

Sentence imposed on John Calas in 1762

.....in a chemise, with head and feet bare, (Calas) will be taken in a cart from the palace prison to the Cathedral. There, kneeling in front of the main door, holding in his hand a torch of yellow wax weighing two pounds, he must ... (ask) pardon of God, of the King and of justice. Then the executioner should take him in the cart to the Place Saint Georges, where upon a scaffold his arms, legs, thighs, and loins will be broken and crushed. Finally, the prisoner should be placed upon a wheel, with his face turned to the sky, alive and in pain, and repent for his said crimes and misdeeds, all the while imploring God for his life, thereby to serve as an example and to instil terror in the wicked

St Thomas Aquinas and the spiritual explanation of crime

There is a God-given “natural law” that is revealed by observing, through the eyes of faith, people’s natural tendency to do good rather than evil. The criminal law is based on this natural law. People who commit crime (i.e. violate the criminal law) therefore also commit sin (i.e. violate the natural law)

Alessandro Manzoni – The Betrothed

One morning in June, 1630, a woman standing at a window in Milan saw a man enter the street della Vetra de Cittadini. He carried a paper on which he appeared to be writing, and from time to time he drew his hands along the walls. It occurred to her that he was perhaps an “anointer,” and she proceeded to spread her suspicion, with the result that the man was arrested. He was found to be one Piazza, a Commissioner of the Tribunal of Health, who was able to give such an account of himself as, in ordinary times, would have led to his immediate acquittal. Both the populace and the judges, however, were panic-stricken, and eager to vent on any victim the fear and anguish into which the ravages of the plague had plunged them. Piazza was accordingly tortured, and after repeated and horrible sufferings was induced to make a false confession and to implicate an innocent barber, who, he said, had given him the ointment and promised him money if he spread it on the houses

Mora, the barber, was next arrested and submitted to a similar illegal and infamous process, until he also confessed, throwing the burden of blame in turn upon Piazza. Under false promises of immunity and suggestions of what was wanted from them, they alleged that several other persons were their accomplices or principals, and these also were thrown into jail. The evidence of Mora and Piazza was mutually contradictory on many points and was several times retracted, but the judges ignored these matters, broke their promise of immunity, and condemned both to death. They were placed on a car to be carried to the place of execution; as they proceeded, their bodies were gashed with a hot iron; their right hands were struck off as they passed Mora's shop; their bones were broken on the wheel; they were bound alive to the wheel and raised from the ground, and after six hours were put to death. This they bore with fortitude, having previously declared their innocence, retracted their confessions, and absolved their alleged accomplices. Mora's house was demolished, and a pillar, called the Column of Infamy, was erected on the spot, where it stood till 1778.

After the murder of these two miserable men, the judges proceeded to press the cases against the others whose names had been dragged into the matter, one of whom was an officer called Padilla, son of the Commandant of the Castle of Milan. Several of these suffered the same tortures and death as Mora and Piazza; but Padilla's case dragged on for two years, at the end of which he was acquitted. The story of this terrible example of judicial cruelty had been to some extent cleared up by Verri in his book on Torture, but Manzoni was anxious to show that, evil as were the laws which permitted the use of the rack, it was not they but the judges who were responsible. For even the laws of torture prohibited the methods by which these men were made to inculcate themselves, and the illegality and monstrosity of the whole proceeding were attributable to a court eager for a conviction at all costs to gratify the thirst for blood of a maddened and ignorant populace.

Thomas Hobbes and “the social contract”

According to Hobbes people naturally pursue their own interests and this leads to *a war of each against all*. Fortunately people are rational enough to realize that this situation is against their own interests. So they agree to give up their own selfish behaviour as long as everyone else does the same thing at the same time. This is what Hobbes calls “the social contract”- *something like a peace treaty that everyone signs because they are all exhausted from the war of each against all* -

Cesare Beccaria

On Crimes and Punishments

1. The role of the legislatures should be both to define crimes and also to define specific punishments for each specific crime. This contrasted with the practice of Beccaria's time when legislatures passed very general laws and left the implementation up to the vast discretion of the judges
2. The role of the judges should be solely to determine guilt – i.e. whether the defendant had committed a crime. Once that determination was made, then the judge should follow the strict letter of the law in determining the punishment. Instead of vast discretion, Beccaria argued that judges should have no discretion whatsoever.

3. The seriousness of a crime should be determined solely by the extent of the harm that inflicts on society. Beccaria argued that other factors were irrelevant in determining seriousness, including the intent of the offender
4. Punishments should be proportionate to the seriousness of the crime and their purpose should be to deter crime.
5. Punishments are unjust when their severity exceeds what is necessary to achieve deterrence

6. Excessive severity not only fails to deter crime but actually increases it (*the severity of punishment of itself emboldens men to commit the very wrongs it is supposed to prevent; they are driven to commit additional crimes to avoid the punishment for a single one. The countries and times most notorious for severity of penalties have always been those in which the bloodiest and most inhumane of deeds were committed, for the same spirit of ferocity that guided the hand of the legislators also ruled that of the parricide and assassin*)
7. Punishments should be prompt (*the more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be*)
8. Punishments should also be certain
9. Law should be structured so as to prevent crime from happening in the first place (*it is better to prevent crime than to punish them*)

Conclusion

In order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws