

## Excerpts from Cesare Beccaria's *On Crimes & Punishments*, 1764

If we look into history we shall find that laws, which are, or ought to be, conventions between men in a state of freedom, have been, for the most part the work of the passions of a few, or the consequences of a fortuitous or temporary necessity; not dictated by a cool examiner of human nature, who knew how to collect in one point the actions of a multitude, and had this only end in view, *the greatest happiness of the greatest number*.

Observe that by *justice* I understand nothing more than that bond which is necessary to keep the interest of individuals united, without which men would return to their original state of barbarity. All punishments which exceed the necessity of preserving this bond are in their nature unjust.

The end of punishment, therefore, is no other than to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence. Such punishments, therefore, and such a mode of inflicting them, ought to be chosen, as will make the strongest and most lasting impressions on the minds of others, with the least torment to the body of the criminal.

The torture of a criminal during the course of his trial is a cruelty consecrated by custom in most nations. It is used with an intent either to make him confess his crime, or to explain some contradiction into which he had been led during his examination, or discover his accomplices, or for some kind of metaphysical and incomprehensible purgation of infamy, or, finally, in order to discover other crimes of which he is not accused, but of which he may be guilty.

No man can be judged a criminal until he be found guilty; nor can society take from him the public protection until it have been proved that he has violated the conditions on which it was granted. What right, then, but that of power, can authorize the punishment of a citizen so long as there remains any doubt of his guilt? This dilemma is frequent. Either he is guilty, or not guilty. If guilty, he should only suffer the punishment ordained by the laws, and torture becomes useless, as his confession is unnecessary. If he be not guilty, you torture the innocent; for, in the eye of the law, every man is innocent whose crime has not been proved

Crimes are more effectually prevented by the *certainty* than the *severity* of punishment.

In proportion as punishments become more cruel, the minds of men, as a fluid rises to the same height with that which surrounds it, grow hardened and insensible; and the force of the passions still continuing in the space of an hundred years the *wheel* terrifies no more than formerly the *prison*. That a punishment may produce the effect required, it is sufficient that the evil it occasions should exceed the *good* expected from the crime, including in the calculation the certainty of the punishment, and the privation of the expected advantage. All severity beyond this is superfluous, and therefore tyrannical.

The punishment of death is pernicious to society, from the example of barbarity it affords. If the passions, or the necessity of war, have taught men to shed the blood of their fellow creatures, the laws, which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, the more horrible as this punishment is usually attended with formal pageantry. Is it not absurd, that the laws, which detest and punish homicide, should, in order to prevent murder, publicly

commit murder themselves?

It is better to prevent crimes than to punish them. This is the fundamental principle of good legislation, which is the art of conducting men to the *maximum* of happiness, and to the *minimum* of misery, if we may apply this mathematical expression to the good and evil of life....

Would you prevent crimes? Let the laws be clear and simple, let the entire force of the nation be united in their defense, let them be intended rather to favor every individual than any particular classes of men; let the laws be feared, and the laws only. The fear of the laws is salutary, but the fear of men is a fruitful and fatal source of crimes.

### Questions:

- What were the four broad categories of crimes in the 18c?
- Identify the various penal reforms proposed by Beccaria in this work.

### SOURCE:

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