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On Crimes and Punishments

In all negociations of difficulty, a man may not look to sow and reap at once; but must prepare business, and so ripen it by degrees.

Francis Bacon
Essays XLVII ('Of Negociating')

Frontispiece

The allegorical illustration engraved by Giovanni Lapi for the third edition of 1765. The engraving depicts Justice turning away from capital punishment in horror and looking benignly on the instruments of socially useful hard labour. Reproduced by permission of the Syndics of Cambridge University Library.

To the Reader

A few odd remnants of the laws of an ancient conquering race codified twelve hundred years ago by a prince ruling at Constantinople, and since jumbled together with the customs of the Lombards and bundled up in the rambling volumes of obscure academic interpreters – this is what makes up the tradition of opinions that passes for law across a large portion of Europe. It is as deplorable as it is common that an opinion of Carpzov's, an ancient custom noted by Claro, or a mode of punishment suggested with vengeful complacency by Farinacci have become the laws so confidently implemented by those who should tremble at the responsibility of ordering the lives and fortunes of men. These laws, which are the residue of the most barbarous centuries, are examined in this book insofar as they relate to the system of criminal justice. This book presumes to set out their confusions for the benefit of those who are charged with the public welfare in a style designed to ward off the unenlightened and impatient run of men. That sincere search for the truth, that independence of vulgar opinion with which this work is written, are the effects of the benign and enlightened government under which the present author lives. The great monarchs, the human benefactors who rule us, love the truths which are expounded by humble philosophers with an unfanatical zeal directed exclusively against those who, eschewing reason, rely on force or machination. Our current abuses, when their circumstances are fully understood, are a mockery and a reproof of past ages and not of the present day and its legislators.

Whoever might wish to do me the honour of criticising this work, then, must begin by understanding its aim, an aim which, far from diminishing legitimate authority, serves to reinforce it, or should do if persuasion is more efficacious than force with men, and if caring and humanity can justify it in everyone's eyes. The ill-digested criticisms which have been published against the present book are founded on confused ideas and oblige me briefly to interrupt my address to enlightened readers and to put a stop once and for all to the errors of timid zeal or the calumnies of piqued envy.

There are three sources from which the principles of morals and politics which guide men are drawn: revelation, natural law and the conventions arrived at by society. Where its ultimate goal is concerned, there is no comparison between the first and the others; but they are all alike in this, that all three conduce to the happiness of this mortal life. To consider the concerns of the last of them does not exclude concern with the first two. On the contrary, it is because these latter, though divine and immutable, have been so corrupted by men's false religions and by arbitrary notions of virtue and vice are twisted in a thousand different ways by impure minds, that it is necessary to examine in isolation from every other matter those things which derive from purely human conventions, both those that are entered into explicitly and those that are tacitly assumed in the interests of the common need and utility, a notion that necessarily commands the assent of every sect and every system of morals. And it will always be a praiseworthy undertaking to compel even the most wayward and incredulous to conform to the principles which drive men to live in society. There are, therefore, three separate classes of virtue and vice: the religious, the natural and the political. These three classes should never come into conflict with each other, although not all the consequences and duties which flow from the one flow from the others. Not everything commanded by revelation is commanded by natural law; nor is everything commanded by natural law commanded by the purely social law. But it is extremely important to treat separately those things which result from this last convention, that is to say from explicit or tacit compacts among men, because it marks the limit of the force which man may legitimately use against man in the absence of a special dispensation from the supreme Being. So, the

idea of political virtue can fairly be called mutable, without implying any criticism; the idea of natural virtue would always be clear and manifest were it not obscured by the folly or the passions of men; and the idea of religious virtue is forever one and constant because it is revealed directly by God and is sustained by Him.

It would be mistaken, just because someone is discussing social conventions and their consequences, to attribute to him any opposition to the principles of natural law or revelation, because these are not what he is talking about. It would be equally mistaken for anyone discussing the state of war which obtained before the establishment of society to interpret it in a Hobbesian sense, that is, to deny that there were duties and obligations anterior to the establishment of society, instead of interpreting this state as a fact born of human corruption and the lack of any express sanction. It would also be a mistake to accuse a writer, who is pondering the commandments of the social contract, of denying that there are any duties or obligations prior to the contract itself.

Divine justice and natural justice are both essentially unchanging and constant, since the relation between two objects which remain the same is always the same. But human or political justice, being nothing but a relation between an action and the varying state of society, can vary according to how necessary or useful that action is to society. Nor can human justice be well understood except by one who has analysed the complex and ever-changing relations of civil association. As soon as these essentially distinct principles are confused, all hope of thinking clearly about public affairs is lost. It is for theologians to chart the boundaries of the just and the unjust, insofar as the intrinsic good or evil of an action is concerned; but it is for the student of law and the state to establish the relationship between political justice and injustice, that is to say, between what is socially useful and what is harmful. Neither task can ever prejudice the other, for everyone can see that purely political virtue must give way before the unchanging virtue which flows from God.

I say again that, whoever would favour me with his criticisms, should not begin by attributing to me principles inimical either to virtue or to religion, inasmuch as I have shown that I do not hold such principles. Instead of portraying me as a seditious non-believer, he should try to show me up as a poor logician or a careless

political thinker. Nor should he quake at every proposal which upholds the interests of mankind; he should try to convince me either of the uselessness or of the politically harmful effects which might arise from my principles; he should try to show me the benefits of the accepted customs. I have given public notice of my religion and of my loyalty to my sovereign in the reply to the *Notes and Observations*. It would be vain to reply to further writings of that sort. But whoever writes in a tone befitting a decent man and shows a sufficient degree of enlightenment to absolve me from the need to start by proving first principles, of whatever kind, will find in me not so much a man striving to respond, as a peaceable lover of truth.[a]

[a] The first additions [i.e. those of the third edition] are enclosed in brackets { } and the second additions [i.e. those of the fifth edition] in brackets {{ }}.

Introduction

For the most part, men leave the care of the most important regulations either to common sense or to the discretion of individuals whose interests are opposed to those most foresighted laws which distribute benefits to all and resist the pressures to concentrate those benefits in the hands of a few, raising those few to the heights of power and happiness, and sinking everyone else in feebleness and poverty. It is, therefore, only after they have experienced thousands of miscarriages in matters essential to life and liberty, and have grown weary of suffering the most extreme ills, that men set themselves to right the evils that beset them and to grasp the most palpable truths which, by virtue of their simplicity, escape the minds of the common run of men who are not used to analysing things, but instead passively take on a whole set of second-hand impressions of them derived more from tradition than from enquiry.

If we open our history books we shall see that the laws, for all that they are or should be contracts amongst free men, have rarely been anything but the tools of the passions of a few men or the offspring of a fleeting and haphazard necessity. They have not been dictated by a cool observer of human nature, who has brought the actions of many men under a single gaze and has evaluated them from the point of view of whether or not they conduce to *the greatest happiness shared among the greater number*. Blessed are those very few nations which have not waited for the slow succession of coincidence and contingencies to bring about some tentative movement towards the good from out of the extremities of evil, but

which have sped with good laws through the intervening stages. And that philosopher who had the courage to scatter out among the multitudes from his humble, despised study the first seeds of those beneficial truths that would be so long in bearing fruit, deserves the gratitude of all humanity.

We have discovered the true relations between sovereign and subjects and between nation and nation. Commerce has been stimulated by philosophic truths disseminated by the press, and there is waged among nations a silent war by trade, which is the most humane sort of war and more worthy of reasonable men. Such is the progress we owe to the present enlightened century. But there are very few who have scrutinised and fought against the savagery and the disorderliness of the procedures of criminal justice, a part of legislation which is so prominent and so neglected in almost the whole of Europe. How few have ascended to general principles to expose and root out the errors that have built up over the centuries, so curbing, as far as it is within the power of disseminated truths to do, the all too free rein that has been given to misdirected force, which has, up to now, provided an entrenched and legitimised example of cold-blooded atrocity. And yet, the groans of the weak, sacrificed to cruel indifference and to wealthy idleness, the barbarous tortures that have been elaborated with prodigal and useless severity, to punish crimes unproven or illusory, the horrors of prison, compounded by that cruellest tormentor of the wretched, uncertainty, ought to have shaken into action that rank of magistrates who guide the opinions and minds of men.

The immortal president Montesquieu glossed over this subject. Indivisible truth has set me to follow in the enlightened footsteps of that great man, but the thinking men for whom I write will know how to distinguish my steps from his. I shall be happy if, like him, I can deserve the private thanks of humble and peaceable lovers of reason and if I can arouse that sweet stirring of sympathy with which sensitive souls respond to whoever upholds the interests of humanity.

Chapter 1 The origin of punishment

Laws are the terms under which independent and isolated men come together in society. Wearied by living in an unending state of war and by a freedom rendered useless by the uncertainty of retaining it, they sacrifice a part of that freedom in order to enjoy what remains in security and calm. The sum of these portions of freedom sacrificed to the good of all makes up the sovereignty of the nation, and the sovereign is the legitimate repository and administrator of these freedoms. But it was insufficient to create this repository; it was also necessary to protect it from the private usurpations of each individual, who is always seeking to extract from the repository not only his own due but also the portions which are owing to others. What were wanted were sufficiently tangible motives to prevent the despotic spirit of every man from resubmerging society's laws into the ancient chaos. These tangible motives are the punishments enacted against law-breakers. I say *tangible motives* because experience shows that the common run of men do not accept stable principles of conduct. Nor will they depart from the universal principle of anarchy which we see in the physical as well as in the moral realm, unless they are given motives which impress themselves directly on the senses and which, by dint of repetition, are constantly present in the mind as a counterbalance to the strong impressions of those self-interested passions which are ranged against the universal good. Neither eloquence, nor exhortations, not even the most sublime truths have been enough to hold back for long the passions aroused by the immediate impact made by objects which are close at hand.

Chapter 2 The right to punish

Every punishment which is not derived from absolute necessity is tyrannous, says the great Montesquieu, a proposition which may be generalised as follows: every act of authority between one man and another which is not derived from absolute necessity is tyrannous. Here, then, is the foundation of the sovereign's right to punish crimes: the necessity of defending the repository of the public well-being from the usurpations of individuals. The juster the punishments, the more sacred and inviolable is the security and the greater the freedom which the sovereign preserves for his subjects. If we consult the human heart, we find in it the fundamental principles of the sovereign's true right to punish crimes, for it is vain to hope that any lasting advantage will accrue from public morality if it be not founded on ineradicable human sentiments. Any law which differs from them will always meet with a resistance that will overcome it in the end, in the same way that a force, however small, applied continuously, will always overcome a sudden shock applied to a body.

No man has made a gift of part of his freedom with the common good in mind; that kind of fantasy exists only in novels. If it were possible, each one of us would wish that the contracts which bind others did not bind us. Every man makes himself the centre of all the world's affairs.

{The multiplication of the human race, however gradual, greatly exceeded the means that a sterile and untended nature provides for the satisfaction of man's ever-evolving needs, and brought primitive men together. The first unions inescapably gave rise to

others to resist them, and so the state of war was translated from individuals to nations.}

Thus it was necessity which compelled men to give up a part of their freedom; and it is therefore certain that none wished to surrender to the public repository more than the smallest possible portion consistent with persuading others to defend him. The sum of these smallest possible portions constitutes the right to punish; everything more than that is no longer justice, but an abuse; it is a matter of fact not of right. Note that the word 'right' is not opposed to the word 'power', but the former is rather a modification of the latter, that is to say, the species which is of the greatest utility to the greatest number. And by 'justice' I mean nothing other than the restraint necessary to hold particular interests together, without which they would collapse into the old state of unsociability. Any punishment that goes beyond the need to preserve this bond is unjust by its very nature. We must be careful not to attach any notion of something real to this word 'justice', such as a physical force or an actual entity. It is simply a way whereby humans conceive of things, a way which influences beyond measure the happiness of all. Nor do I speak here of that justice which flows from God and whose direct bearing is on the punishments and rewards of the after-life.

Chapter 3 Consequences

The first consequence of these principles is that laws alone can decree punishments for crimes, and that this authority resides only with the legislator, who represents the whole of society united by the social contract. No magistrate (who is a member of society) can justly establish of his own accord any punishment for any member of the same society. A punishment which exceeds the limit laid down by law is the just punishment with another punishment superadded. Therefore, a magistrate may not, on any pretext of zeal or concern for the public good whatsoever, increase the punishment laid down by law for a miscreant citizen.

The second consequence is that whilst every individual is bound to society, society is likewise bound to every individual member of it by a pact which, by its very nature, places obligations on both parties. {These obligations, which descend from the palace to the hovel, bind equally the most elevated and the humblest of men, mean nothing other than that it is in the interests of all that the pacts useful to the greatest number be observed. Violation by even one man begins to legitimate anarchy.}[b] The sovereign, as the representative of society, may only frame laws in general terms which are binding on all members. He may not rule on whether an individual has violated the social pact, because that would divide the nation into two parts: one, represented by the sovereign, who

[b] {The word 'obligation' is one which is more often met with in ethics than in any other science, and is an abbreviation for a train of reasoning, rather than a mark of an idea. If you search for the idea corresponding to the word 'obligation' you will not find it, but if you reason using it, you will understand and be understood.}

asserts the violation of the contract, and the other, represented by the accused, who denies it. There is, therefore, need of a third party to judge the truth of the matter. Herein lies the need for the magistrate, whose sentences admit of no appeal and consist in simply confirming or denying particular facts.

The third consequence is that, even if it could be shown that the extreme severity of some punishments, even if not directly contrary to the public good and the aim of discouraging crimes, is merely useless, even then, it will be contrary not only to those beneficent virtues which arise from an enlightened reason which prefers to govern happy men than a herd of slaves among whom timorous cruelty is rife, but also be contrary to justice and to the very nature of the social contract.

Chapter 4 The interpretation of the laws

A fourth consequence. Nor can the authority to interpret the laws devolve upon the criminal judges, for the same reason that they are not legislators. The judges have not received the laws from our forefathers as if they were a family tradition or a will which leaves its inheritors no duty but that of obedience. Rather, they receive them from the living society or from the sovereign which represents it as the legitimate repository of the current sum of the will of the whole of society. The judges do not receive the laws as obligations of an ancient oath, which is void because it enchains the wills of those not yet born, and iniquitous because it reduces men from a state of society to the state of a herd. Rather, they receive them as the result of a tacit or express oath which the united wills of the subjects have made to the sovereign, as the bonds necessary to curb and control the domestic turbulence of particular interests. Such is the laws' physical and real authority. Who, then, shall be the rightful interpreter of the law? Shall it be the sovereign, that is the repository of the current will of all, or the judge, whose task is merely that of enquiring whether a given man has committed an unlawful act or not?

The judge should construct a perfect syllogism about every criminal case: the major premise should be the general law; the minor, the conformity or otherwise of the action with the law; and the conclusion, freedom or punishment. Whenever the judge is forced, or takes it upon himself, to construct even as few as two syllogisms, then the door is opened to uncertainty.

Nothing is more dangerous than the popular saw that we ought to consult the spirit of the law. This is a bulwark which, once

breached, sets loose a flood of opinions. This truth, which seems paradoxical to common minds, which are more struck by a trivial present disorder than by the atrocious but remote consequences which grow out of a false principle's taking root in society, seems self-evident to me. There are mutual connections between all our knowledge and all our ideas; the more complex these connections are, the more ways there are by which we can arrive at or depart from any given idea. Every person has his own point of view, and at different times, every person has a different one. The spirit of the law, therefore, would be the upshot of good or bad logic on the part of the judge and of the state of his digestion, and would depend on the turbulence of his emotions, on the weakness of the aggrieved party, on the judge's relations with the plaintiff and on all those tiny pressures which, to the wavering mind of man, change the appearance of every object. Hence, we see the fate of a citizen changing many times as he progresses through the courts, and the lives of wretches falling victim to fallacious reasoning or the momentary turmoil of the mood of the judge, who takes for the legitimate interpretation of the law the haphazard upshot of this series of confused impulses which affect his mind. It is for this reason that we see the same court punish the same crime differently at different times, because it consults not the constant and fixed voice of the law, but the erring instability of interpretations.

There is no comparison between the irregularities which arise from the rigorous observance of the letter of the law and the irregularities which arise from interpretation. The temporary irregularity occasioned by the former prompts us to make the easy and necessary emendation to the wording of the law which was the cause of the uncertainty; but such an emendation restrains the fatal licence to wrangle, from which arbitrary and sordid litigation arises. When a fixed code of laws, which must be followed to the letter, leaves the judge no role other than that of enquiring into citizens' actions and judging whether they conform or not to the written law, and when the standards of just and unjust, which ought to guide the actions of the ignorant citizen as much as those of the philosopher, are not a matter of debate but of fact, then the subjects are not exposed to the petty tyrannies of the many individuals enforcing the law, tyrannies which are the crueller the smaller the distance between him who inflicts and him who suffers. These

tyrannies are more noxious than those of a single person, because the despotism of many individuals is only rectifiable by the despotism of a single person and the cruelty of the despot is proportional, not to his power, but to the obstacles he encounters. In this way, citizens can acquire that sense of security which is just, because it is the reason why men join together in society, and which is useful, because it allows them to evaluate exactly the drawbacks of wrongdoing. It is also the case that they will acquire a spirit of independence, but not the kind that will lead them to shake off the laws or to defy the supreme magistrates, but the kind that will allow them to stand up to those who have dared to sully the name of virtue by describing with that name their weakness in giving in to their self-interested and capricious opinions. Those who have arrogated to themselves the right of passing on to their inferiors the tyrannical blows they have received from their superiors will not like my principles. And I would have much to fear if the spirit of tyranny were compatible with the spirit of reading.

Chapter 5 The obscurity of the laws

If interpretation of the laws is an evil, it is obvious that the obscurity which makes interpretation necessary is another. And it is the greatest of evils if the laws be written in a language which is not understood by the people and which makes them dependent upon a few individuals because they cannot judge for themselves what will become of their freedom or their life and limbs, hindered by a language which turns a solemn and public book into what is almost a private and family affair. What are we to think of mankind, seeing that such is the long-standing practice of the greater part of educated and enlightened Europe? The more people understand the sacred code of the laws and get used to handling it, the fewer will be the crimes, for there is no doubt that ignorance and uncertainty of punishment opens the way to the eloquence of the emotions.

One consequence of the foregoing thoughts is that, without the written word, a society will never arrive at a fixed form of government, in which power derives from all the members and not just from a few, and in which laws which are unalterable except by the general will, are not corrupted as they make their way through the throng of private interests. Experience and reason have taught us that the credibility and reliability of human traditions diminish the further we get from their origins. Without a stable reminder of the social contract, how will the laws withstand the inevitable pressures of time and human emotion?

Thus we see how useful the printing press is, which makes the general public, and not just a few individuals, the repository of the

holy laws. And we see how it drives out the shady propensity to cabal and intrigue, which vanishes when confronted with the enlightenment and knowledge that its followers ostensibly despise but really fear. It is for this reason that, in Europe, we see a reduction in the horror of the crimes which afflicted our forefathers, who became by turns tyrants and slaves. Anyone who knows how things were two or three centuries ago and how they are now, can see how, from luxury and ease of life, the most precious virtues have sprung up: humanity, charity and toleration of human error. He will see too what the effects were of so-called ancient simplicity and good faith: humanity groaning under the weight of superstition, greed, the ambition of a few staining with human blood the coffers of gold and the thrones of kings, hidden betrayals, public massacres, every nobleman a tyrant of the common people and ministers of the holy word sullying in blood the hands which daily touch the God of meekness. These are not the doings of the present enlightened century, which some call corrupt.

Chapter 6 The proportion between crimes and punishments

It is in the common interest not only that crimes not be committed, but that they be rarer in proportion to the harm they do to society. Hence the obstacles which repel men from committing crimes ought to be made stronger the more those crimes are against the public good and the more inducements there are for committing them. Hence, there must be a proportion between crimes and punishments.

It is impossible to foresee all the mischiefs which arise from the universal struggle of the human emotions. They multiply at a compound rate with the growth of population and with the criss-crossing of private interests, which cannot be geometrically directed towards the public utility. In political arithmetic, we must substitute the calculus of probabilities for mathematical exactitude. {{Even a cursory look at history shows that disorder grows as the boundaries of empires expand. As patriotic sentiment correspondingly wanes, there is a growth in the motives for crime insofar as each individual has an interest in that very disorder: therefore, the need to stiffen the punishments continually increases.}}

That force which attracts us, like gravity, to our own good can be controlled only by equal and opposite obstacles. The effects of this force are the whole confused gamut of human actions: if these interfere with and obstruct one another, then the punishments, which we may call *political obstacles*, eliminate their evil effects, without destroying the moving cause, which is the very sensibility inalienable from man's nature. And the legislator behaves like the skilled architect, whose task is to counteract the destructive forces

of gravity and to exploit those forces that contribute to the strengthening of the building.

Given men's need to come together, and given the compacts which necessarily arise from the very opposition of private interests, we can make out a scale of wrong actions, of which the highest grade consists in those which spell the immediate destruction of society, and the lowest those which involve the smallest possible injustice to its private participants. Between these two extremes are distributed in imperceptible gradations from the highest to the lowest, all the actions which are inimical to the public good and which can be called crimes. If it were possible to measure all the infinite and untoward combinations of human actions geometrically, then there should be a corresponding scale of punishments running from the harshest to the mildest. But it is enough that the wise lawgiver signposts the main stages, without confusing the order and not reserving for the crimes of the highest grade the punishments of the lowest. If there were an exact and universal scale of crimes and punishments, we should have an approximate and common measure of the gradations of tyranny and liberty, and of the basic humanity and evil of the different nations.

Any action which does not fall between the two limits noted above cannot be called a *crime*, nor be punished as such, unless by those who find it in their own interest so to call it. Uncertainty about where these limits lie has produced in nations a morality which is at odds with the law, enactments which are at odds with each other, and a mass of laws which expose the most sterling men to the most severe punishments, but which leave the words *vice* and *virtue* vague and afloat, raising those doubts about one's very existence which lead to the drowsiness and torpor fatal to the body politic. Anyone who reads the laws and histories of nations with a philosophical eye will see the changes which have always occurred over the centuries in the words *vice* and *virtue*, *good citizen* and *bad*, not as a result of changes in the countries' circumstances and so in the common interest, but as a result of the passions and false beliefs which at various times have motivated the different lawgivers. The reader will see often enough that the passions of one century are the basis of the morals of later centuries, that strong emotions, the offspring of fanaticism and enthusiasm, are weakened and, so to speak, gnawed away by time, which returns

all physical and moral phenomena to equilibrium, and they become the common sense of the day and a powerful tool in the hands of the strong and the astute. In this way, the very obscure notions of virtue and honour were born, and they are so obscure because they change with the passage of time which preserves words rather than things, and they change with the rivers and mountains which so often form the boundaries not only of physical but also of moral geography.

If pleasure and pain are the motive forces of all sentient beings, and if the invisible legislator has decreed rewards and punishments as one of the motives that spur men even to the most sublime deeds, then the inappropriate distribution of punishments will give rise to that paradox, as little recognised as it is common, that punishments punish the crimes they have caused. If an equal punishment is laid down for two crimes which damage society unequally, men will not have a stronger deterrent against committing the greater crime if they find it more advantageous to do so.

Chapter 7 Errors in the measuring of punishments

The foregoing considerations give me the right to affirm that the one true measure of criminality is the damage done to the nation and that, therefore, those who believe that the true measure of criminality lies in the malefactor's intention are mistaken. A person's intention is contingent on the impression caused by the objects at the time and the preceding disposition of the mind, and these vary from man to man and in the same man according to the very swift succession of ideas, emotions and circumstances. It would, therefore, be necessary to frame not only a special code of laws for each citizen, but also a new law for each particular crime. Sometimes men do the greatest wrongs to society with the best of intentions; and at other times they do it the greatest service with the worst will.

Others measure the seriousness of crimes more by the rank of the injured party than by their significance for the public good. If this were the true measure of criminality, an irreverence towards the divine Being ought to be more harshly punished than the murder of a monarch, the superiority of His nature off-setting infinitely the difference in the offence.

Lastly, some men have thought that the gravity of the sin plays a role in measuring the degree of criminality of an action. The fallaciousness of this opinion will be obvious to an impartial student of the true relations among men, and between God and man. The former are relations of equality. Necessity alone, from the confrontation of emotions and the opposition of interests, has given rise to the idea of *common utility*, which is the foundation of human justice. The latter involves relations of dependence upon a perfect

Being and Creator, Who has retained for Himself alone the right to be at the same time Lawgiver and Judge, for He alone can be both without impropriety. If He has laid down eternal punishments for those who disobey His Omnipotence, what manner of insect will dare to add to divine justice, will seek to avenge the Being Who is sufficient unto Himself, Who cannot be affected with pleasure or pain by anything, and Who, alone among beings, acts without fear of any reaction? The gravity of a sin depends on the inscrutable malice of the heart, which finite beings cannot know without special revelation. How, then, could it be used as a guide for the punishment of crimes? If such a thing were tried, men could punish when God pardons and pardon when God punishes. If men can run counter to the Almighty by blaspheming against Him, then they can do so also by punishing on His behalf.

Chapter 8 The classification of crimes

We have seen what the true measure of crimes is, namely, *harm to society*. This is one of those palpable truths which, though they call for neither quadrants nor telescopes to be discovered, but are within the grasp of the average intelligence, nevertheless have, by a curious conjunction of circumstances, only been firmly recognised by a few thinkers in every nation and in every century. But opinions worthy only of Asiatic despots and emotions robed in authority and power have blotted out, mainly by unfelt pressures but sometimes by violent impressions affecting the timid credulity of men, the simple ideas, which perhaps shaped the first philosophy of those youthful societies, and to which the enlightenment of the present century seems to be leading us back, with that greater conviction that results from a rigorous analysis, from a thousand unhappy experiences and the very obstacles themselves.

It would now seem appropriate to examine and to distinguish all the various sorts of crimes and the ways of punishing them, if it were not for the fact that this would demand immense and tedious detail because of the variations caused by the differing circumstances of differing times and places. But it will be enough to point out the most general principles and the most baneful and common mistakes to correct both those who, from a misguided love of freedom, would wish to introduce anarchy, and those who would like to reduce men's lives to monastic regularity.

Some crimes directly destroy society or its representative. Some undermine the personal security of a citizen by attacking his life, goods or honour. Others still are actions contrary to what each

citizen, in view of the public good, is obliged by law to do or not do. The first, which are the greatest crimes, because the most damaging, are those which are called *lèse-majesté* or sedition. Only tyranny and ignorance, which can confuse even the clearest of words and ideas, could apply this term – and a correspondingly severe punishment – to crimes of a different nature, thus making men the victims of a word, as on countless other occasions. Every crime, even a private one, offends against society, but not all aim at its immediate destruction. Like physical actions, moral actions have their own limited sphere of action and, like any other movement in nature, are located differently in time and space; so that only a captious understanding, which is the standard philosophy of slavery, can confuse what eternal truth has separated by immutable relations.

After these, there are the crimes which run counter to the security of individuals. Since this is the main purpose of every legitimate association, the violation of the right to security which each citizen has earned must be assigned one of the heavier punishments contemplated by the laws.

Every citizen ought to believe himself able to do anything which is not against the law without fearing any other consequence than what follows from the action itself. This is the political creed which ought to be received by the people and preached by magistrates scrupulously upholding the law. This is a sacred creed, without which there cannot be a legitimate society; a just recompense for men's sacrifice of that universal power over all things common to all sentient creatures, and limited only by their own strength. This creed liberates and invigorates the spirit and enlightens the mind, making men virtuous with that virtue which knows no fear and not with that pliant prudence which is fitting only to those who have to live a precarious and uncertain existence. Therefore, attacks on citizens' security and freedom are among the greatest crimes, and into this class fall not only the murders and thefts practised by common people, but also those of the nobility and magistrates, whose influence is wider and has a greater effect, destroying the subjects' faith in the ideas of justice and duty, and replacing it with the notion that might is right, which is as dangerous in him who adopts it as it is in him who suffers from it.

Chapter 9 Of honour

There is a noteworthy contradiction between, on the one hand, the civil laws which are the jealous guardians of, above all, the citizen's person and goods, and, on the other, the laws of what is called 'honour', in which pride of place is given to opinion. Long and ingenious disquisitions have been devoted to the term 'honour', without any fixed and stable idea being associated with it. What a sorry state for the human mind to be in, that the most remote and trivial ideas about the revolution of the heavens should be better known than the moral notions which are near to hand and of the greatest importance, forever varying as they are buffeted by the winds of human passions and as they are accepted and disseminated by an easily led ignorance. This apparent paradox vanishes if we consider how objects which are too close to our eyes become blurred. In just this way, the very proximity of our moral ideas makes it easy for the many simple ideas which comprise them to become muddled and for the distinctions necessary to the rigorous investigation of the phenomena of human sensibility to get confused. And the impartial investigator of human affairs will cease to wonder altogether, and may begin to suspect that there may not be any need for such a complex moral apparatus and so many restraints to make men happy and secure.

Honour, then, is one of those complex ideas which is compounded not only of simple ideas, but also of equally complicated ideas, and which includes or excludes its various constituent elements according to the way it presents itself to the mind, retaining only a few common ideas, just as several complex algebraic quantities

admit of a common denominator. To find this common denominator in the various ideas which men have created of *honour*, we must look briefly at the formation of societies.

The first laws and the first magistrates arose out of the need to remedy the harms produced by the physical despotism of every individual; this was the end for which society was instituted and this primary end has always been preserved, actually or apparently, at the head of every legal code, including the destructive ones. But the coming together of men and the progress of their understanding gave rise to an infinite variety of actions and mutual needs which always outstripped the laws' provision but fell short of the actual power of each individual. At this stage began the despotism of opinion, which was the only means by which to gain those goods from others and to avoid those evils which the laws were unable to secure. And opinion afflicts both the wise man and the vulgar; it is what puts a higher price on the appearance of virtue than on virtue itself and prompts even a knave to become a missionary providing he finds it is in his interest. Thus men's respect became not merely useful, but necessary, to avoid falling below the common standard. Thus, if the ambitious man seeks it as useful, and the vain man solicits it as evidence of his worth, we can see that the proud man requires it as a necessity. Very many men are ready to stake their very lives on this *honour*. Since it arose only after the formation of society, it could not be placed in the common repository; rather, it represents an instantaneous return to the state of nature and a temporary withdrawal of oneself from the laws which do not sufficiently protect the citizen in such a matter.

Therefore, in extreme political freedom and in extreme subjection all idea of honour disappears or is fully absorbed into other ideas. In the former case, the despotism of the laws makes the search for others' respect useless and, in the latter, the despotism of men, by destroying civil co-existence, reduces them to a precarious and fleeting personality. Honour is thus one of the fundamental principles of monarchies that are mitigated despotisms, functioning in them as revolutions do in despotic states, as a temporary return to the state of nature and as a reminder to the ruler of the ancient equality of men.

Chapter 10 Of duels

Private duels, whose origin lay in the very anarchy of the laws, arose from this need for others' esteem. Duels are alleged to have been unknown in the ancient world, perhaps because the ancients did not foregather in temples, in theatres and with their friends warily forearmed, or perhaps because the duel was a common and ordinary spectacle which enslaved and debased gladiators gave to the public, and free men disdained to be considered and called gladiators because of their private combats.

Attempts to put a stop to this custom by decrees of death against those who engage in duels have been in vain, for it is founded on something which some men fear more than death. Deprived of the esteem of others, the man of honour sees himself doomed to become either a merely solitary being, which would be an insupportable condition for a sociable man, or the butt of insults and slander, whose combined effect would be greater than the danger of punishment.

Why is it that ordinary people for the most part do not duel as noblemen do? It is not just that they are unarmed, but because the need for others' esteem is less common among the humble classes than it is among those who, being exalted, regard each other with greater circumspection and jealousy.

It is not useless to repeat what others have written, which is that the best way to prevent this crime is to punish the aggressor, that is, the person whose action caused the duel, and to absolve him who, through no fault of his own, was compelled to defend what the current laws do not guarantee, his good name, and had to show his fellow citizens that he fears only the laws and not men.

Chapter 11 Public peace

Finally, in the third type of crimes we find particularly those which disturb the public peace and the calm of the citizenry, such as brawls and revels in the public streets which are meant for the conduct of business and traffic. Likewise, there is fanatical demagogy which arouses the volatile emotions of curious crowds, emotions that gain in strength from the mass of the listeners and from dark and inscrutable enthusiasm more than from clear and calm reason, which never influences a large gathering of men.

Among the measures effective in forestalling the dangerous amassing of popular emotions are street-lighting at public expense, the posting of guards in the various districts of the city, sober and moral sermons delivered in the silence and sacred peace of churches protected by public authorities, and homilies in defence of public and private interests in the nation's councils, in parliaments or wherever the majesty of the sovereign power resides. These make up one of the main branches of the care of the magistrate, which the French call *police*. But if the magistrate implements laws which are arbitrary and not set down in a code which is diffused among all the citizens, then the door is open to tyranny, which always hems in political liberty.

I can find no exception to the general truism that every citizen ought to know when he is guilty and when he is innocent. If censors, or other arbitrary magistrates are necessary in some regimes, that necessity arises from the weakness of its constitution and not from the nature of a well-organised government. Uncertainty as to one's fate has sacrificed more victims to a hidden tyranny than public

and official cruelty ever has. The latter disgusts men's minds more than it debases them. The true tyrant always begins by usurping men's opinions, and hobbling the courage which can only shine in the clear light of the truth, in the fire of emotion, or in ignorance of danger.

But what shall be the punishments appropriate for these crimes? Is death a really *useful* and *necessary* punishment for the security and good order of society? Are torture and corporal punishment *just* and do they serve the *purpose* for which the laws were set up? What is the best way to prevent crimes? Are the same punishments equally useful at all times? What influence do they exercise over public mores? These questions need to be answered with a mathematical rigour which will cut through the cloud of specious reasoning, seductive eloquence and diffident doubt. I should deem myself satisfied if I had no claim other than that of being the first to present to Italians, rather more clearly than hitherto, those things which other nations have ventured to write and have begun to put into practice; but if, in upholding the rights of men and the invincible truth, I were to contribute to relieving some blighted victim of tyranny or, equally lethal, ignorance, from the spasms and anxieties of death, the blessing and tears of joy of even a single innocent man would console me for the scorn of the multitude.

Chapter 12 The purpose of punishment

It is evident from the simple considerations already set out that the purpose of punishment is not that of tormenting or afflicting any sentient creature, nor of undoing a crime already committed. How can a political body, which as the calm modifier of individual passions should not itself be swayed by passion, harbour this useless cruelty which is the instrument of rage, of fanaticism or of weak tyrants? Can the wailings of a wretch, perhaps, undo what has been done and turn back the clock? The purpose, therefore, is nothing other than to prevent the offender from doing fresh harm to his fellows and to deter others from doing likewise. Therefore, punishments and the means adopted for inflicting them should, consistent with proportionality, be so selected as to make the most efficacious and lasting impression on the minds of men with the least torment to the body of the condemned.

Chapter 13 Of witnesses

It is a matter worth pondering in every good legal code just how the credibility of witnesses and proofs of guilt are to be weighed. Every reasonable man can be a witness, anyone, that is, whose ideas are to some degree consistent and whose sentiments are concurrent with those of other men. {{The true measure of his credibility is nothing but his interest in telling or not telling the truth, from which it follows that it is silly to exclude women on the grounds of their weakness, puerile to treat condemned men, because they are dead in law, as if they are dead in fact, and meaningless to insist on the infamy of the infamous when they have no interest in lying.}} Therefore, credibility should diminish in proportion to the affection, hate or other close relations which obtain between the witness and the accused. More than one witness is needed, because, so long as one party affirms and the other denies, nothing is certain and the right which every man has to be believed innocent preponderates. A witness's credibility noticeably diminishes as the enormity of the crime or the unlikeliness of its circumstances increase, such as in cases of witchcraft and gratuitous cruelty.[c] It is more likely that several men should lie in a case of

[c] {{Among criminal lawyers belief in a witness grows with the horror of the crime. Here is the iron rule which is dictated by the cruellest imbecility: 'In atrocissimis leviores conjecturae sufficiunt, et licet judici jura transgredi.' If we translate this into ordinary language, Europeans shall see one of the myriad maxims, all equally reasonable, to which they are, almost without knowing it, subject: 'In the most horrid crimes, that is, in the least likely, the slightest conjectures are enough, and the judges may go beyond the law.' The absurdities of legal practice are often the products of fear, which is the main spring of human ridiculousness. Our legislators

witchcraft, because it is more probable that illusion, ignorance or virulent hatred should act on several men than that even one man should exercise a power which God has either not given to or has taken back from every created being. It is the same in cases of extreme cruelty since, no man is cruel beyond his interests, his hatred or his fear. Strictly speaking, there is no superfluous feeling in man; it is always in proportion to the effects of the impressions made upon his senses. Likewise, the credibility of a witness can be discounted to some extent if he is a member of some private association whose customs and rules are either little known or different from those of the public at large. Such a man acts not only from his own emotions, but from those of others as well.

Lastly, when the crime is verbal, the credibility of witnesses is virtually nil, since the tone of voice, gestures and everything that leads up to and away from the different ideas which men attach to the same words change and modify what a person says so that it is almost impossible to repeat it in exactly the same way it was first said. Moreover, violent and uncommon actions, which are the real crimes, always leave a trace of themselves in the multitude of circumstances and effects which derive from them; but words remain only in the hearers' memory, which is generally unreliable and often imposed upon. A malicious accusation concerning a man's words is, therefore, far easier than one concerning his actions, since the greater number of circumstances which can be called in evidence about the latter give the accused more ways by which to exonerate himself.

(for such are the jurisconsults who have been authorised by the mere fact of being dead to decide about everything and to be transformed from partial and self-serving writers into judges and lawgivers over men), fearful of condemning an innocent man, weigh down judicial practice with an exuberance of formalities and exceptions such that exact observance of them would enthrone anarchic impunity in the place of justice. When frightened by some few horrid crimes which are hard to prove, however, our legislators believed that they had to overcome the very formalities that they had themselves established, and thus, as much from despotic impatience as from womanish trepidation, they converted grave trials into a kind of game in which luck and guile play the main parts.}}

{Chapter 14 Evidence and forms of judgement

There is a very useful theorem for calculating the certainty of a matter, such as the evidence for a crime. When the pieces of evidence for some matter are interdependent, that is, when the pieces of evidence cannot be tested except against each other, then, the more evidence is adduced, the less credible is the matter in question, because anything which would make the earlier parts fail will make the later parts fail too. {{When all the pieces of evidence for some matter depend equally on a single piece, the number of pieces neither increases nor decreases the probability of the matter, because their joint value as evidence is included in the value of the piece on which they all depend.}} When the pieces of evidence are independent of each other, that is, when the evidence can be tested other than by each other, then, the more evidence is adduced, the more credible is the matter in question, because the falsity of one piece of evidence does not affect the validity of the others.

It may seem odd that I talk of probability in relation to crimes, which have to be certain if they are to call for punishment. But the paradoxicality here will disappear if we see that moral certainty is, strictly speaking, nothing but a probability, though a probability of such a sort as to be called certainty because every reasonable man necessarily assents to it out of force of habit born of the need to act and antecedent to any theorising. Therefore, the certainty which is called for to establish that a man is guilty is the same as that which guides men in the most important enterprises of their lives. {{We may distinguish between perfect and imperfect pieces of evidence for a crime. Those which exclude the possibility that

a given man is innocent I call perfect; and those which do not exclude that possibility, imperfect. Of the former, even a single piece is sufficient to obtain a conviction; of the latter, we need as many pieces as are necessary to make up one perfect piece of evidence; that is to say, if, relative to each of the pieces taken alone, it is possible that a man should be innocent, then relative to them jointly, it is impossible that he should be. It may be noted that imperfect evidence from which the accused could exonerate himself becomes perfect if he does not do so adequately. But it is easier to feel the moral certainty of evidence than to define it exactly.}}

For this reason, I think it an admirable arrangement which supplements the main judge with assessors, selected by lot rather than nominated. Because in this case the ignorance which judges by feeling is a safer guide than the erudition which judges by opinion. Where the laws are clear and precise, the judge's task is merely to discover the facts. But, if the search for the evidence of a crime calls for skill and ability, if the presentation of the result calls for clarity and precision, then forming a judgement on the basis of this resulting evidence requires only simple and ordinary good sense, which is less misleading than the learning of a judge who is accustomed to wanting to find criminals and who reduces everything to an artificial system derived from his studies. It would be a happy nation in which the law were not a learned profession!

The law according to which every man should be tried by his peers is a very useful one, because, when a citizen's freedom and fortune are at stake, the sentiments inspired by inequality should be silenced. The sense of his own superiority with which a rich man views the poor, and the indignation with which the inferior views the superior should have no role to play in such judgements. When the crime is an offence against a third party, then half the judges should be the peers of the defendant and half the peers of the plaintiff. In this way, having evened up every private interest which could, even involuntarily, alter the guise under which things are seen, only the laws and the truth shall be heard. It is also in keeping with justice that the accused be allowed, up to a certain point, to dismiss jurors of whom he has doubts; and if this right is allowed to him for a certain time without dispute, then it will seem almost that he is condemning himself.

Verdicts and the proof of guilt should be public, so that opinion, which is perhaps the only cement holding society together, can restrain the use of force and the influence of the passions, and so that the people shall say that they are not slaves but are protected, which is a sentiment to inspire courage and as valuable as a tax to a sovereign who knows his true interests. We shall not point out other refinements and provisions which these kinds of institutions call for. If it were necessary to say everything, I should have said nothing.}

Chapter 15 Secret denunciations

Secret denunciations are an obvious abuse, but a time-hallowed one rendered necessary in many nations by the weakness of the constitution. Such a custom makes men dishonest and furtive. Anyone who suspects he sees an informer in his fellow man sees him as an enemy. Men then become accustomed to masking their feelings and hiding them from others, finally getting to the point where they hide them from themselves. Unhappy the men who reach this stage: without clear and fixed principles to guide them, they drift lost and uncertain on the wide sea of opinion, constantly struggling to save themselves from the monsters which threaten them; they live each moment embittered by the uncertainty of the future. Deprived of the lasting pleasures of peace and security, only a few brief moments of pleasure, haphazardly wolfed down in the course of their miserable lives, offer any consolation for their having lived at all. Shall we make of such men the valiant soldiers to defend the nation or the throne? And shall we find among them the upright magistrates who, with free and patriotic eloquence, will support and swell the sovereign's true interests, who will bring to the throne along with the taxes the love and thanksgiving of all classes of men, and who, on the sovereign's behalf, will bestow on the mansion and the hovel alike the peace, security and aspiration to improve one's lot through hard work which is the useful leaven and very life of the state?

Who can defend himself against false accusation when it is guarded by tyranny's strongest shield, *secrecy*? What sort of government can it be in which the ruler suspects every subject of being

an enemy, and is forced to preserve the public peace by taking away each individual's peace of mind?

{What reasoning can justify secret denunciations and punishments? Is it public safety, security and the preservation of the regime? But what untoward state of things is it, in which those who hold power and the respect that goes with it, are afraid of every citizen? Is it the protection of the accuser? So, the laws do not defend him sufficiently. And are there to be subjects who are more powerful than the sovereign! Is it the baseness of the informer? In that case, a secret slander is authorised while a public is punished. Is it the nature of the crime? If we call inoffensive or even publicly useful actions crimes, then no amount of secrecy for the denunciations and the judgements will suffice. Can there be crimes, that is, offences against the public, of which it is not in the interest of everyone that it be made a public example, that is, that the condemnation should be public? I respect every government and I am not discussing any one in particular; the state of things is sometimes such that it might appear that the removal of an evil embedded in the system of government spells ruin for the whole; but if it fell to me to establish new laws for some untenanted corner of the universe, I should have the whole of posterity before my eyes and my hand would tremble before I should license such a practice.}

It has been said by Montesquieu that public denunciation is better fitted to republics, where a citizen's first desire ought to be for the public good, than it is to monarchies, where that feeling is very weak as a result of the nature of the regime and where the best arrangement is that of appointed prosecutors who shall arraign those who break the laws in the name of the public at large. But every government, both republican and monarchic, should punish the slanderer as it would the person who is slandered.

Chapter 16 Of torture

The torture of a criminal while his trial is being put together is a cruelty accepted by most nations, whether to compel him to confess a crime, to exploit the contradictions he runs into, to uncover his accomplices, to carry out some mysterious and incomprehensible metaphysical purging of his infamy, {or, lastly, to expose other crimes of which he is guilty but with which he has not been charged}.

No man may be called guilty before the judge has reached his verdict; nor may society withdraw its protection from him until it has been determined that he has broken the terms of the compact by which that protection was extended to him. By what right, then, except that of force, does the judge have the authority to inflict punishment on a citizen while there is doubt about whether he is guilty or innocent? This dilemma is not a novelty: either the crime is certain or it is not; if it is certain, then no other punishment is called for than what is established by law and other torments are superfluous because the criminal's confession is superfluous; if it is not certain, then an innocent man should not be made to suffer, because, in law, such a man's crimes have not been proven. Furthermore, I believe it is a wilful confusion of the proper procedure to require a man to be at once accuser and accused, in such a way that physical suffering comes to be the crucible in which truth is assayed, as if such a test could be carried out in the sufferer's muscles and sinews. This is a sure route for the acquittal of robust ruffians and the conviction of weak innocents. Such are the evil consequences of adopting this spurious test of

truth, but a test worthy of a cannibal, that the ancient Romans, for all their barbarity on many other counts, reserved only for their slaves, the victims of a fierce and overrated virtue.

What is the political purpose of punishment? The instilling of terror in other men. But how shall we judge the secret and secluded torture which the tyranny of custom visits on guilty and innocent alike? It is important that no established crime go unpunished; but it is superfluous to discover who committed a crime which is buried in shadows. A misdeed already committed, and for which there can be no redress, need be punished by a political society only when it influences other people by holding out the lure of impunity. If it is true that, from fear or from virtue, more men observe the laws than break them, the risk of torturing an innocent ought to be accounted all the greater, since it is more likely that any given man has observed the laws than that he has flouted them.

Another absurd ground for torture is the purging of infamy, that is, when a man who has been attainted by the law has to confirm his own testimony by the dislocation of his bones. This abuse should not be tolerated in the eighteenth century. It presupposes that pain, which is a sensation, can purge infamy, which is a mere moral relation. Is torture perhaps a crucible and the infamy some impurity? It is not hard to reach back in time to the source of this absurd law, because even the illogicalities which a whole nation adopts always have some connection with its other respected commonplaces. It seems that this practice derives from religious and spiritual ideas, which have had so much influence on the ideas of men in all nations and at all times. An infallible dogma tells us that the stains springing from human weakness, but which have not earned the eternal anger of the great Being, have to be purged by an incomprehensible fire. Now, infamy is a civil stain and, since pain and fire cleanse spiritual and incorporeal stains, why should the spasms of torture not cleanse the civil stain of infamy? I believe that the confession of guilt, which in some courts is a prerequisite for conviction, has a similar origin, for, before the mysterious court of penitence, the confession of sin is an essential part of the sacrament. It is thus that men abuse the clearest illuminations of revealed truth; and, since these are the only enlightenment to be found in times of ignorance, it is to them that credulous mankind will always turn and of them that it will make the most absurd

and far-fetched use. But infamy is a sentiment which is subject neither to the law nor to reason, but to common opinion. Torture itself causes real infamy to its victims. Therefore, by this means, infamy is purged by the infliction of infamy.

The third ground for torture concerns that inflicted on suspected criminals who fall into inconsistency while being investigated, as if both the innocent man who goes in fear and the criminal who wishes to cover himself would not be made to fall into contradiction by fear of punishment, the uncertainty of the verdict, the apparel and magnificence of the judge, and by their own ignorance, which is the common lot both of most knaves and of the innocent; as if the inconsistencies into which men normally fall even when they are calm would not burgeon in the agitation of a mind wholly concentrated on saving itself from a pressing danger.

This shameful crucible of the truth is a standing monument to the law of ancient and savage times, when ordeal by fire, by boiling water and the lottery of armed combat were called the *judgements* of God, as if the links in the eternal chain which originates from the breast of the First Mover could be continually disrupted and uncoupled at the behest of frivolous human institutions. The only difference which there might seem to be between torture and ordeal by fire or boiling water is that the result of the former seems to depend on the will of the criminal, and that of the latter on purely physical and external factors; but this difference is only apparent and not real. Telling the truth in the midst of spasms and beatings is as little subject to our will as is preventing without fraud the effects of fire and boiling water. Every act of our will is always proportional to the force of the sensory impression which gives rise to it; and the sensibility of every man is limited. Therefore, the impression made by pain may grow to such an extent that, having filled the whole of the sensory field, it leaves the torture victim no freedom to do anything but choose the quickest route to relieving himself of the immediate pain. Thus the criminal's replies are as necessitated as are the effects of fire and boiling water. And thus the sensitive but guiltless man will admit guilt if he believes that, in that way, he can make the pain stop. All distinctions between the guilty and the innocent disappear as a consequence of the use of the very means which was meant to discover them.

{It would be redundant to make this point twice as clear by citing the numerous cases of innocent men who have confessed their guilt as a result of the convulsions of torture. There is no nation nor age which cannot cite its own cases, but men do not change nor do they think out the consequences of their practices. No man who has pushed his ideas beyond what is necessary for life, has not sometimes headed towards nature, obeying her hidden and indistinct calls; but custom, that tyrant of the mind, repulses and frightens him.}

The result, therefore, of torture depends on a man's predisposition and on calculation, which vary from man to man according to their hardihood and sensibility, so that, with this method, a mathematician would settle problems better than a judge. Given the strength of an innocent man's muscles and the sensitivity of his sinews, one need only find the right level of pain to make him admit his guilt of a given crime.

A guilty man is interrogated in order to know the truth, but if this truth is hard to discover from the bearing, the gestures and the expression of a man at rest, it will be much the harder to discover it from a man in whom every feature, by which men's faces sometimes betray the truth against their will, has been altered by spasms of pain. Every violent action confuses and clouds the tiny differences in things which sometimes serve to distinguish truth from falsehood.

These truths were known to the ancient Roman legislators, who only allowed the torture of slaves, who were denied the status of persons. They are also evident in England, a nation the glory of whose letters, the superiority of whose trade and wealth, and hence power, and whose examples of virtue and courage leave us in no doubt about the goodness of her laws. Torture has been abolished in Sweden and by one of the wisest monarchs of Europe who, bringing philosophy to the throne and legislating as the friend of his subjects, has set them equal and free under the law, which is the only equality and freedom which reasonable men could demand in the present state of things. Martial law does not believe torture necessary for armies, which are made up for the most part of the scum of society whom you might have thought more in need of it than any other class of person. How strange it must seem to anyone who does not take account of how great the tyranny of habit is,

that peaceful laws should have to learn a more humane system of justice from souls inured to massacre and blood.

This truth is also felt, albeit indistinctly, by those very people who apparently deny it. No confession made under torture can be valid if it is not given sworn confirmation when it is over; but if the criminal does not confirm his crime, he is tortured afresh. Some learned men and some nations do not allow this vicious circle to be gone round more than three times; other nations and other learned men leave it to the choice of the judge, in such a way that, of two men equally innocent or equally guilty, the hardy and enduring will be acquitted and the feeble and timid will be convicted by virtue of the following strict line of reasoning: *I, the judge, had to find you guilty of such and such a crime; you, hardy fellow, could put up with the pain, so I acquit you; you, feeble fellow, gave in, so I convict you. I know that the confession extorted from you in the midst of your agonies would carry no weight, but I shall torture you afresh if you do not confirm what you have confessed.*

A strange consequence which necessarily follows from the use of torture is that the innocent are put in a worse position than the guilty. For, if both are tortured, the former has everything against him. Either he confesses to the crime and is convicted, or he is acquitted and has suffered an unwarranted punishment. The criminal, in contrast, finds himself in a favourable position, because if he staunchly withstands the torture he must be acquitted and so has commuted a heavier sentence into a lighter one. Therefore, the innocent man cannot but lose and the guilty man may gain.

The law which calls for torture is a law which says: *Men, withstand pain, and if nature has placed in you an inextinguishable self-love, if she has given you an inalienable right to self-defence, I create in you an entirely opposite propensity, which is a heroic self-hatred, and I order you to denounce yourselves, telling the truth even when your muscles are being torn and your bones dislocated.*

{Torture is given to discover if a guilty man has also committed other crimes to those with which he is charged. The underlying reasoning here is as follows: *You are guilty of one crime, therefore you may be of a hundred others; this doubt weighs on me and I want to decide the matter with my test of the truth; the laws torture you because you are guilty, because you may be guilty, or because I want you to be guilty.*}

Finally, torture is applied to a suspect in order to discover his accomplices in crime. But if it has been proven that torture is not a fit means of discovering the truth, how can it be of any use in unmasking the accomplices, which is one of the truths to be discovered? As if a man who accuses himself would not more readily accuse others. And can it be right to torture a man for the crimes of others? Will the accomplices not be discovered by the examination of witnesses, the interrogation of the criminal, the evidence and the *corpus delicti*, in short, by the very means which ought to be used to establish the suspect's guilt? Generally, the accomplices flee as soon as their partner is captured; the uncertainty of their fate condemns them to exile and frees the nation of the danger of further offences, while the punishment of the criminal in custody serves its sole purpose, which is that of discouraging with fear other men from perpetrating a similar crime.

{{Chapter 17 Of the exchequer

There was a time when almost all punishments were pecuniary. Men's crimes were the prince's patrimony. Attacks on the public security were an object of financial gain. Those who were charged with defending the public security had an interest in seeing it broken. The way in which punishment was exacted was by a suit between the exchequer, which dealt these punishments, and the criminal – a civil litigation, more private than public, which gave to the exchequer more rights than those ordained for the public security, and to the criminal more impositions than would be necessary to set an example. The judge, therefore, was more counsel for the exchequer than an impartial seeker after the truth, a tax official rather than a protector and minister of the laws.

But since, in this system, to confess that one was a transgressor was to confess that one was in debt to the exchequer, which was the aim of these criminal proceedings, so it came about (as still obtains, effects lasting long after their causes) that the whole arrangement of the criminal law centred on a confession of guilt put together in such a way as to favour and not to harm the interests of the exchequer. Without such a confession, a criminal convicted on indubitable evidence would receive a lesser punishment than the established one. Without it, he would not undergo torture for other similar crimes which he might have committed. But with it, the judge takes possession of the criminal's body and, with methodical formalities, tears it apart, to draw from it, as from some capital he has earned, all the profit he can. Once the fact of the crime has been proven, confession renders the proof convincing.

To make this proof even less suspect, it is extracted by the use of torments and the desperation of pain. At the same time, a calm, impartial confession given out of court, without the bullying fears of a judicial torture, will not be sufficient for a conviction. Enquiries and evidence which throw light on the matter, but which weaken the exchequer's case, are excluded. If criminals were sometimes spared pains, it was not for the sake of their wretchedness and misery, but for fear that this entity, now legendary and inconceivable, might lose its case.

The judge becomes the enemy of the accused, of a man in chains, a prey to squalor, to torture, to the most appalling future; and he does not seek for the truth of the matter, but only for the crime in the prisoner; he sets traps for him and, if they do not succeed, he feels it as a personal failure, an affront to that sense of his own infallibility, which men attribute to themselves in all matters. The judge has in his power the evidence which leads to the arrest. If anyone is to prove himself innocent, he must first be declared to be guilty: this is what is called the *offensive trial*, and the criminal proceedings almost everywhere in the enlightened Europe of the eighteenth century are of this sort. The true trial, the *informative*, which consists in the impartial search for the facts, which is what reason demands, what martial law implements, and what even Asiatic despotism employs in peaceful and unimportant cases, is very little in evidence in European courts. What an involuted maze of strange illogicalities, which no doubt a happier future will find incredible! Only the philosophers of that time will be able to discover through their knowledge of human nature any explanation of how such a system could come about.}}

Chapter 18 Of oaths

There is a contradiction between the laws and the natural sentiments of men in the matter of the oaths which a criminal is required to take so as to make him truthful when he has the greatest interest in being deceitful. As if a man could swear himself into the duty of promoting his own destruction, and religion did not fall silent in most men when their interests were speaking. The experience of every century shows that men have abused religion, that precious gift from Heaven, more than anything. And why should knaves respect religion if the men who are considered wisest have often defiled it? For most men, the motives which religion opposes to the cries of fear and love of life, are too weak because too remote from the senses. The affairs of Heaven are conducted according to laws altogether different from those that govern the affairs of men. Why should the former be confused with the latter? And why should a man be put in the terrible dilemma of being either lost to God or conniving at his own ruin? The law which demands such an oath requires one to be either a bad Christian or a martyr. Oaths slowly become a mere formality, thereby sapping the strength of religious feelings which, in most men, are the sole pledges of virtue. Experience has shown how useless oaths are. Any judge will testify that no oath has ever made a guilty man tell the truth, and so does reason, which rules that every law which runs counter to men's natural feelings is useless and therefore pernicious. Such laws share the fate of dykes which are built straight in the line of a river's flow: they are either flattened and engulfed straight away, or they are eroded and gradually undermined by the eddies which they themselves set up.

Chapter 19 Of prompt punishments

The swifter and closer to the crime a punishment is, the juster and more useful it will be. I say juster, because it spares the criminal the useless and fierce torments of uncertainty which grow in proportion to the liveliness of one's imagination and one's sense of one's own impotence. Juster because, loss of freedom being a punishment, a man should suffer it no longer than necessary before being sentenced. Remand in custody, therefore, is the simple safe-keeping of a citizen until he may be judged guilty, and since this custody is intrinsically of the nature of a punishment, it should last the minimum possible time and should be as lacking in severity as can be arranged. The minimum time should be calculated taking into account both the length of time needed for the trial and the right of those who have been held the longest to be tried first. The stringency of the detention ought not to be greater than what is necessary to prevent escape or to save evidence from being covered up. The trial itself ought to be brought to a conclusion in the shortest possible time. What crueller contrast could there be than that between the procrastination of the judge and the anguish of the accused? On the one hand, the callous magistrate thinking of his comforts and pleasures, on the other, the prisoner languishing in tears and dejection. In general, the severity of a punishment and the consequence of crime ought to be as effective as possible on others and as lenient as possible on him who undergoes it, because a society cannot be called legitimate where it is not an unfailing principle that men should be subjected to the fewest possible ills.

I have said that promptness of punishment is more useful because the smaller the lapse of time between the misdeed and the punishment, the stronger and more lasting the association in the human mind between the two ideas *crime* and *punishment*. The former will come to be sensed as the cause and the latter as the necessary, inexorable effect. It is proven that the compounding of ideas is the cement which holds together the fabric of the human intellect, and without it pleasure and pain would be unconnected feelings and of no effect. The further men move away from general ideas and universal principles, that is, the less refined they are, the more they act on immediate associations that are closer to home, ignoring the more remote and complicated ones which are of use only to men strongly impassioned by the object of their desire, the light of whose attention illuminates a single object, leaving everything else in the dark. The more remote and complicated associations are also of use to more sophisticated minds, which have become accustomed to passing many objects in review at one time, and are able to compare many fragmentary feelings with each other, in such a way that the resulting action is less risky and uncertain.

Therefore, the contiguity of crime and punishment is of the highest importance if we want the idea of punishment to be immediately associated in unsophisticated minds with the enticing picture of some lucrative crime. A long delay only serves to separate these two ideas further. Whatever impression the punishment of a crime may make, {it makes less as punishment than as spectacle, and} it will be felt only after the spectators have half-forgotten their horror at the crime in question, which would have served to reinforce their sense of what punishment is.

There is another principle which serves admirably to draw even closer the important connection between a misdeed and its punishment. And that is that the punishment should, as far as possible, fit the nature of the crime. This sort of fit greatly eases the comparison which ought to exist between the incentive to crime and the retribution of punishment, so that the latter removes and redirects the mind to ends other than those which the enticing idea of breaking the law would wish to point it.

Chapter 20 Violent crimes

Some crimes are assaults on persons, others are offences against goods. The former should always be punished with corporal punishment: the rich and the powerful should not be able to put a price on assaults on the weak and the poor; otherwise wealth, which is the reward of industry under the protection of the laws, feeds tyranny. There is no freedom when the laws permit a man in some cases to cease to be a *person* and to become a *thing*: then you will see the efforts of the powerful devoted to discovering from amongst the mass of civil relations those in which the law most favours his interests. The discovery of these is the magic secret which turns citizens into beasts of burden and which, in the hands of the strong, becomes the chain by which the actions of the rash and the weak are shackled. And it is the reason why, in some states which have all the appearance of being free, tyranny is hidden or worms its way unforeseen into a corner neglected by the lawgiver and gathers strength and grows unobserved. Men generally build the most solid bulwarks against open tyranny, but they do not see the tiny insect which gnaws away at them and opens a path for the river's flood that is the more sure for being concealed.

{Chapter 21 The punishment of the nobility

What, then, shall be the punishments fitting for the nobility, whose privileges make up a large part of the laws of nations? This is not the place to consider whether the hereditary distinction between nobility and commoners is useful to a government or necessary in a monarchy, whether it really constitutes a power interposed between and limiting the excesses of the two extremes, or whether it is not rather a class which, a slave to itself and to others, restricts the circulation of credit and hope to a very narrow compass, like those fertile and pleasant oases that stand out in the vast and sandy deserts of Arabia. Nor shall I consider whether, supposing it to be true that inequality is either necessary or useful in society, it is also true that it should subsist between classes rather than between individuals, should be fixed at one part rather than distributed throughout the body politic, or should be perpetual rather than continually destroyed and reborn. I shall confine myself to the punishments suited to this class of person, observing that the punishments ought to be the same for the highest as they are for the lowest of citizens. To be legitimate, every distinction whether of honour or wealth presupposes an antecedent equality based on the laws, which treat every subject as equally subordinate to them. It is to be supposed that the men who gave up their natural despotism have said, *let him who is most industrious have the greatest honour, and let his fame redound on his successors; but he who is more blessed or more honoured should hope for greater things than his fellow men but should not fear less than them the violation of those contracts by which he is raised above them.* It is true that no such decrees

issued from an assembly of all humankind, but they exist in the unchanging relations of things. They do not destroy those benefits which allegedly are produced by the nobility but prevent its unfortunate consequences. They buttress the laws, closing off every route by which punishment might be evaded.

To the argument that giving the same punishment to the nobleman and to the commoner is not really fair because of the difference in upbringing and the shame which is brought on an illustrious house, my reply would be that the measure of punishment is not the sensitivity of the criminal, but the harm done to the public, which is all the greater when it is perpetrated by those who are more privileged. The fairness of punishments can only be determined from without, since in reality they have a different effect on every individual, and the family's shame can be alleviated by a public demonstration by the sovereign of benevolence towards the criminal's innocent family. For, as everyone knows, such outward formalities take the place of reason in credulous and admiring people.}

Chapter 22 Theft

Thefts without violence should be punished with fines. Whoever seeks to enrich himself at the expense of others ought to be deprived of his own wealth. But, since this is generally the crime of poverty and desperation, the crime of that unhappy section of men to whom the perhaps 'terrible' and 'unnecessary' right to property has allowed nothing but a bare existence, {and since fines only increase the number of criminals above the original number of crimes, and take bread from the innocent when taking it from the villains,} the most fitting punishment shall be the only sort of slavery which can be called just, namely the temporary enslavement of the labour and person of the criminal to society, so that he may redress his unjust despotism against the social contract by a period of complete personal subjection.

But when violence is added to theft, then the punishment ought to be likewise a mixture of corporal punishment and penal servitude. Other writers before me have shown the disarray which arises from failing to distinguish between the punishments for violent thefts and those by stealth, by trying to set up an absurd equation between a large sum of money and the life of a man; but it is never redundant to repeat what has almost never been put into practice. Once set in motion, political machines continue the longest in one direction and are the slowest to adjust to a new one. These are crimes of different natures, and the mathematical axiom that between different magnitudes there is an infinity of difference holds as true in politics.

Chapter 23 Public disgrace

Personal injuries which damage honour, that is, that proper esteem that a citizen can rightly expect from others, ought to be punished with public disgrace. This disgrace is a sign of public disapproval, which deprives the malefactor of public goodwill, of the nation's confidence, and of that sense almost of brotherhood which society inspires. The law does not stretch to such matters. It is therefore necessary that the disgrace inflicted by the law be the same as that which derives from the nature of things, the same as is dictated by universal morality or the particular morality which arises from particular systems, which are the lawgivers to common opinion in any given nation. If the one differs from the other, then either the laws lose public confidence or ideas of morality and rectitude disappear in spite of speechifyings, which can never overcome the power of examples.

Whoever describes actions which are in themselves matters of indifference as worthy of public disgrace, reduces the opprobrium attaching to actions which are truly disgraceful. The penalties of public disgrace ought not to fall too often nor on too many individuals at a time: in the first case, because when concrete effects are seen too frequently in matters of opinion they weaken the force of opinion itself; and in the second, because to disgrace many people is in effect to disgrace no-one.

{{Corporal and painful punishments should not be meted out for crimes which, being founded on pride, derive glory and nourishment from pain itself. Ridicule and public disgrace are far more appropriate, being punishments which use the pride of the onlookers

to put a brake on the pride of fanatics, and whose constant application can, with slow and patient efforts, bring out the truth. Thus, the wise lawgiver, by setting force against force and opinions against opinions, breaks down the admiration and wonder caused in the popular mind by a false principle, the correctly deduced consequences of which tend to conceal its basic absurdity from the mass.}}

This is the way to avoid muddling the relations and the invariable nature of things, which, being unlimited in time and perpetually operative, breaks down and overturns any limited regulations which deviate from it. It is not only the arts of taste and pleasure that have faithful imitation of nature as their universal principle. Politics itself, when it is true and lasting, is governed by this general rule, since it is nothing but the art of guiding and concerting the immutable sentiments of men.

Chapter 24 Parasites

Anyone who disturbs the public peace, who does not obey the laws which are the conditions under which men abide with each other and defend themselves, must be ejected from society – in other words, he must be banished. This is the reason why wise states will not endure, in the midst of effort and industriousness, that sort of political parasitism which is confused by stern moralists with the idleness of wealth accumulated by hard work. This latter is a necessary idleness and useful insofar as society expands and the administration of public affairs contracts. By parasitism I mean that kind of inactivity which contributes neither labour nor wealth to society, which accumulates without ever losing, and which the masses regard with foolish admiration and the wise with scornful compassion for those victims who fall into its clutches and who lacking that drive towards an active life which is given by the necessity of caring for or increasing the requisites of life, let all their energies drift at the mercy of the passions of opinion, which are not the weakest of passions. We cannot call someone a social parasite who enjoys the fruits of his own forefathers' virtues or vices and who, in return for his temporary pleasures, dispenses bread and a livelihood to the industrious poor, and who wages by means of his wealth the silent war of trade in peacetime, rather than waging with force the uncertain and bloody sort of war. Thus it is not the stern and straitlaced virtue of some guardians of public morals who should decide who are the parasites to be punished, but the laws.

{{It seems as if those who have been accused of a terrible crime and who are very likely, but not certainly, guilty, ought to be

banished. To bring this about, however, a law is needed which is as little arbitrary and as exact as possible, and which imposes banishment on him who has posed the nation with the fatal choice either of fearing him or of doing him wrong, but which preserves his sacred right of proving his innocence. The evidence would have to be more persuasive in the case of a citizen than in that of a foreigner, and in the case of a person of good record than in that of a frequent offender.}}

Chapter 25 Banishment and confiscations

But should someone who is banished and excluded forever from the society of which he was a member be deprived of his possessions? This question can be considered from various points of view. The loss of one's goods is a greater punishment than that of banishment; so there ought to be some cases in which, proportionately with the crime, there ought to be partial or total loss of possessions or none at all. All possessions shall be forfeit when the banishment laid down by law is such as to sever all the ties between society and the malefactor. In such a case, the citizen dies and the man remains, and as far as the body politic is concerned, this should have the same effect as natural death. It would therefore seem that the convict's goods should pass to his legitimate heirs rather than to the prince, since death and banishment are identical in the eyes of the body politic. But it is not on account of this subtlety that I dare to oppose the confiscation of goods. If some writers have upheld the view that confiscations have put a brake on vendettas and private bullying, they have not observed that a punishment is just not simply because it produces some good, but because it is necessary. Even a useful injustice cannot be tolerated by a lawgiver who wishes to shut out the ever-vigilant tyranny which entices with temporary advantages and the happiness of a few notables, whilst scorning the future destruction and tears of uncounted commoners. Confiscations put a price on the head of the weak; they make the innocent suffer the punishment of the guilty; and they force on the innocent the desperate necessity of committing crimes. What more afflicting sight could there be than

that of a family which is brought into disgrace and destitution by the crimes of its head, when their legally decreed submission to him prevented them from averting his crimes, even if there had been a way of doing so!

Chapter 26 Family feeling

Such lamentable but authorised injustices were sanctioned by the most enlightened men and implemented by the freest republics, as a result of regarding society as a union of families rather than as a union of persons. Say there are one hundred thousand people, divided into twenty thousand families, each comprising five people including the head of the family who represents it: then if the association is regarded as consisting of families, there will be twenty thousand persons and eighty thousand slaves; if it is regarded as consisting of individuals there will be one hundred thousand citizens and no slaves. In the former case, there will be one republic and twenty thousand little monarchies which make it up; in the latter, the republican spirit will be breathed not only in the squares and in public meetings, but also within the home, where much of a man's happiness or misery is to be found. In the first case, since laws and customs are the product of the habitual sentiments of the members of the republic – that is, of the heads of households – the spirit of monarchism will gradually infiltrate the republic itself and the effects of this change will be curbed only by the conflict of individual interests, and not by an atmosphere of freedom and equality. Family feeling is a feeling for details and is limited to small matters. The spirit which regulates republics involves mastery of general principles, identifies the essential facts and reduces them to the main classes which are important for the good of the greatest number. In the republic of families, children remain under the power of the head so long as he lives, and have to wait until he dies to live under the sole jurisdiction of the laws. Habituated to

bowing and scraping and going in fear at an age when they are freshest and most lively, when their feelings are least affected by that fear of experience which goes by the name of moderation, how will they overcome the obstacles which vice always places in the way of virtue in their sluggish and decaying years, when men tend to oppose any dramatic changes, among other reasons because they despair of ever seeing the results?

When a republic is made up of persons, subordination within the family is not a matter of command but of contract; and when the children, having outgrown the natural dependence resulting from their weakness and need for education and protection, become free members of the city, they submit to the head of the family in order to share in its advantages, just as free men do in society at large. In the case of a republic made up of families, the sons, who constitute the largest and most productive part of the community, are at their father's disposal. In a republic made up of persons, there is no obligatory bond other than the sacred and inviolable call to give all necessary mutual aid and the duty to show gratitude for kindnesses received – a bond undermined less by the malignancy of the human heart than it is by being misguidedly imposed by the laws.

Such conflicts between the laws of the family and the basic laws of the republic are a rich source of other conflicts between domestic and public morality, and thus produce a perpetual strife within the soul of each man. The first of these laws inspires submissiveness and fear, the second courage and free-spiritedness; the first teaches one to limit beneficence to a small number of people whom one has not oneself chosen, the second to extend it to all classes of men; the former demands continual self-sacrifice to a false idol going by the name of the *good of the family*, which is frequently not the good of any of its members, while the latter teaches one to seek one's own interest without breaking the laws or excites the passionate feeling which spurs one to sacrifice oneself for the nation. Such conflicts lead men to spurn the pursuit of virtue, which they find incoherent and confused, and as remote as all blurred objects, both physical and moral, appear. How often, in thinking over his past actions, is a man astonished to find that he has acted wrongly!

As society grows, each individual becomes a smaller fraction of the whole, and the republican sentiment diminishes at the same

rate unless the laws take care to reinforce it. Like the human body, societies have their circumscribed limits and, if they grow beyond them, their economy will be upset. It seems as if the size of a state should be in inverse proportion to the sensibility of its members, otherwise, if both were to grow at the same rate, even good laws would find that the very good which they have produced will be an obstacle to the prevention of crimes. Too large a republic will not save itself from despotism except by subdividing itself and uniting into so many federated republics. But how is this end to be achieved? By a despotic dictator with the courage of Sulla, and as much flair for building as he had for destroying. If such a man is ambitious, the renown of future centuries awaits him; if he is a philosopher, the blessing of his fellow citizens will requite him for the loss of power, if he has not already become indifferent to their ingratitude. As the feelings which attach us to our nation weaken, so our feelings for the things close to hand are strengthened; thus under the harshest despotisms friendships are at their strongest, and the always modest virtues of the family are the most common or rather the only ones. From this fact anyone can see how limited the vision of most lawgivers has been.

Chapter 27 Lenience in punishing

But my thoughts have carried me away from my topic, which I must now waste no time in returning to. One of the most effective brakes on crime is not the harshness of its punishment, but the unerringness of punishment. This calls for vigilance in the magistrates, and that kind of unswerving judicial severity which, to be useful to the cause of virtue, must be accompanied by a lenient code of laws. The certainty of even a mild punishment will make a bigger impression than the fear of a more awful one which is united to a hope of not being punished at all. For, even the smallest harms, when they are certain, always frighten human souls, whereas hope, that heavenly gift which often displaces every other sentiment, holds at bay the idea of larger harms, especially when it is reinforced by frequent examples of the impunity accorded by weak and corrupt judges. The harsher the punishment and the worse the evil he faces, the more anxious the criminal is to avoid it, and it makes him commit other crimes to escape the punishment of the first. The times and places in which the penalties have been fiercest have been those of the bloodiest and most inhuman actions. Because the same brutal spirit which guided the hand of the lawgiver, also moved the parricide's and the assassin's. He decreed iron laws from the throne for the savage souls of slaves, who duly obeyed them; and in secluded darkness he urged men to murder tyrants only to create new ones.

As punishments become harsher, human souls which, like fluids, find their level from their surroundings, become hardened and the ever lively power of the emotions brings it about that, after a

hundred years of cruel tortures, the wheel only causes as much fear as prison previously did. If a punishment is to serve its purpose, it is enough that the harm of punishment should outweigh the good which the criminal can derive from the crime, and into the calculation of this balance, we must add the unerringness of the punishment and the loss of the good produced by the crime. Anything more than this is superfluous and, therefore, tyrannous. Men are guided by the repeated action on them of the harms they know and not by those they do not. Imagine two states, in which the scales of punishment are proportionate to the crimes and that in one the worst punishment is perpetual slavery, and that in the other it is breaking on the wheel. I maintain that there would be as much fear of the worst punishment in the first as in the second; and if there were cause to introduce in the first the worst punishments of the second, the same cause would produce an increase in the punishments of the second, which would gradually move from the wheel via slower and more elaborate torments to reach the ultimate refinements of that science which tyrants know all too well.

Two other disastrous consequences contrary to the very purpose of preventing crime follow from having harsh punishments. One is that it is not easy to sustain the necessary proportion between crime and punishment because, despite all the efforts of cruelty to devise all manner of punishments, they still cannot go beyond the limits of endurance of the human organism and feeling. Once this point has been reached, no correspondingly greater punishments necessary to prevent the more damaging and atrocious crimes can be found. The other consequence is that the harshness of punishments gives rise to impunity. Men's capacity for good or evil is confined within certain bounds, and a spectacle which is too awful for humanity cannot be more than a temporary upset, and can never become a fixed system of the sort proper to the law. If the laws are truly cruel, they must either be changed or they will occasion a fatal impunity.

What reader of history does not shudder with horror at the barbaric and useless tortures that so-called wise men have coldbloodedly invented and put into operation? Who can fail to feel himself shaken to the core by the sight of thousands of wretches whom poverty, either willed or tolerated by the laws, which have

always favoured the few and abused the masses, has dragged back to the primitive state of nature, and either accused of impossible crimes invented out of a cringing ignorance or found guilty of nothing but being faithful to their own principles, and who are then torn apart with premeditated pomp and slow tortures by men with the same faculties and emotions, becoming the entertainment of a fanatical mob?

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 broken 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, who 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

sociably, 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 pretexts for power and for the calculated and cruel formalities of justice; they are nothing but a conventional 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 crueller, 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

revered by the people and honoured by the magistracy! But why is the fate of an innocent man so different today? Because it seems that, in our current criminal system, the idea of force and power predominates in the popular mind over the idea of justice; because the accused and the convicted are thrown together into the same dungeon; because prison is more a punishment than a place of custody of the accused, {{and because the force that upholds the laws internally is separated from the force that defends the throne and the nation, when they ought to be united. If they were so united, the former would be joined to the judicial arm by their common reliance on the laws, although it would not be dependent on the latter's direct authority. And the glory which accompanies the pomp and pride of a military unit would draw off the ill-repute which, like all vulgar feelings, attaches to the manner rather than to the thing; and this is shown by military prisons' not being as shameful in the common mind as civil prisons.}} The barbaric notions and fierce ideas of our ancestral northern huntsmen still remain in the popular mind, in our customs and in our laws, which are always a hundred years behind a given nation's stage of goodness and enlightenment.

It has been maintained by some people that, wherever a crime or illegal action is committed, it can be punished; as if the status of being a subject were indelible, like that of a slave. Or even worse, as if a person could be the subject of one government and live under another, and as if his actions could, without contradiction, fall under two sovereigns and two, often contradictory, codes of law. Some believe likewise, on the abstract grounds that one who offends against mankind deserves universal condemnation and to have all mankind as his enemy, that an evil act committed at Constantinople, for instance, can be punished in Paris. As if judges were the upholders of human sensibilities, rather than of the contracts which bind men together. The place of punishment is the place of the crime, because it is there and nowhere else that men must settle accounts with an individual to prevent an affront to the public. A villain, provided he has not broken the terms of a society of which he is not a member, may be feared and so exiled and excluded by the greater power of the society, but he may not be punished by the processes of law which enforce contracts but do not pursue the intrinsic evil of actions.

Those guilty of lesser crimes are often punished either in the dark of the prison-house or by being deported as an example to a distant, and so almost useless, slavery in countries where they have not offended. Since men do not suddenly decide to commit great crimes, most people will regard the public punishment of a serious crime as nothing to do with them and as something that could never happen to them. But the public punishment of lesser crimes, which seem to be closer to home, would make more of an impression, and in deterring men from these would deter them all the more from the others. Punishments should be proportional among themselves to crimes, not only in their severity but also in the manner in which they are inflicted. Some would excuse the punishment of a petty crime if the offended party forgives the criminal, an act of beneficence and humanity but contrary to the public good. As if the pardon of a private citizen could remove the necessity of setting an example in the same way that he can forgo damages for the offence. The right to have someone punished does not belong to any individual; it is the right of all the citizens and of the sovereign. The individual can give up his part of this right, but he cannot cancel that of others.

Chapter 30 Trials and prescriptions

Once the evidence has been collected and the crime established, it is necessary to allow the accused time and the means to clear himself. But the time should be brief so as not to compromise the promptness of punishment, which we have seen to be one of the main brakes on crime. Some have opposed such brevity out of a misguided love of humanity, but all doubts will vanish once it is recognised that it is the defects in the laws that increase the dangers to the innocent.

But the laws ought to establish a certain amount of time for preparing both the defence and the prosecution, and the judge would become a lawmaker if it fell to him to decide how much time was to be set aside for trying a given crime. However, those crimes that are so awful that they linger in men's memories, once proven, admit of no limitation on the period within which a prosecution must be brought in the case of a criminal who has sought to flee his punishment. But in lesser and insignificant crimes a time-limit ought to be set to save a citizen from uncertainty, because the long obscurity of the crime prevents its being an example of impunity to others, and the possibility remains of the guilty party's reforming in the interim. It is enough to point out these principles, because a limit can only be fixed with precision in relation to a particular code of laws and the given circumstances of a society. I shall merely add that, in a nation which has discovered the usefulness of moderate punishments, laws which extend or shorten the period available for prosecution in proportion to the gravity of the crime, using remand and voluntary exile as part of

the punishment, will be able to provide a simple and restricted class of lenient punishments for a wide range of crimes.

But the periods in question shall not increase in direct proportion to the seriousness of the crime, since the likelihood of a crime is in inverse proportion to its seriousness. The period of investigation ought to diminish accordingly, therefore, and the time within which a prosecution must occur increase, which may seem to be in conflict with what I have said about equal punishments being given for unequal crimes if we count the period of remand or period of limitation before the verdict as part of the punishment. To clarify my idea for the reader, I distinguish two classes of crime: the first consists of serious crimes beginning with murder and including all the worst villainies; the second consists of minor crimes. This distinction has its foundation in human nature. The safety of one's own life is a natural right, the protection of property is a social right. The number of motives which impel men to overstep the natural feelings of pity is far fewer than the number of motives which impel them by the natural desire to be happy to violate a right which they do not find in their hearts but in social conventions. The vastness of the difference in probability of these two classes of crimes requires them to be regulated by different principles. In the most serious crimes, because they are the rarest, the period of enquiry should be decreased because of the greater likelihood that the accused is innocent, and the time set aside for preparation of the case ought to be increased, because the removal of the seductive prospect of impunity, which is the more harmful the more serious the crime, depends on a definitive verdict of innocence or guilt. But in minor crimes, since the accused's innocence is less likely, the time set aside for investigation should increase, and, since the harm caused by impunity is the less, the period for preparing the trial should decrease. Dividing crimes into two classes in this way would not be acceptable if the harm caused by crimes going unpunished decreased as the likelihood of guilt increased. {It might be recalled that an accused, who is found neither innocent nor guilty but who is discharged for lack of evidence, can be re-imprisoned and undergo a fresh investigation for the same crime if new and legally relevant evidence should turn up before the period of limitations for the crime has elapsed. At least this seems to me to be the proper attitude for the defence of both the subjects'

security and their liberty. For it is too easy to favour either one of them at the expense of the other, so that each of these inalienable and equal prerogatives of every citizen goes unprotected and uncared for, the former in the face of overt or covert despotism and the latter in the face of turbulent popular anarchy.}

Chapter 31 Crimes difficult to prove

To someone who does not take into account the fact that reason has almost never been the lawgiver to nations, it will seem strange, in view of these principles, that crimes which are the most serious or the most fantastical and strange, that is, which are the least likely to occur, come to be proved by guesses or by the weakest and least clearcut evidence. It is as if the laws and the judge had an interest not in the truth, but in getting a guilty verdict; as if the conviction of an innocent man were not a greater danger the more the likelihood of innocence outstrips the likelihood of guilt. Most men lack the energy that is as necessary for great crimes as it is for great virtue, from which it seems that the two go together in those countries which sustain themselves more by the activity of government and a passion for the public good, than by their size or the constant high quality of their laws. In the latter sort of country, weakened passions seem better suited to maintaining than to improving the form of government. And from this we draw the important conclusion that great crimes do not always show that a country is in decline.

There are some crimes which are at once common in society and difficult to prove. And in these cases, the difficulty of producing evidence indicates the probability of innocence. And the harm of the crime's going unpunished being the less since the frequency of these crimes depends on principles other than the risk of being punished, so the time for investigation and the period allowed for prosecution should similarly be decreased. Yet adultery and sodomy which are hard crimes to prove, are precisely those in which,

according to the received views, the tyrannical presumptions of the *nearly proofs* and *half-proofs* are admitted (as if a man could be *half-innocent* or *half-guilty*, that is, *half-punishable* or *half-acquittable*), and where, according to the cold and iniquitous teaching of some learned men who presume to offer norms and rules to the judiciary, torture exercises its cruel prerogatives on the body of the accused, the witnesses and even the whole family of the unfortunate.

Adultery is a crime which, viewed politically, is motivated and directed by two factors: the fluctuating laws of men and that very powerful attraction which urges one sex towards the other. This latter is similar in many respects to the gravitational forces that move the universe. Like gravity, it diminishes with distance, and, if the one rules all bodily movements, the other, so long as it lasts, rules all the movements of the soul. But sexual attraction differs from gravity in that gravity is counterbalanced by obstacles, whereas sex gathers strength and keenness the more obstacles are placed in its way.

If I were speaking to peoples still deprived of the light of religion, I would say that there is yet another difference between this crime and others. Adultery arises from the abuse of a constant and universal need in all mankind, a need antecedent to and, indeed, foundational of society itself, whereas other socially destructive crimes result from transitory emotions rather than natural need. To one who knows history and mankind, this need seems, in any given climate, to be always a constant quantity. Supposing this hypothesis to be true, then laws and mores which sought to decrease the total amount of such needs would be useless, even pernicious, because their effect would be to overload some people with the needs of others as well as their own. In contrast, they would be wise laws which, so to speak, by following the gentle slope of the plain, divided and split off the whole amount into as many equal and small parts, as were necessary to prevent drought or flood in every place. Conjugal fidelity is always proportional to the number and freeness of marriages. Where they are held together by ancestral prejudices, where they are welded and sundered by domestic power, there gallantry will stealthily break their bonds despite common morality, whose role it is to decry the effects and excuse the causes. But there is no need for such reflections for those who, living in the true religion, have higher motives, which correct the influence

of natural impulses. The commission of such a crime is so instantaneous and mysterious, so covered by that very veil which the laws have set up, a necessary but fragile veil which raises rather than lowers the value of what it covers, the opportunities for crime are so easy, the consequences so equivocal, that the lawgiver has more chance of preventing it than of punishing it.

A general rule: for every crime which by its very nature generally goes unpunished, punishment becomes an incentive. It is a feature of our imagination that difficulties – so long as they are not insurmountable or excessively daunting to our natural laziness – tend to fire the imagination and make the object appear still more desirable. For those difficulties are like barriers which prevent the wandering and fickle imagination from leaving the object alone. Compelled to consider the object's every aspect, the imagination is led to attach itself to the pleasurable parts to which our souls are more naturally attracted than to the painful and unhappy, which they shun and flee.

Homosexuality, which is so severely punished by law and so easily subjected to the tortures which defeat innocence, has its foundation less in the needs of an isolated and free man, than in the emotions of a socialised and enslaved one. It derives its strength not so much from the satiation of pleasures as from that sort of education which begins by rendering men useless to themselves with a view to making them useful to others. It is a product of those houses where eager youth is cooped up and, deprived by insurmountable obstacles of all other contacts, expends its adolescent vigour in profitless activities, becoming old before its time.

Likewise, infanticide results from the unavoidable conflict in which a woman is placed if she has given in to weakness or violence. How could one who finds herself caught between disgrace and the death of a being unable to feel what harms it, not prefer the latter to the certain misery to which she and her unhappy fruit would be exposed? The best way to prevent this crime would be to have effective laws to protect the weak against the tyranny which exacerbates those vices which cannot cover themselves with the mantle of virtue.

I do not mean to belittle the just revulsion which these crimes deserve. But, having pointed out their sources, I think I am allowed

to draw a general conclusion, which is that one cannot say that a punishment for a crime is exactly just (meaning necessary) until the law has instituted the best possible means in a given nation's circumstances for preventing such a crime.

Chapter 32 Suicide

Suicide is a crime which seems not to allow of being punished strictly speaking, since such a thing can only be visited either on the innocent or on a cold and insensible corpse. In the latter case, punishment would make no more impression on the living than whipping a statue. In the former case, it is unjust and tyrannical because man's political freedom presupposes that punishment be directed only at the actual culprit of a crime. Men love life too much and everything around them confirms them in this love. The enticing image of pleasure and hope, that sweetest snare of mortals, for which they will gulp down great draughts of evil if it is mixed with a few drops of delight, is too alluring for there to be any need to fear that the necessary impossibility of punishing such a crime will have any influence on men. He who fears pain obeys the law; but death extinguishes all the bodily sources of pain. What motive, then, can stay the desperate man's hand from suicide?

One who kills himself does less harm to society than one who leaves its borders forever; for the former leaves all his belongings, whilst the latter takes with him some part of what he owns. Indeed, if the strength of a nation consists in the number of its citizens, one who leaves a society to join a neighbouring nation does twice the harm of one who simply removes himself by death. The question then boils down to knowing whether it is useful or damaging to a country to allow its members a standing freedom to remove themselves beyond its borders.

No law should be issued which cannot be enforced or which the nature of the circumstances makes unenforceable. Since men

are ruled by opinion, which obeys the slow and indirect pressure of the lawgiver, but resists measures which are abrupt or direct, so laws which are useless and scorned by men will bring into disrepute even the most salutary laws, which will come to be viewed as obstacles to be overcome rather than as the repository of the public good. Indeed, if, as we have said, our feelings are limited, the greater esteem men have for objects other than the laws, the less they will have for the laws themselves. From this principle the wise arranger of the public happiness can draw several useful conclusions, but setting them out would take us too far from our main topic, which is to show the pointlessness of turning a state into a prison. Such a law is pointless because, unless unscalable cliffs or impassable seas separate a country from all others, how can every point on its border be closed and how is one to guard the guards? Someone who takes everything with him cannot be punished. Once such a crime has been committed, it can no longer be punished; and punishing it beforehand is to punish men's will and not their actions, which would be to control the intentions, a part of a man utterly free from the reign of human laws. {{To punish the truant through the property he has left behind, even omitting the ease and inevitability of collusion, which could not be avoided without a tyrannical interference with contracts, would bog down all trade between nations.}} Punishing the criminal when he returns would prevent him from undoing the harm done to society by making all truancies permanent. The very ban on leaving a country breeds in the residents a desire to leave it, and is a warning to foreigners not to enter.

What should we think of a government which has no means but fear to prevent from leaving men who are naturally attached to their country since the earliest impressions of childhood? The surest way to bind men to their homeland is to raise the relative well-being of every one of them. Just as every effort ought to be made to keep the balance of trade in our favour, so the sovereign's and the nation's highest interest lies in ensuring that, compared with neighbouring countries, the total amount of happiness in the nation be greater than elsewhere. The pleasures of luxury are not the principal elements of this happiness, though they are a necessary remedy for inequality, which grows as the nation advances, as, without them, all the wealth would be concentrated in a single pair

of hands. Where the borders of a country are extended more quickly than the population grows, luxury favours despotism. {{One reason for this is because, where there are fewer inhabitants, there is less industry, and where there is less industry, the poor are more dependent on the pomp of the rich, and the union of the oppressed against their oppressors is harder to organise and less to be feared. Another reason is because the homage, public offices, distinctions and deference which make the differences between the strong and the weak more obvious,}} can be more easily exacted from a few people than from many, since men are more independent when less observed and less observed when they are in larger numbers. But where the population grows more quickly than the borders do, luxury is opposed to the growth of despotism. For it stimulates men's industry and activity, and the accruing needs offer too many pleasures and comforts to rich men for them to be overly concerned with display, which is something that strengthens the sentiment of dependence, to play the major role in the economy. Therefore, we see that, unless some other factor is operative, in large, weak and underpopulated states the luxury of ostentation prevails over that of comfort; but in countries which are more populous than extensive, the luxury of comfort always diminishes ostentation. But commerce and the circulation of luxury goods has the unfortunate side-effect that, although it is carried out by the many, it arises from and ends up satisfying the pleasures of a few and the great majority of those involved enjoy only the smallest part of it. As a result, this trade does not choke off the feeling of poverty, which is caused more by relative differences than by real ones. But security and a freedom which is limited only by the laws are the main foundation of a nation's happiness; with them the pleasures of luxury benefit the people; without them they become instruments of tyranny. Just as the noblest animals and the freest birds flee to lonely places and impenetrable woods, and abandon the fertile and joyful fields where the huntsman lays his snares, so men refrain from pleasures themselves when tyranny offers them.

It is therefore established that the law which makes of its subjects prisoners in their own land is useless and unjust. Hence, so too will be any punishment for suicide; for even if it is a sin which God will punish, because only He can punish after death, it is not a crime before men, since the punishment, instead of falling on

the malefactor, falls on his family. If it should be urged against me that such a punishment may nevertheless draw a man back from killing himself, I reply that one who calmly gives up the benefits of life, who so hates life herebelow as to prefer an eternity of sorrow, could hardly be prevailed upon by the less powerful and more distant thought of his children or relatives.

Chapter 33 Smuggling

Smuggling is a real crime against the sovereign and the nation, but the punishment of it should not involve dishonour since it does not seem disgraceful in the eyes of the public. If humiliating punishments are given to crimes which are not held to be dishonourable, then the feeling of disgrace aroused by those that really are so diminishes. One who sees the same punishment of death, for instance, for the killer of a pheasant as for the killer of a man or for the forger of an important document, cannot see any difference among these crimes. In this way the moral sentiments are destroyed, feelings which are the work of many centuries and much blood, and which are so slow and difficult to kindle in human hearts that it was believed necessary to employ the most sublime motives and the trappings of solemn ceremonial to arouse them.

This is a crime which arises from the law itself because the higher the custom duty, the greater the advantage; and so the temptation to smuggle and the ease of committing it grow as the borders to be protected lengthen and the volume of goods necessary for a profit diminishes. Punishment by confiscation of both the contraband goods and the gear found with it is very fair, but the lower the duty the more effective it would be, since men do not take risks except in proportion to the profit they expect to result from a successful venture.

But why does this crime not bring disgrace to its authors, given that it is a theft from the prince and so from the nation as a whole? My answer would be that crimes which men believe could not be visited on them personally do not interest them sufficiently

to produce public outrage against the offenders. Smuggling is of this sort. Men, on whom its distant consequences make the slightest of impressions, do not see the harm which smuggling could do to them. Indeed, they often enjoy its immediate advantages. All they see is the harm done to the prince. They are not as concerned, therefore, to deny their good opinion to a smuggler as they are to a thief, a forger of signatures or those who commit other offences that might affect them directly. It is an evident principle that every sentient being is interested only in the harms which he knows.

But should such a crime go unpunished when the criminal has no possessions to lose? No: there are cases of smuggling which so closely affect the nature of taxation, which is so important and so intractable a part of good administration, that such a crime deserves a fairly heavy punishment, even up to imprisonment or penal servitude, but in such a way as to be fitting to the nature of the crime. For instance, the prison regime of a tobacco smuggler ought not to be the same as that of a hired assassin or a thief, and, to be the most fitting sort of punishment, his work ought to be limited to toil and exertion in the excise service which he wished to defraud.

Chapter 34 Of debtors

The need to guarantee the good faith of contracts and the security of trade require the lawgiver to assign to the creditors the persons of failed debtors. But I believe it is important to distinguish between the fraudulent bankrupt and the innocent bankrupt. The former ought to be punished with the same penalties which attach to the counterfeiter, because counterfeiting a metal coin, which is a token of the obligations citizens owe to each other, is no greater crime than counterfeiting the obligations themselves. {{But the innocent bankrupt is one who, after thorough investigation before his judges, has shown that he was stripped of his goods either by the wrongdoing of others, by the misfortune of others, or by circumstances beyond human control. On what barbarous grounds should he be thrown into prison, deprived of the sole, blighted good which is freedom, to suffer the miseries of the guilty, and, with the desperation of oppressed righteousness, perhaps go so far as to repent of his own innocence in which he lived peacefully under the protection of the laws, which it was beyond his power not to break? For these were laws dictated by the powerful out of greed and acquiesced in by the poor out of that hope which flickers in most human breasts and which makes us believe that events will be unfavourable to others and favourable to ourselves. Men's most superficial feelings lead them to prefer cruel laws. Nevertheless, when they are subjected to them themselves, it is in each man's interest that they be moderate, because the fear of being injured is greater than the desire to injure.

Returning to the innocent bankrupt, I admit that his obligations to his creditors should not be discharged until he has repaid them in full, that he should not be permitted to withdraw from them without the agreement of the interested parties nor to remove his business into another jurisdiction, when that business ought to be required under penalty to be so conducted as to put him back in a position to satisfy his creditors in proportion to the progress it makes. But what legitimate grounds, such as the security of trade or the sacred right to ownership, can possibly justify depriving him of his freedom? This would be useless except when the evils of servitude make the supposedly innocent bankrupt admit his guilt, a very rare case if the investigation has been thorough. I take it to be an axiom of lawgiving, that the weight to be given to the political disadvantages of the impunity of a given crime is in direct proportion to the harm done to the public and in inverse proportion to the likelihood of its being proved.

It should be possible to distinguish fraud from grievous culpability, the grievous from the mitigated culpability and this last from perfect innocence. To the first should be assigned the penalties for crimes of forgery, to the second lesser penalties, but including deprivation of freedom, and to the last should be reserved the free choice of the means to put himself back on his feet. In the third case, of mild fault, this choice should be left to the creditors. The distinctions between serious and mild offences should be fixed by blind and impartial laws, not by the dangerous and arbitrary discretion of judges. It is as necessary to fix limits in politics to measure the public good as it is in mathematics to measure quantities.[d]

How easily a farsighted lawgiver could prevent many culpable bankruptcies and repair the misfortune of the hardworking innocent! The public and open registration of all contracts, the freedom for all citizens to inspect the systematically ordered documentation, a

[d] {{Trade, or the ownership of goods, is not among the purposes of the social compact, but can be a means for achieving them. To expose the members of society to the harms to which so many occasions give rise, would be to subordinate the ends to the means, a mistake in every science but most of all in politics. I fell into this error in earlier editions, in which I said that the innocent bankrupt should be imprisoned as a pledge of his debts, or used as a slave in his creditors' employ. I am ashamed to have written in this way. I have been accused of irreligion and did not deserve it. I have been accused of subversiveness and did not deserve it. I have offended against the rights of man, and no-one has admonished me.}}

public bank founded on taxes wisely raised on flourishing trade and aimed at helping with appropriate funds unfortunate and innocent traders – these measures would have no real disadvantages and could produce innumerable advantages. But easy, simple and great laws, which await nothing but a sign from the lawgiver to spread prosperity and vigour throughout the nation, laws which would earn him immortal hymns of gratitude down the generations, are those which are least considered or least wanted. A nervous and nitpicking spirit, the fearful prudence of the present moment and an unadventurous dourness toward novelty take over the feelings of those who regulate the multifarious activities of little men.}}

Chapter 35 Asylums

Two questions remain to be considered: the first is whether it is just that there be places of asylum, and whether it is useful or not to have extradition treaties between different countries. Within a country's borders there should be no place which is outside the law. Its power should follow every citizen like a shadow. Impunity and asylum differ only in degree, and since the certainty of punishment makes more of an impression than its harshness, asylums invite men to commit crimes more than punishments deter them from them. To increase the number of asylums is to create so many little sovereign states, because where the law does not run, there new laws can be framed opposed to the common ones and there can arise a spirit opposed to that of the whole body of society. The whole of history shows that great revolutions, both in states and in the views of men, have issued forth from places of asylum. But as to whether extradition is useful I would not dare to say until there are laws better suited to human needs, and more lenient punishments that put an end to dependence on fickleness and mere opinion, so that persecuted innocence and despised virtue are protected; until tyranny has been banished to the vast plains of Asia by that universal reason which ever more closely unites the interests of the throne and its subjects. Nevertheless, the belief that there is no scrap of ground on which real crimes are tolerated would be an extremely effective way of preventing them.

Chapter 36 On setting a price on men's heads

The other question is whether it is useful to put a price on the head of a man known to be guilty and to make every citizen an executioner by arming him. The criminal is either outside or inside the country's borders. In the former case, the sovereign urges the citizens to commit a crime and exposes them to punishment for encroaching on and usurping the authority of other countries, and thereby authorises the other countries to do likewise to him. In the latter case, he shows his own weakness. If someone has the power to defend himself, he does not attempt to buy it. Moreover, such a decree overturns all ideas of morality and virtue, which are driven from the human mind by the slightest breeze. One moment the laws call for betrayal and the next they punish the same. With one hand the lawgiver tightens the bonds of family, of clan and of friendship, and with the other he rewards those who break and shatter them. Ever contradictory, one moment he urges the suspicious minds of men to have faith in each other, and the next he spreads misgivings in every heart. Instead of preventing one crime, he encourages a hundred. Such are the expedients adopted in weak nations, whose laws are nothing but makeshift repairs to a ruined building which is falling down on all sides. As enlightenment spreads through the nation, good faith and mutual assurance become the more necessary and tend to become inextricable from real politics. Chicanery, cabals and dark, twisted paths are mostly foreseen and the sensibility of all smothers the sensibility of each individual. The very centuries of ignorance, in which public morality compelled men to obey private morality, provide examples for the

instruction and edification of enlightened centuries. But laws which reward betrayal and urge a clandestine war by sowing mutual mistrust among citizens run counter to this so essential union of morality and politics, which would bring happiness to humanity and peace to nations, and would bring to the world a longer period than it has ever enjoyed up until now of tranquillity and freedom from the evils that stalk its surface.

{Chapter 37 Attempted crimes, accomplices and immunity

Although the laws do not punish intentions, surely an action which shows a clear intent to commit a crime deserves to be punished, albeit less harshly than the actual execution of the crime would be. The necessity of preventing an attempt at crime justifies a punishment; but since the attempt and the carrying out of the crime may be separated by an interval, the heavier penalties for an accomplished crime might lead to a change of heart. The same may be said, although on different grounds, of a case in which there are accomplices in a crime, not all of whom are its main agents. When several men join together in a risky venture, the greater the risk, the more they try to share it equally among all of them. It will therefore be hard to find an individual prepared to be the main agent and to run a greater risk than his accomplices. The sole exception would be when the main agent is promised a special recompense. Since he would have been compensated for the greater risk he runs, in this case the penalty should be the same for all of them. Such considerations might seem too metaphysical to someone who does not recognise that it is of the greatest utility to have laws which elicit the fewest possible grounds for agreement among the participants in a crime.

Some courts offer free pardon to an accomplice in a serious crime who incriminates his partners. This sort of measure has its advantages and its disadvantages. The disadvantages are that the government licenses betrayal, which is hateful even among villains. For, crimes of courage are less ruinous to the nation than crimes of cowardice. The former are rare and only await a beneficent and

guiding hand to make them contribute to the public good. The latter are more common and infectious, and always more self-centred. Moreover, the court shows its own lack of resolve and the weakness of the law if it begs the help of those who offend against it. The advantages of such pardons are the possibility of preventing major crimes and the fact that they have an intimidating effect on the populace, since the agents remain hidden although the results of their confessions are obvious. In addition, it helps to show that whoever betrays the laws, which is to say the public, is likely to be unfaithful in private. It would seem to me preferable to have a general law promising immunity from prosecution to an accomplice who informs about any crime whatever, than to have a special dispensation for a particular case. Because in this way alliances between criminals could be discouraged by the mutual fear which each accomplice would have of exposing himself to danger; and the court would not be fuelling the audacity of villains by calling on their assistance in a particular case. Such a law, however, ought to join to banish the informer at the same time as pardoning him . . . But I am torturing myself uselessly in trying to overcome the remorse which I feel in allowing betrayal and deception to be part of the sacrosanct laws, which are the foundation of public assurance, and the basis of human morality. What kind of example would it be to the nation if the promise of impunity were to be revoked and if someone who had simply responded to an invitation held out to him by the laws were to be dragged off to punishment as a result of some learned sophistry? Such examples are not rare among nations, and consequently not a few people think that a nation is nothing but a complicated machine whose levers are pulled at their pleasure by the most skilful and most powerful. Cold and indifferent to the delight of tenderer and sublimer souls, such men manipulate the dearest feelings and the most violent emotions with clinical precision when they see them useful to their own ends, playing on souls as musicians on their instruments.

Chapter 38 Leading interrogations, depositions

Our laws proscribe the use of *leading* questions in a trial, that is questioning which, according to the learned, asks about the *specifics*, when it should ask about the *general features* of the circumstances of a crime: questioning, in other words, which, being closely connected to the crime, *leads* the accused to give an immediate reply. According to theorists of the criminal law, questioning should, so to speak, spiral in on the facts and should never approach them directly. The grounds for this procedure are either so as not to *lead* an accused to implicate himself or perhaps because it seems to be unnatural that a suspect should accuse himself point blank.

Whichever of these two explanations is correct, there is a remarkable inconsistency in the laws between this convention and their sanctioning of torture; for what sort of interrogation could be more *leading* than pain? Examples of the first arise with torture, because the pain will *lead* the sturdy man to keep an obstinate silence and so exchange a heavier pain for a lighter; and it will *lead* the weak man to confess in order to free himself from the present pain which is so much more effective at that moment than future pain. The same goes for examples of the second kind, because if a *specific* question makes the guilty man confess against the rights of nature, agony will make him do so all the more easily. However, men are more impressed by the different names they give to things than by the actual differences between those things.

Among the other abuses arising from language and which have had no small influence on human affairs, we may note that which renders the deposition of a convicted criminal null and void. The

traditional jurists gravely say that such a man is *legally dead*, and a *dead* man cannot perform any action. Many victims have been sacrificed to this fatuous metaphor; and it has often been seriously debated whether or not the truth should give way before juridical formulae. So long as the depositions of a convicted criminal do not go so far as to arrest the course of justice, why should the condemned man not be given the chance, even after the verdict has been handed down, in the name of the convict's extreme misery and the interests of truth, to bring forward new facts which change the nature of the case and can vindicate either himself or others with a new judgement? Formalities and ceremonials are necessary to the administration of justice, partly so that nothing is left to the discretion of the administrators, partly because they give people the idea of a judgement that is neither disorderly nor partial, but stable and regular, and partly because they make a bigger impression than argumentation would on men who are slavish followers of tradition. Truth, because it is either too simple or too complex, needs some pomp to recommend it to the ignorant multitude. But for the law to establish these ceremonies in ways which detract from the truth would be highly dangerous.

Finally, one who under examination obstinately refuses to answer the questions put to him, deserves a penalty which should be fixed by law, and be of the severest kind, in order to prevent men from avoiding their public duty in this way. Such a penalty is not called for when it is beyond doubt that a given suspect has committed a given crime, since in this case interrogations serve no useful purpose. Similarly, a confession is superfluous when other evidence proves an individual's guilt. This last is usually the case, because experience shows that on the whole the guilty deny everything.}

Chapter 39 Of a particular kind of crime

The reader of these pages will observe that I have said nothing about a particular sort of crime which once covered Europe with human blood and raised those sorry pyres whose flames were fed with the bodies of living men. These were times when the blind mob enjoyed the pleasing spectacle and sweet harmony of hearing muffled and chaotic groans issuing from swirling black smoke – smoke of human limbs, together with the cracking of charring bones and the frying of still-quivering organs. But reasonable men will see that neither the place, the time nor the present subject-matter allow me to discuss the nature of such a crime. It would take too long, and would take me too far from my topic to show, the example of many countries notwithstanding, how necessary perfect uniformity of thought ought to be in a state; how opinions, which differ only on a few very subtle and obscure points no human intelligence can grasp, can nevertheless overthrow the public good if one view is not preferred by authority to another; and how the nature of opinion is such that, whilst some opinions are clarified by being bandied and debated so that the true rise to the top and the false sink into oblivion, others, being insecure for all the steadfastness with which they are held, need to be arrayed in authority and power. It would take too long to show that, however hateful might seem the rule of force over the human mind, its only achievements being hypocrisy and hence moral degeneration; and however opposed to the spirit of kindness and fraternity which is enjoined by reason and by the authority we must revere, such a thing is nevertheless necessary and indispensable.

All the above must be believed as demonstrably true and in conformity with the real interests of men, if there is someone who carries it out with recognised authority. My topic is solely those crimes which arise from human nature and the social compact, and not those sins whose punishments, even in this life, ought to be regulated by principles other than those of a limited philosophy.

Chapter 40 False ideas of utility

One source of errors and injustices is the false ideas of utility held by some lawgivers. It is a false idea of utility that gives higher importance to particular inconveniences than to the general inconvenience, that commands the feelings instead of exciting them, that commands logic to submit. It is a false idea of utility that sacrifices a thousand real advantages for a single chimerical or unimportant disadvantage, that would deprive men of fire because it burns or water because it drowns, and can only remedy evils by destruction.

{{The laws which forbid men to bear arms are of this sort. They only disarm those who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity and the most important in the civil code will respect the lesser and more arbitrary laws, which are easier and less risky to break, and which, if enforced, would take away the personal freedom – so dear to man and to the enlightened lawgiver – and subject the innocent man to all the annoyances which the guilty deserve? These laws make the victims of attack worse off and improve the position of the assailant. They do not reduce the murder rate but increase it, because an unarmed man can be attacked with more confidence than an armed man. These laws are not preventive but fearful of crime, they originate from the disturbing impression arising out of a few particular cases rather than from a reasonable consideration of the advantages and disadvantages of a universal law.}}

Similarly, a false idea of utility wishes to impose on a multitude of sentient creatures the symmetry and order of brute inanimate

matter, and ignores the immediate motives, which alone work constantly and forcibly on the mass of people, in favour of remoter motives whose effect is very brief and weak, unless, that is, some power of the imagination, rare in human beings, compensates for the distance of their object by magnifying it.

Finally, it is a false idea of utility to sacrifice the thing to the name and to separate the public good from the good of each individual. The difference between the state of society and the state of nature is that savage man does not harm others except to benefit himself, whereas social man is sometimes moved by bad laws to offend against others without doing himself any good. The despot fills the souls of his slaves with fear and dejection, but these sentiments rebound on him with greater force to torture his own soul. The more solitary and domestic that fear is, the less it endangers whoever uses it as a means to his own happiness; but the more public it is, and the greater the number of men it inflames, the easier it becomes for a rash, desperate or daring man to compel others to serve his own ends, arousing in his followers feelings which are the more grateful and more enticing, the greater the number of men the risk falls upon. For the value which the oppressed place on their own lives decreases in proportion to the misery they are undergoing. This is the reason why offences cause new offences, for hatred is a more longlasting feeling than love, inasmuch as the former gathers strength from continued activity, which weakens the latter.

Chapter 41 How to prevent crimes

It is better to prevent crimes than to punish them. This is the principal goal of all good legislation, which is the art of guiding men to their greatest happiness, or the least unhappiness possible, taking into account all the blessings and evils of life. But the means hitherto employed have been mistaken or opposed to the proposed goal. The chaos of men's activities cannot be reduced to a geometric order devoid of irregularity and confusion. Just as the constant and very simple laws of nature do not prevent the planets being disturbed in their orbits, so human laws cannot prevent disturbances and disorders among the infinite and very opposite motive forces of pleasure and pain. Yet this is the fantasy of limited men when they have power in their hands. To forbid a large number of trivial acts is not to prevent the crimes they may occasion. It is to create new crimes, wilfully to redefine virtue and vice, which we are exhorted to regard as eternal and immutable. What a state would we be reduced to if we were forbidden everything which might tempt us to crime? It would be necessary to deprive a man of the use of his senses. For every motive which urges a man to commit a real crime, there are a thousand which urge him to perform those trivial actions which bad laws call crimes. And if the likelihood of crimes is proportional to the number of motives a man might have for them, broadening the range of crimes only increases the likelihood of their being committed. The majority of the laws are mere privileges, that is to say, a tribute from everyone for the comfort of the few.

Do you want to prevent crimes? Then make sure that the laws are clear and simple and that the whole strength of the nation is concentrated on defending them, and that no part of it is used to destroy them. {Make sure that the laws favour individual men more than classes of men.} Make sure that men fear the laws and only the laws. Fear of the law is salutary; but man's fear of his fellows is fatal and productive of crimes. Slavish men are more debauched, more sybaritic and crueller than free men. The latter ponder the sciences and the interests of the nation, they envisage and aspire to great things; but the former are content with the present moment and seek amid the din of depravity a distraction from the emptiness of their everyday lives. Accustomed to uncertainty about the result of everything, the result of their crimes becomes doubtful to them, reinforcing the emotions by which they are driven. In a country which is idle by virtue of its climate, uncertainty in its laws maintains and increases the country's idleness and stupidity. If a country is debauched but energetic, uncertainty in its laws will waste the country's energy in the formation of numberless little cabals and intrigues, which spread suspicion in every heart and make betrayal and pretence the basis of good sense. If a country is brave and strong, uncertainty eventually will be removed, though only after the nation has passed through many fluctuations from freedom to slavery and from slavery to freedom.

Chapter 42 The sciences

Do you want to prevent crimes? Then see to it that enlightenment and freedom go hand in hand. The evils which arise from knowledge are in inverse proportion to its diffusion, and the benefits are in direct proportion. A daring impostor, who is always an uncommon man, wins the adoration of an ignorant people and the jeers of an enlightened one. By facilitating the making of comparisons and multiplying the points of view, knowledge counterposes different sentiments, which modify each other reciprocally, a process that becomes all the easier as we learn to anticipate the same views and the same objections in others. In the face of widespread enlightenment within a nation, foul-mouthed ignorance is silenced and the authority which has no defences in reason trembles. Only the vigour of the laws remains unshaken. For there is no enlightened man who does not love the public, clear and useful compacts that guarantee the common security, comparing that small portion of useless freedom that he has sacrificed with the sum of the freedoms sacrificed by others who, without the laws, could become conspirators against him. Looking upon a well-framed code of laws and finding that he has lost nothing but the sorry freedom to do harm to others, any sensitive soul will be compelled to bless the throne and its occupant.

It is not true that the sciences are always harmful to mankind, and, that when they have been so, it was an evil men could not avoid. The increase of the human species across the face of the Earth introduced war, the cruder arts, and the first laws, which were the temporary pacts which arose and perished with the necessity of

the moment. This was man's first philosophy, whose few elements were just, because his idleness and small wisdom saved him from mistakes. But the needs of men increased with the increase of their numbers. Stronger and more lasting impressions were therefore called for to save men from repeated returns to the original state of unsociability, which was becoming ever more ruinous. Those first errors which populated the Earth with false gods and set up an invisible universe which regulated ours were therefore of great benefit to humanity (I mean a great political benefit). It was an act of kindness to men to dazzle them with supernatural wonders and to drag docile ignorance to the altars. By presenting men with objects beyond their senses, which fled before them just as they believed they were within their grasp, which were never despised, because never really known, they united men's divided emotions and focussed them on a single object which strongly absorbed them. These were the first events which lifted all nations out of the savage state. This was the age when great societies were formed, and such was the nature of the bond, perhaps the only bond needed to bind them. I do not speak of God's Chosen People, for whom the most extraordinary miracles and the most marked favours took the place of human politics. But as it is a feature of error to divide itself *ad infinitum*, the sciences which were born out of error turned men into a blind and fanatical mob who, caught in a maze ran into each other and muddled each other to such an extent that some sensitive and philosophic souls went so far as to regret the ancient state of savagery. This is the first age in which knowledge, or at least opinion, is harmful.

The second age consists in the difficult and terrifying passage from error to truth, from unknowing darkness to enlightenment. The mighty clash between errors useful to a few powerful men and the truths useful to many weak men, the coming together and the agitation of emotions which such an occasion prompts, add innumerable evils to the suffering of mankind. Whoever reflects on the various histories of nations, which after a certain lapse of time come to resemble each other in their main outlines, will repeatedly find a whole generation sacrificed to the happiness of succeeding generations in the hard-fought but necessary transition from the shadows of ignorance to the light of philosophy and, as a corollary, in the passage from tyranny to freedom. But once

men's souls have calmed and the fires which purged the nation of the evils which oppressed it have cooled, then truth, whose progress accelerates after the first slow steps, shall sit on the throne as the consort of the monarch, and shall be worshipped and have an altar in the parliaments of republics. Who then will be able to say that the light which illuminates the multitude is more harmful than the shadows, or that a good understanding of the true and simple relations of things can ever be ruinous to men?

If blind ignorance is less lethal than mediocre and confused knowledge, since the latter adds to the former the inevitable mistakes of one who has a limited vision even within the bounds of truth, the greatest gift a sovereign can give the nation and himself would be to make an enlightened man the repository and the guardian of the sacred laws. Accustomed to looking fearlessly at the truth, lacking most of the unexamined and insatiable urges that stand in the way of virtue in most men, habituated to viewing humanity from the highest vantage points, his nation becomes a family of brothers. And the more of mankind he has before his eyes, the shorter the distance separating the great from the mass of people seems to him. Philosophers have needs and interests which are unknown to common folk, in particular that of not denying in public the principles which they preach in private, and they acquire the habit of loving truth for its own sake. A pick of such men fashions the happiness of the nation; but it is a fleeting happiness if good laws do not so increase their numbers as to diminish the always significant likelihood of a bad selection.

Chapter 43 Magistrates

Another way of preventing crimes is to make the tribunal charged with executing the laws more interested in observing the laws than in corrupting them. The more men make up this body the smaller the danger of the laws being usurped. For it is harder to bribe officers who keep an eye on each other, and they have less interest in increasing their own power the smaller the portion that each has of it, especially when compared with the risks involved in such an effort. If, by pomp and display, the harshness of his edicts and his refusal to hear the just or unjust petitions of those who suppose themselves ill-used, the sovereign accustoms his subjects to fear the magistrates more than the laws, then the magistrates will profit from this fear more than personal and public safety will gain.

Chapter 44 Public awards

Another means of preventing crimes is to reward virtue. I notice that the laws of all nations today are totally silent on this matter. If the prizes given by academies to the discoverers of useful truths have increased both knowledge and the number of good books, why should not prizes distributed by the beneficent hand of the sovereign likewise increase the number of virtuous actions? In the hands of the wise distributor, the coin of honour will prove a lasting investment.

Chapter 45 Education

Finally, the surest but hardest way to prevent crime is to improve education. This topic is too broad and goes beyond the limits which I have set myself. It is a topic, I dare to add, which is too intertwined with the nature of government for it to be left an untilled field, and only cultivated here and there by a few wise men until the distant future when public happiness reigns. A great man, who enlightens mankind even as it persecutes him, has shown in detail the principal precepts of an education which is truly useful to men. It consists less in a sterile mass of subjects than in the precise and informed choice of topics; it replaces copies with originals in the study of both the physical and moral phenomena which either chance or effort presents to fresh young minds. It encourages virtue by the easy path of the feelings, and diverts men away from evil by the infallible method of alerting them to the necessary ill consequences it brings, rather than by the uncertain method of ordering them what to do, which gains only a feigned and fleeting obedience.

{{Chapter 46 Pardons

As punishments become milder, clemency and pardons become less necessary. Happy the nation in which they are harmful! Clemency, then, a virtue which has often complemented all the duties which attach to the sovereign's throne, should be redundant in a perfect administration where punishments are mild and the methods of judgement are regular and expeditious. This truth will seem hard to one who lives amid the chaos of a criminal system in which amnesties and pardons are called for in proportion to the absurdity of the laws and the awful severity of the sentences. Clemency is the most beautiful prerogative of the throne, it is the most desirable endowment of sovereignty and it is the tacit condemnation which the benevolent dispensers of the public happiness make of a code of laws which, for all its imperfections, has on its side the prejudice of ages, the voluminous and impressive tomes of innumerable commentators, the staid paraphernalia of endless procedural formalities, and the support of the most fawning and least feared semi-literates. But one ought to bear in mind that clemency is a virtue of the lawgiver and not of the laws' executor, that it ought to shine in the legal code and not in particular judgements. To show men that crimes can be pardoned, and that punishment is not their inevitable consequence, encourages the illusion of impunity and induces the belief that, since there are pardons, those sentences which are not pardoned are violent acts of force rather than the products of justice. What will be said, then, of a prince who offers a pardon, that is, public safety to an

individual and, with a private act of unenlightened kind-heartedness, makes a public decree of impunity?

The laws, therefore, ought to be inexorable and so should their executors in particular cases. But the lawgiver ought to be gentle, lenient and humane. The lawgiver ought to be a skilled architect, who raises his building on the foundation of self-love, and the interest of all ought to be the product of the interests of each. As a result, he shall not be required to separate the public good from the good of individuals with partial laws and disorderly remedies, and to raise a false image of public well-being on fear and suspicion. As a deep and sensitive philosopher, he ought to let men, his brothers, enjoy in peace that small portion of happiness which is set aside for them to enjoy in this corner of the universe by the huge system set up by the First Cause, by He Who Is.}}

Chapter 47 Conclusion

I conclude with a final reflection that the severity of punishments ought to be relative to the state of the nation itself. Stronger and more easily felt impressions have to be made on a people only just out of the savage state. A lightning strike is needed to stop a fierce lion who is provoked by a gunshot. But as souls become softened by society, sensitivity grows. And as it does so, the severity of punishments ought to diminish, if the relation between the object and the sensation is to remain constant.

From all I have written it is possible to draw a very useful general axiom, though it little conforms to custom – the most usual legislator of nations. It is: *In order that punishment should not be an act of violence perpetrated by one or many upon a private citizen, it is essential that it should be public, speedy, necessary, the minimum possible in the given circumstances, proportionate to the crime, and determined by the law.*