literacy.

OBSCURITY OF THE LAWS

If the interpretation of laws is an evil, another evil, evidently, is the obscurity that makes interpretation necessary. And this evil would be very great indeed where the laws are written in a language that is foreign to a people, forcing it to rely on a handful of men because it is unable to judge for itself how its liberty or its members may fare – in a language that transforms a sacred and public book into something very like the private possession of a family. When the number of those who can understand the sacred code of laws and hold it in their hands increases, the frequency of crimes will be found to decrease, for undoubtedly ignorance and uncertainty of punishments add much to the eloquence of the passions. What are we to make of men, therefore, when we reflect that this very evil is the inveterate practice of a large part of cultured and enlightened Europe?

One consequence of this last reflection is that, without writing, a society can never acquire a fixed form of government with power that derives from the whole and not from the parts, in which the laws, which cannot be altered except by the general will, are not corrupted in their passage through the mass of private interests. Experience and reason have shown us that the probability and certainty of human traditions diminish the further removed they are from their source. For, obviously, if there exists no enduring memorial of the social compact, how are the laws to withstand the inevitable pressure of time and of passions? [...]

PROMPTNESS OF PUNISHMENT

The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be. I say more just, because the criminal is thereby spared the useless and cruel torments of uncertainty, which increase with the vigour of imagination and with the sense of personal weakness; more just, because privation of liberty, being itself a punishment, should not precede the sentence except when necessity requires. Imprisonment of a citizen, then, is simply custody of his person until he be judged guilty; and this custody, being essentially penal, should be of the least possible duration and of the least possible severity. The time limit should be determined both by the anticipated length of the trial and by seniority among those who are entitled to be tried first. The strictness of confinement should be no more than is necessary to prevent him from taking flight or from concealing the proofs of his crimes. The trial itself should be completed in the briefest possible time. What crueller contrast than the indolence of a judge and the anguish of a man under



accusation – the comforts and pleasures of an insensitive magistrate on one side, and on the other the tears, the squalor of a prisoner? In general, the weight of punishment and the consequence of a crime should be that which is most efficacious for others, and which inflicts the least possible hardship upon the person who suffers it; one cannot call legitimate any society which does not maintain, as an infallible principle, that men have wished to subject themselves only to the least possible evils.

I have said that the promptness of punishments is more useful because when the length of time that passes between the punishment and the misdeed is less, so much the stronger and more lasting in the human mind is the association of these two ideas, *crime and punishment*; they then come insensibly to be considered, one as the cause, the other as the necessary inevitable effect. It has been demonstrated that the association of ideas is the cement that forms the entire fabric of the human intellect; without this cement pleasure and pain would be isolated sentiments and of no effect. The more men depart from general ideas and universal principles, that is, the more vulgar they are, the more apt are they to act merely on immediate and familiar associations, ignoring the more remote and complex ones that serve only men strongly impassioned for the object of their desires; the light of attention illuminates only a single object, leaving the others dark. They are of service also to more elevated minds, for they have acquired the habit of rapidly surveying many objects at once, and are able with facility to contrast many partial sentiments one with another, so that the result, which is action, is less dangerous and uncertain.

Of utmost importance is it, therefore, that the crime and the punishment be intimately linked together, if it be desirable that, in crude, vulgar minds, the seductive picture of a particularly advantageous crime should immediately call up the associated idea of punishment. Long delay always produces the effect of further separating these two ideas; thus, though punishment of a crime may make an impression, it will be less as a punishment than as a spectacle, and will be felt only after the horror of the particular crime, which should serve to reinforce the feeling of punishment, has been much weakened in the hearts of the spectators.

Another principle serves admirably to draw even closer the important connection between a misdeed and its punishment, namely, that the latter be as much in conformity as possible with the nature of the crime. This analogy facilitates admirably the contrast that ought to exist between the inducement to crime and the counterforce of punishment, so that the latter may deter and lead the mind toward a goal the very opposite of that toward which the seductive idea of breaking the laws seeks to direct it.

Those guilty of lesser crimes are usually punished either in the obscurity of a prison or by transportation, to serve as an example, with a distant and therefore almost useless servitude, to nations which they have not offended. Since men are not induced on the spur of the moment to commit the gravest crimes, public punishment of a great misdeed will be regarded by the majority as something very remote and of improbable occurrence; but public punishment of lesser



crimes, which are closer to men's hearts, will make an impression which, while deterring them from these, deters them even further from the graver crimes. A proportioning of punishments to one another and to crimes should comprehend not only their force but also the manner of inflicting them.

THE CERTAINTY OF PUNISHMENT: MERCY

One of the greatest curbs on crimes is not the cruelty of punishments, but their infallibility, and, consequently, the vigilance of magistrates, and that severity of an inexorable judge which, to be a useful virtue, must be accompanied by a mild legislation. The certainty of a punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity; even the least evils, when they are certain, always terrify men's minds, and hope, that heavenly gift which is often our sole recompense for everything, tends to keep the thought of greater evils remote from us, especially when its strength is increased by the idea of impunity which avarice and weakness only too often afford.

Sometimes a man is freed from punishment for a lesser crime when the offended party chooses to forgive – an act in accord with beneficence and humanity, but contrary to the public good – as if a private citizen, by an act of remission, could eliminate the need for an example, in the same way that he can waive compensation for the injury. The right to inflict punishment is a right not of an individual, but of all citizens, or of their sovereign. An individual can renounce his own portion of right, but cannot annul that of others.

As punishments become more mild, clemency and pardon become less necessary. Happy the nation in which they might some day be considered pernicious! Clemency, therefore, that virtue which has sometimes been deemed a sufficient substitute in a sovereign for all the duties of the throne, should be excluded from perfect legislation, where the punishments are mild and the method of judgment regular and expeditious. This truth will seem harsh to anyone living in the midst of the disorders of a criminal system, where pardons and mercy are necessary to compensate for the absurdity of the laws and the severity of the sentences. This, which is indeed the noblest prerogative of the throne, the most desirable attribute of sovereignty, is also, however, the tacit disapprobation of the beneficent dispensers of public happiness for a code which, with all its imperfections, has in its favour the prejudice of centuries, the voluminous and imposing dowry of innumerable commentators, the weighty apparatus of endless formalities, and the adherence of the most insinuating and least formidable of the semi-learned. But one ought to consider that clemency is a virtue of the legislators and not of the executors of the laws, that it ought to shine in the code itself rather than in the particular judgments. To make men see that crimes can be pardoned or that punishment is not their necessary consequence foments a flattering hope of impunity and creates a belief that, because they might be remitted, sentences which are not remitted are rather acts of oppressive violence than emanations of justice. What is to be said, then, when



the ruler grants pardons, that is, public security to a particular individual, and, with a personal act of unenlightened beneficence, constitutes a public decree of impunity? Let the laws, therefore, be inexorable, and inexorable their executors in particular cases, but let the legislator be tender, indulgent, and humane. Let him, a wise architect, raise his building upon the foundation of self-love and let the general interest be the result of the interests of each; he shall not then be constrained, by partial laws and tumultuous remedies, to separate at every moment the public good from that of individuals, and to build the image of public well-being upon fear and distrust. Wise and compassionate philosopher, let him permit men, his brothers, to enjoy in peace that small portion of happiness which the grand system established by the First Cause, by that *which is*, allows them to enjoy in this corner of the universe.

[...]

PROPORTION BETWEEN CRIMES AND PUNISHMENTS

It is to the common interest not only that crimes not be committed, but also that they be less frequent in proportion to the harm they cause society. Therefore, the obstacles that deter men from committing crimes should be stronger in proportion as they are contrary to the public good, and as the inducements to commit them are stronger. There must, therefore, be a proper proportion between crimes and punishments.

If pleasure and pain are the motives of sensible beings, if, among the motives for even the sublimest acts of men, rewards and punishments were designated by the invisible Legislator, from their inexact distribution arises the contradiction, as little observed as it is common, that the punishments punish crimes which they themselves have occasioned. If an equal punishment be ordained for two crimes that do not equally injure society, men will not be any more deterred from committing the greater crime, if they find a greater advantage associated with it.

Whoever sees the same death penalty, for instance, decreed for the killing of a pheasant and for the assassination of a man or for forgery of an important writing, will make no distinction between such crimes, thereby destroying the moral sentiments, which are the work of many centuries and of much blood, slowly and with great difficulty registered in the human spirit, and impossible to produce, many believe, without the aid of the most sublime of motives and of an enormous apparatus of grave formalities.

It is impossible to prevent all disorders in the universal conflict of human passions. They increase according to a ratio compounded of population and the crossings of particular interests, which cannot be directed with geometric precision to the public utility. For mathematical exactitude we must substitute, in the arithmetic of politics, the calculation of probabilities. A glance at the histories will show that disorders increase with the confines of empires. National sentiment declining in the same proportion, the tendency to commit crimes increases with the increased interest everyone takes in such disorders; thus there is a constantly increasing need to make punishments heavier.

That force, similar to gravity, which impels us to seek our own well-being is restrained in its operation only to the extent that obstacles are set up against it. The effects of this force are the confused series of human actions. If these clash together and disturb one another, punishments, which I would call 'political obstacles', prevent the bad effect without destroying the impelling cause, which is that sensibility inseparable from man. And the legislator acts then like an able architect whose function it is to check the destructive tendencies of gravity and to align correctly those that contribute to the strength of the building.

Given the necessity of human association, given the facts that result from the very opposition of private interests, a scale of disorders is distinguishable, the first grade consisting of those that are immediately destructive of society, and the last, of those that do the least possible injustice to its individual members. Between these extremes are included all the actions contrary to the public good that are called crimes, and they all descend by insensible gradations from the highest to the lowest. If geometry were applicable to the infinite and obscure combinations of human actions, there ought to be a corresponding scale of punishments, descending from the greatest to the least; if there were an exact and universal scale of punishments and of crimes, we would have a fairly reliable and common measure of the degrees of tyranny and liberty, of the fund of humanity or of malice, of the various nations. But it is enough for the wise legislator to mark the principal points of division without disturbing the order, not assigning to crimes of the first grade the punishments of the last.

[...]

HOW TO PREVENT CRIMES

It is better to prevent crimes than to punish them. This is the ultimate end of every good legislation, which, to use the general terms for assessing the good and evils of life, is the art of leading men to the greatest possible happiness or to the least possible unhappiness.

But heretofore, the means employed have been false and contrary to the end proposed. It is impossible to reduce the turbulent activity of mankind to a geometric order, without any irregularity and confusion. As the constant and very simple laws of nature do not impede the planets from disturbing one another in their movements, so in the infinite and very contrary attractions of pleasure and pain, disturbances and disorder cannot be impeded by human laws. And yet this is the chimera of narrow-minded men when they have power in their grasp. To prohibit a multitude of indifferent acts is not to prevent crimes that might arise from them, but is rather to create new ones; it is to define by whim the ideas of virtue and vice which are preached to us as eternal and immutable. To what should we be reduced if everything were forbidden us that might induce us to crime! It would be necessary to deprive man of the use of his senses. For one motive that drives men to commit a real crime there are a thousand that drive them to commit those indifferent acts which are called crimes by bad laws; and

if the probability of crimes is proportionate to the number of motives, to enlarge the sphere of crimes is to increase the probability of their being committed. The majority of the laws are nothing but privileges, that is, a tribute paid by all to the convenience of some few.

Do you want to prevent crimes? See to it that the laws are clear and simple and that the entire force of a nation is united in their defence, and that no part of it is employed to destroy them. See to it that the laws favour not so much classes of men as men themselves. See to it that men fear the laws and fear nothing else. For fear of the laws is salutary, but fatal and fertile for crimes is one man's fear of another. Enslaved men are more voluptuous, more depraved, more cruel than free men. These study the sciences, give thought to the interests of their country, contemplate grand objects and imitate them, while enslaved men, content with the present moment, seek in the excitement of debauchery a distraction from the emptiness of the condition in which they find themselves. Accustomed to an uncertainty of outcome in all things, the outcome of their crimes remains for them problematical, to the advantage of the passions that determine them. If uncertainty regarding the laws befalls a nation which is indolent because of climate, its indolence and stupidity are confirmed and increased; if it befalls a voluptuous but energetic nation, the result is a wasteful diffusion of energy into an infinite number of little cabals and intrigues that sow distrust in every heart, make treachery and dissimulation the foundation of prudence; if it befalls a brave and powerful nation, the uncertainty is removed finally, but only after having caused many oscillations from liberty to slavery and from slavery back to liberty.

Do you want to prevent crimes? See to it that enlightenment accompanies liberty. Knowledge breeds evils in inverse ratio to its diffusion, and benefits in direct ratio. A daring impostor, who is never a common man, is received with adorations by an ignorant people, and with hisses by an enlightened one. Knowledge, by facilitating comparisons and by multiplying points of view, brings on a mutual modification of conflicting feelings, especially when it appears that others hold the same views and face the same difficulties. In the face of enlightenment widely diffused throughout the nation, the calumnies of ignorance are silenced and authority trembles if it be not armed with reason. The vigorous force of the laws, meanwhile, remains immovable, for no enlightened person can fail to approve of the clear and useful public compacts of mutual security when he compares the inconsiderable portion of useless liberty he himself has sacrificed with the sum total of liberties sacrificed by other men, which, except for the laws, might have been turned against him. Any person of sensibility, glancing over a code of well-made laws and observing that he has lost only a baneful liberty to injure others, will feel constrained to bless the throne and its occupant.

[...]

Another way of preventing crimes is to direct the interest of the magistracy as a whole to observance rather than corruption of the laws. The greater the number of magistrates, the less dangerous is the abuse of legal power; venality is more difficult among men who observe one another, and their interest in increasing



their personal authority diminishes as the portion that would fall to each is less, especially in comparison with the danger involved in the undertaking. If the sovereign, with his apparatus and pomp, with the severity of his edicts, with the permission he grants for unjust as well as just claims to be advanced by anyone who thinks himself oppressed, accustoms his subjects to fear magistrates more than the laws, [the magistrates] will profit more from this fear than personal and public security will gain from it.

Another way of preventing crimes is to reward virtue. Upon this subject I notice a general silence in the laws of all the nations of our day. If the prizes offered by the academies to discoverers of useful truths have increased our knowledge and have multiplied good books, why should not prizes distributed by the beneficent hand of the sovereign serve in a similar way to multiply virtuous actions? The coin of honour is always inexhaustible and fruitful in the hands of the wise distributor.

Finally, the surest but most difficult way to prevent crimes is by perfecting education – a subject much too vast and exceeding the limits I have prescribed for myself, a subject, I venture also to say, too intimately involved with the nature of government for it ever to be, even in the far-off happy ages of society, anything more than a barren field, only here and there cultivated by a few sages. A great man, who enlightens the world that persecutes him, has indicated plainly and in detail what principal maxims of education are truly useful to men: they are, that it should consist less in a barren multiplicity of things than in a selection and precise definition of them; in substituting originals for the copies of the moral as well as physical phenomena which chance or wilful activity may present to the fresh minds of youths; in leading them toward virtue by the easy way of feeling, and in directing them away from evil by the infallible one of necessity and inconvenience, instead of by the uncertain means of command which obtains only simulated and momentary obedience.

CONCLUSION

From what has thus far been demonstrated, one may deduce a general theorem of considerable utility, though hardly conformable with custom, the usual legislator of nations; it is this: *In order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws* [original emphasis].

