

12.4 | *Crime and Punishment*

Two main subjects are treated in this section: on the one hand, the nature, causes, and varieties of crime; on the other, the purposes, justifications, and kinds of punishment. The first of these subjects is closely related to matters treated in Section 12.1 on LAW AND LAWYERS and also in Section 9.7 on RIGHT AND WRONG, as well as in Section 9.10 on VIRTUE AND VICE; in addition, the reader will find some overlapping between the discussion of crime here and of sin in Section 20.13 of Chapter 20 on RELIGION. Section 12.1 on LAW AND LAWYERS is also relevant to the second subject, but even more so is Section 12.2 on JUSTICE AND INJUSTICE. For example, the reader will find passages dealing with the *lex talionis*—an eye for an eye, a tooth for a tooth—both here, as relevant to punishment, and in the section on justice.

The central issue concerning punishment arises from the question whether it should be entirely utilitarian in purpose, aiming to deter potential criminal offenders as well as to reform those who have committed criminal acts, or it should be purely retributive in aim, righting the wrong and thus restoring the balance of justice. Those who take the latter view attempt to draw a sharp line between retribution and revenge. Those who take the former view tend to regard retribution as nothing but vengeance. Regarding punishment as remedial or therapeutic, the utilitarian view justifies a particular type of punishment in a particular case by the degree to which it serves the purposes of deterrence and reform. Regarding it as an act of justice, the retributive view justifies the severity of the punishment by its propor-

tionality to the gravity of the crime being punished.

These considerations raise further questions, such as whether only the guilty should be punished and whether everyone who is guilty of criminal behavior should be punished; as well as questions about the justice of capital punishment, about the inhumanity of cruel and unusual punishments, about the mitigation or attenuation of punishment

in particular cases, and about the desire for punishment on the part of those who are plagued by their sense of guilt.

It has already been pointed out that sin as violation of the divine law, parallel to crime as violation of human law, is discussed in Section 20.13; it should also be pointed out that divine rewards and punishments, meting out divine justice in a purely retributive manner, are discussed in Section 20.15.

1 Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man.

Genesis 9:6

2 The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin.

Deuteronomy 24:16

3 Withhold not correction from the child: for if thou beatest him with the rod, he shall not die.

Thou shalt beat him with the rod, and shalt deliver his soul from hell.

Proverbs 23:13-14

4 *Chorus.* It is but law that when the red drops have been spilled upon the ground they cry aloud for fresh blood. For the death act calls out on Fury to bring out of those who were slain before new ruin on ruin accomplished.

Aeschylus, Libation Bearers, 400

5 *Chorus.* Here is overthrow of all the young laws, if the claim of this matricide shall stand good, his crime be sustained. Should this be, every man will find a way to act at his own caprice; over and over again in time to come, parents shall await the deathstroke at their children's hands.

Aeschylus, Eumenides, 490

6 *Tyndareus.* Suppose a wife murders her husband. Her son then follows suit by killing her, and his son then must have his murder too and so on.

Where, I want to know, can this chain of murder end? Can it ever end, in fact, since the last to kill is doomed to stand

under permanent sentence of death by revenge?

No, our ancestors handled these matters well by banning their murderers from public sight, forbidding them to meet or speak to anyone.

But the point is this: they purged their guilt by banishment, not death. And by so doing, they stopped that endless vicious cycle of murder and revenge.

Do not mistake me.

I despise adultery and unfaithful wives, and my daughter Clytemnestra, an adulteress and murderess to boot, most of all.

As for your wife Helen, I loathe her too and never wish to speak to her again.

Nor, I might add, do I envy you your trip to Troy to bring your whore back home. No sir, not my daughters, but the law:

that is my concern. There I take my stand, defending it with all my heart and strength against the brutal and inhuman spirit of murder that corrupts our cities and destroys this country.

Euripides, Orestes, 507

7 *Socrates.* The proper office of punishment is twofold: he who is rightly punished ought either to become better and profit by it, or he ought to be made an example to his fellows, that they may see what he suffers, and fear and become better. Those who are improved when they are punished by gods and men, are those whose sins are curable; and they are improved, as in this world so also in another, by pain and suffering; for there is no other way in which they can be delivered from their evil. But they who have been guilty of the worst crimes, and are incurable by reason of their crimes, are made examples; for, as they are incurable, the time has passed at which they can receive any benefit. They get no good themselves, but others get good when they behold them enduring for ever the most terrible and painful and fearful sufferings as the penalty of their sins.

Plato, Gorgias, 525A

8 *Athenian Stranger*. A man may very likely commit . . . crimes, either in a state of madness or when affected by disease, or under the influence of extreme old age, or in a fit of childish wantonness, himself no better than a child. And if this be made evident to the judges elected to try the cause, on the appeal of the criminal or his advocate, and he be judged to have been in this state when he committed the offence, he shall simply pay for the hurt which he may have done to another; but he shall be exempt from other penalties, unless he have slain some one, and have on his hands the stain of blood.

Plato, *Laws*, IX, 864B

9 *Athenian Stranger*. The law, like a good archer, should aim at the right measure of punishment, and in all cases at the deserved punishment.

Plato, *Laws*, XI, 934A

10 *Athenian Stranger*. If a man steal anything belonging to the public, whether that which he steals be much or little, he shall have the same punishment. For he who steals a little steals with the same wish as he who steals much, but with less power, and he who takes up a greater amount, not having deposited it, is wholly unjust. Wherefore the law is not disposed to inflict a less penalty on the one than on the other because his theft is less, but on the ground that the thief may possibly be in one case still curable, and may in another case be incurable. If any one convict in a court of law a stranger or a slave of a theft of public property, let the court determine what punishment he shall suffer, or what penalty he shall pay, bearing in mind that he is probably not incurable. But the citizen who has been brought up as our citizens will have been, if he be found guilty of robbing his country by fraud or violence, whether he be caught in the act or not, shall be punished with death; for he is incurable.

Plato, *Laws*, XII, 941B

11 If the virtues are concerned with actions and passions, and every passion and every action is accompanied by pleasure and pain, for this reason also virtue will be concerned with pleasures and pains. This is indicated also by the fact that punishment is inflicted by these means; for it is a kind of cure, and it is the nature of cures to be effected by contraries.

Aristotle, *Ethics*, 1104^b13

12 There are crimes of which the motive is want. . . . But want is not the sole incentive to crime; men also wish to enjoy themselves and not to be in a state of desire—they wish to cure some desire, going beyond the necessities of life, which preys upon them; nay, this is not the only reason—they may desire superfluities in order to enjoy plea-

sure unaccompanied with pain, and therefore they commit crimes.

Now what is the cure of these three disorders? Of the first, moderate possessions and occupation; of the second, habits of temperance; as to the third, if any desire pleasures which depend on themselves, they will find the satisfaction of their desires nowhere but in philosophy; for all other pleasures we are dependent on others. The fact is that the greatest crimes are caused by excess and not by necessity. Men do not become tyrants in order that they may not suffer cold; and hence great is the honour bestowed, not on him who kills a thief, but on him who kills a tyrant.

Aristotle, *Politics*, 1267^a3

13 There is in life a dread of punishment for evil deeds, signal as the deeds are signal, and for atonement of guilt, the prison and the frightful hurling down from the rock, scourgings, executioners, the dungeon of the doomed, the pitch, the metal plate, torches; and even though these are wanting, yet the conscience-stricken mind through boding fears applies to itself goads and frightens itself with whips, and sees not meanwhile what end there can be of ills or what limit at last is to be set to punishments, and fears lest these very evils be enhanced after death. The life of fools at length becomes a hell here on earth.

Lucretius, *Nature of Things*, III

14 There are some duties we owe even to those who have wronged us. There is, after all, a limit to retribution and punishment. Or rather, may I say that it is enough to get a wrong-doer to repent of his misdeed, so that he may not repeat the offense, and also as a means of deterring others from doing wrong.

Cicero, *De Officiis*, I, 11

15 They lie below, on golden beds display'd;
And genial feasts with regal pomp are made.
The Queen of Furies by their sides is set,
And snatches from their mouths th' untasted
meat,
Which if they touch, her hissing snakes she rears,
Tossing her torch, and thund'ring in their ears.
Then they, who brothers' better claim disown,
Expel their parents, and usurp the throne;
Defraud their clients, and, to lucre sold,
Sit brooding on unprofitable gold;
Who dare not give, and e'en refuse to lend
To their poor kindred, or a wanting friend.
Vast is the throng of these; nor less the train
Of lustful youths, for foul adult'ry slain:
Hosts of deserters, who their honor sold,
And basely broke their faith for bribes of gold.
All these within the dungeon's depth remain,
Despairing pardon, and expecting pain.
Ask not what pains; nor farther seek to know

Their process, or the forms of law below.
Some roll a weighty stone; some, laid along,
And bound with burning wires, on spokes of
wheels are hung.

Unhappy Theseus, doom'd for ever there,
Is fix'd by Fate on his eternal chair;
And wretched Phlegyas warns the world with
cries
(Could warning make the world more just or
wise):
'Learn righteousness, and dread th' avenging dei-
ties.'

To tyrants others have their country sold,
Imposing foreign lords, for foreign gold;
Some have old laws repeal'd, new statutes made,
Not as the people pleas'd, but as they paid;
With incest some their daughters' bed profan'd:
All dar'd the worst of ills, and, what they dar'd,
attain'd.

Had I a hundred mouths, a hundred tongues,
And throats of brass, inspir'd with iron lungs,
I could not half those horrid crimes repeat,
Nor half the punishments those crimes have met.
Virgil, *Aeneid*, VI

- 16 Draco's laws were written not with ink but blood; and he, himself, being once asked why he made death the punishment of most offences, replied, "Small ones deserve that, and I have no higher for the greater crimes."

Plutarch, *Solon*

- 17 Any performance that sets an evil example displeases
Even its author himself: to begin with, punishment lies
In the fact that no man, if guilty, is ever acquitted
With himself as judge, though he may have won
in the courtroom
Bribing the praetor in charge, or stuffing the urn
with false ballots.

Juvenal, *Satire XIII*

- 18 The fates of criminals differ.
One gets the cross, another the crown, for the
same misdemeanor.

Juvenal, *Satire XIII*

- 19 If man were all of one piece—I mean, if he were
nothing more than a made thing, acting and acted
upon according to a fixed nature—he could be
no more subject to reproach and punishment than
the mere animals. But as the scheme holds, man is
singled out for condemnation when he does evil;
and this with justice. For he is no mere thing
made to rigid plan; his nature contains a Principle
apart and free.

Plotinus, *Third Ennead*, III, 4

- 20 Every disorder of the soul is its own punishment.

Augustine, *Confessions*, I, 12

- 21 Now when we ask why this or that particular evil act was done, it is normal to assume that it could not have been done save through the desire of gaining or the fear of losing some one of these lower goods. For they have their own charm and their own beauty, though compared with the higher values of heaven they are poor and mean enough. Such a man has committed a murder. Why? He wanted the other man's wife or his property; or he had chosen robbery as a means of livelihood; or he feared to lose this or that through his victim's act; or he had been wronged and was aflame for vengeance. Would any man commit a murder for no cause, for the sheer delight of murdering? The thing would be incredible. There is of course the case of the man [Catiline] who was said to be so stupidly and savagely cruel that he practised cruelty and evil even when he had nothing to gain by them. But even there a cause was stated—he did it, he said, lest through idleness his hand or his resolution should grow slack. And why did he want to prevent that? So that one day by the multiplication of his crimes the city should be his, and he would have gained honors and authority and riches, and would no longer be in fear of the law or in the difficulties that want of money and the awareness of his crimes had brought him. So that not even Catiline loved his crimes as crimes: he loved some other thing which was his reason for committing them.

Augustine, *Confessions*, II, 5

- 22 What shall I say of these judgments which men pronounce on men, and which are necessary in communities, whatever outward peace they enjoy? Melancholy and lamentable judgments they are, since the judges are men who cannot discern the consciences of those at their bar, and are therefore frequently compelled to put innocent witnesses to the torture to ascertain the truth regarding the crimes of other men. What shall I say of torture applied to the accused himself? He is tortured to discover whether he is guilty, so that, though innocent, he suffers most undoubted punishment for crime that is still doubtful, not because it is proved that he committed it, but because it is not ascertained that he did not commit it. Thus the ignorance of the judge frequently involves an innocent person in suffering. And what is still more unendurable—a thing, indeed, to be bewailed, and, if that were possible, watered with fountains of tears—is this, that when the judge puts the accused to the question, that he may not unwittingly put an innocent man to death, the result of this lamentable ignorance is that this very person, whom he tortured that he might not condemn him if innocent, is condemned to death both tortured and innocent. For if he has chosen, in obedience to the philosophical instructions to the wise man, to quit this life rather than endure any longer such tortures, he declares that he has

committed the crime which in fact he has not committed. And when he has been condemned and put to death, the judge is still in ignorance whether he has put to death an innocent or a guilty person, though he put the accused to the torture for the very purpose of saving himself from condemning the innocent; and consequently he has both tortured an innocent man to discover his innocence and has put him to death without discovering it. If such darkness shrouds social life, will a wise judge take his seat on the bench or no? Beyond question he will. For human society, which he thinks it a wickedness to abandon, constrains him and compels him to this duty. And he thinks it no wickedness that innocent witnesses are tortured regarding the crimes of which other men are accused; or that the accused are put to the torture, so that they are often overcome with anguish, and, though innocent, make false confessions regarding themselves, and are punished; or that, though they be not condemned to die, they often die during, or in consequence of, the torture; or that sometimes the accusers, who perhaps have been prompted by a desire to benefit society by bringing criminals to justice, are themselves condemned through the ignorance of the judge, because they are unable to prove the truth of their accusations though they are true, and because the witnesses lie, and the accused endures the torture without being moved to confession. These numerous and important evils he does not consider sins; for the wise judge does these things, not with any intention of doing harm, but because his ignorance compels him, and because human society claims him as a judge. But though we therefore acquit the judge of malice, we must none the less condemn human life as miserable. And if he is compelled to torture and punish the innocent because his office and his ignorance constrain him, is he a happy as well as guiltless man? Surely it were proof of more profound considerateness and finer feeling were he to recognize the misery of these necessities, and shrink from his own implication in that misery; and had he any piety about him, he would cry to God "From my necessities deliver Thou me."

Augustine, *City of God*, XIX, 6

- 23 Man can be punished with a threefold punishment corresponding to the three orders to which the human will is subject. In the first place a man's nature is subjected to the order of his own reason; secondly, it is subjected to the order of another man who governs him either in spiritual or in temporal matters, as a member either of the state or of the household; thirdly, it is subjected to the universal order of the Divine government. Now each of these orders is disturbed by sin, for the sinner acts against his reason, and against human and Divine law. Hence he incurs a threefold punishment; one, inflicted by himself, namely remorse of conscience; another, inflicted by man; and a third, inflicted by God.
- Aquinas, *Summa Theologica*, I-II, 87, 1
- 24 The punishment that is inflicted according to human laws is not always intended as a medicine for the one who is punished, but sometimes only for others; thus when a thief is hanged, this is not for his own amendment, but for the sake of others, that at least they may be deterred from crime through fear of the punishment.
- Aquinas, *Summa Theologica*, I-II, 87, 3
- 25 A severe punishment is inflicted not only on account of the gravity of a fault, but also for other reasons. First, on account of the greatness of the sin, because a greater sin, other things being equal, deserves a greater punishment. Secondly, on account of a habitual sin, since men are not easily cured of habitual sin except by severe punishments. Thirdly, on account of a great desire for or a great pleasure in the sin; for men are not easily deterred from such sins unless they be severely punished. Fourthly, on account of the facility of committing a sin and of concealing it; for such sins, when discovered, should be more severely punished in order to deter others from committing them.
- Aquinas, *Summa Theologica*, I-II, 105, 2
- 26 Both Divine and human laws command . . . sinners to be put to death, [if] there is greater likelihood of their harming others than of their mending their ways. Nevertheless the judge puts this into effect not out of hatred for the sinners, but out of the love of charity, by reason of which he prefers the public good to the life of the individual. Moreover, the death inflicted by the judge profits the sinner, if he be converted, for the expiation of his crime; and if he be not converted, it profits so as to put an end to the sin, because the sinner is thus deprived of the power to sin any more.
- Aquinas, *Summa Theologica*, II-II, 25, 6
- 27 *Saint Francis afterwards, when I was dead, came for me: but one of the Black Cherubim said to him: 'Do not take him; wrong me not. He must come down amongst my menials; because he gave the fraudulent counsel, since which I have kept fast by his hair: for he who repents not, cannot be absolved; nor is it possible to repent and will a thing at the same time, the contradiction not permitting it.'*
- O wretched me! how I started when he seized me, saying to me: 'May be thou didst not think that I was a logician!'
- Dante, *Inferno*, XXVII, 112
- 28 When theft is punished by hanging, this occurs according to positive law on acceptable grounds,

but not as in the case of the Draconian law which condemned every thief to hang, even if he stole only a chicken; this has no acceptable grounds and is contrary to nature. Consequently it was said that this law was written in blood. Yet the punishment must be applied more severely among more unbridled peoples.

Luther, *Table Talk*, 3911

- 29 Some peasants have just informed me hastily that a moment ago they left in a wood that belongs to me a man stabbed in a hundred places, who is still breathing, and who begged them for pity's sake to bring him some water and help him to get up. They say that they did not dare go near him, and ran away, for fear that the officers of the law would catch them there and hold them accountable for the accident—as is done with those who are found near a murdered man—to their total ruin, since they had neither ability nor money to defend their innocence. What could I say to them? It is certain that this act of humanity would have got them into trouble.

How many innocent people we have found to have been punished—I mean by no fault of their judges—and how many there have been that we have not found out about! Here is something that happened in my time. Certain men are condemned to death for a murder, the sentence being, if not pronounced, at least decided and determined. At this point the judges are informed by the officers of an inferior court nearby that they have some prisoners who confess outright to this murder and throw a decisive light on the whole business. They deliberate whether because of this they should interrupt and defer the execution of the sentence passed upon the first accused. They consider the novelty of the case and the precedent it would set in suspending the execution of sentences; that the sentence has been passed according to law, and that the judges have no right to change their minds. In short, these poor devils are sacrificed to the forms of justice.

Philip, or some other, took care of a similar problem in this manner. He had sentenced a man, by a definitive judgment, to pay a heavy fine to another. The truth came to light some time after, and it turned out that he had decided unfairly. On one side were the rights of the case, on the other side the rights of judicial forms. He gave some satisfaction to both, letting the sentence stand and compensating the loss of the convicted man out of his own purse. But he was dealing with a reparable accident; my men were irreparably hanged. How many condemnations I have seen more criminal than the crime!

Montaigne, *Essays*, III, 13, Of Experience

- 30 *Hamlet*. Give me your pardon, sir. I've done you wrong;
But pardon't, as you are a gentleman.

This presence knows,
And you must needs have heard, how I am
punish'd
With sore distraction. What I have done,
That might your nature, honour, and exception
Roughly awake, I here proclaim was madness.
Was't Hamlet wrong'd Laertes? Never Hamlet!
If Hamlet from himself be ta'en away,
And when he's not himself does wrong Laertes,
Then Hamlet does it not, Hamlet denies it.
Who does it, then? His madness.

Shakespeare, *Hamlet*, V, ii, 237

- 31 *Angelo*. Condemn the fault, and not the actor of it?
Why, every fault's condemn'd ere it be done.
Mine were the very cipher of a function,
To fine the faults whose fine stands in record,
And let go by the actor.
Shakespeare, *Measure for Measure*, II, ii, 37

- 32 *Isabella*. Good, good my lord, bethink you;
Who is it that hath died for this offence?
There's many have committed it.

Lucio. Ay, well said.

Angelo. The law hath not been dead, though it
hath slept.

Those many had not dared to do that evil,
If the first that did the edict infringe
Had answer'd for his deed. Now 'tis awake,
Takes a note of what is done; and, like a prophet
Looks in a glass that shows what future evils,
Either new, or by remissness new-conceived,
And so in progress to be hatch'd and born,
Are now to have no successive degrees,
But, ere they live, to end.

Isab. Yet show some pity.

Ang. I show it most of all when I show justice;
For then I pity those I do not know,
Which a dismiss'd offence would after gail;
And do him right that, answering one foul wrong,
Lives not to act another.

Shakespeare, *Measure for Measure*, II, ii, 87

- 33 My Lord, said he, a large River divides in two
Parts one and the same Lordship. I beg your Honour
to lend me your Attention, for 'tis a Case of
great Importance, and some Difficulty—Upon
this River there is a Bridge; at one End of which
there stands a Gallows, and a kind of Court of
Justice, where four Judges use to sit, for the Execution
of a certain Law made by the Lord of the
Land and River, which runs thus.

Whoever intends to pass from one End of this Bridge to the other, must first upon his Oath declare whither he goes, and what his Business is. If he swear Truth, he may go on; but if he swear false, he shall be hang'd, and die without Remission upon the Gibbet at the End of the Bridge.

After due Promulgation of this Law, many People, notwithstanding it's Severity, adventur'd to

go over this Bridge, and as it appear'd they swore true, the Judges permitted 'em to pass unmolested. It happen'd one Day that a certain Passenger being sworn, declar'd, that by the Oath he had taken, he was come to die upon that Gallows, and that was all his Business.

This put the Judges to a Nonplus; for, said they, If we let this Man pass freely, he is forsworn, and according to the Letter of the Law he ought to die: If we hang him, he has sworn Truth, seeing he swore he was to die on that Gibbet; and then by the same Law we should let him pass.

Now your Lordship's Judgment is desir'd what the Judges ought to do with this Man? For they are still at a stand, not knowing what to determine in this Case; and having been inform'd of your sharp Wit, and great Capacity in resolving difficult Questions, they sent me to beseech your Lordship in their Names, to give your Opinion in so intricate and knotty a Case. . . .

Well, hark you me, honest Man, said *Sancho*, either I am a Codshead, or there is as much Reason to put this same Person you talk of to Death as to let him live and pass the Bridge; for if the Truth saves him, the Lye condemns him. Now the Case stands thus, I would have you tell those Gentlemen that sent you to me, since there's as much Reason to bring him off, as to condemn him, that they e'en let him go free; for 'tis always more commendable to do Good than Hurt. And this I would give you under my own Hand, if I could write. Nor do I speak this of my own Head; but I remember one Precept, among many others, that my Master *Don Quixote* gave me the Night before I went to govern this Island, which was, that when the Scale of Justice is even, or a Case is doubtful, we should prefer Mercy before Rigour; and it has pleas'd God I should call it to Mind so luckily at this Juncture.

Cervantes, *Don Quixote*, II, 51

- 34 The house of every man is his castle, and if thieves come to a man's house to rob or murder, and the owner or his servants kill any of the thieves in defence of himself and his house, it is no felony and he lose nothing.

Sir Edward Coke, *Coke's Reports, Semayne's Case*

- 35 In causes of life and death, judges ought (as far as the law permitteth) in justice to remember mercy; and to cast a severe eye upon the example, but a merciful eye upon the person.

Bacon, *Of Judicature*

- 36 When a penalty is either annexed to the crime in the law itself, or hath been usually inflicted in the like cases, there the delinquent is excused from a greater penalty. For the punishment foreknown, if not great enough to deter men from the action, is an invitement to it: because when men compare

the benefit of their injustice with the harm of their punishment, by necessity of nature they choose that which appeareth best for themselves: and therefore when they are punished more than the law had formerly determined, or more than others were punished for the same crime, it is the law that tempted and deceiveth them.

Hobbes, *Leviathan*, II, 27

- 37 If a man by the terror of present death be compelled to do a fact against the law, he is totally excused; because no law can oblige a man to abandon his own preservation. And supposing such a law were obligatory, yet a man would reason thus: "If I do it not, I die presently; if I do it, I die afterwards; therefore by doing it, there is time of life gained." Nature therefore compels him to the fact.

Hobbes, *Leviathan*, II, 27

- 38 To kill against the law is a greater crime than any other injury, life preserved.

And to kill with torment, greater than simply to kill.

And mutilation of a limb, greater than the spoiling a man of his goods.

And the spoiling a man of his goods by terror of death or wounds, than by clandestine surreption.

And by clandestine surreption, than by consent fraudulently obtained.

And the violation of chastity by force, greater than by flattery.

And of a woman married, than of a woman not married.

For all these things are commonly so valued; though some men are more, and some less, sensible of the same offence. But the law regardeth not the particular, but the general inclination of mankind.

Hobbes, *Leviathan*, II, 27

- 39 A *punishment* is an evil inflicted by public authority on him that hath done or omitted that which is judged by the same authority to be a transgression of the law, to the end that the will of men may thereby the better be disposed to obedience. . . .

From the definition of punishment, I infer, first, that neither private revenges nor injuries of private men can properly be styled punishment, because they proceed not from public authority. . . .

Thirdly, that the evil inflicted by public authority, without precedent public condemnation, is not to be styled by the name of punishment, but of a hostile act, because the fact for which a man is punished ought first to be judged by public authority to be a transgression of the law.

Fourthly, that the evil inflicted by usurped power, and judges without authority from the sovereign, is not punishment, but an act of hostility, because the acts of power usurped have not for

author the person condemned, and therefore are not acts of public authority.

Fifthly, that all evil which is inflicted without intention or possibility of disposing the delinquent or, by his example, other men to obey the laws is not punishment, but an act of hostility, because without such an end no hurt done is contained under that name. . . .

Seventhly, if the harm inflicted be less than the benefit of contentment that naturally followeth the crime committed, that harm is not within the definition, and is rather the price of redemption than the punishment of a crime: because it is of the nature of punishment to have for end the disposing of men to obey the law; which end (if it be less than the benefit of the transgression) it attaineth not, but worketh a contrary effect.

Hobbes, *Leviathan*, II, 28

- 40 Intemperance is naturally punished with diseases; rashness, with mischances; injustice, with the violence of enemies; pride, with ruin; cowardice, with oppression; negligent government of princes, with rebellion; and rebellion, with slaughter. For seeing punishments are consequent to the breach of laws, natural punishments must be naturally consequent to the breach of the laws of nature, and therefore follow them as their natural, not arbitrary, effects.

Hobbes, *Leviathan*, II, 31

- 41 To impress your minds with a deeper horror at homicide, remember that the first crime of fallen man was a murder, committed on the person of the first holy man; that the greatest crime was a murder, perpetrated on the person of the King of saints; and that, of all crimes, murder is the only one which involves in a common destruction the Church and the state, nature and religion.

Pascal, *Provincial Letters*, XIV

- 42 When the supreme authority, constrained by the desire of preserving peace, punishes a citizen who injures another, I do not say that it is indignant with the citizen, since it is not excited by hatred to destroy him, but punishes him from motives of piety.

Spinoza, *Ethics*, IV, Prop. 51, Schol.

- 43 In the state of nature, wrong-doing is impossible; or, if anyone does wrong, it is to himself, not to another. For no one by the law of nature is bound to please another, unless he chooses, nor to hold anything to be good or evil, but what he himself, according to his own temperament, pronounces to be so; and, to speak generally, nothing is forbidden by the law of nature, except what is beyond everyone's power. But wrong-doing is action, which cannot lawfully be committed. But if men by the ordinance of nature were bound to be led by reason, then all of necessity would be so led.

For the ordinances of nature are the ordinances of God, which God has instituted by the liberty, whereby he exists, and they follow, therefore, from the necessity of the divine nature, and, consequently, are eternal, and cannot be broken. But men are chiefly guided by appetite, without reason; yet for all this they do not disturb the course of nature, but follow it of necessity. And, therefore, a man ignorant and weak of mind, is no more bound by natural law to order his life wisely, than a sick man is bound to be sound of body.

Therefore wrong-doing cannot be conceived of, but under dominion—that is, where, by the general right of the whole dominion, it is decided what is good and what evil, and where no one does anything rightfully, save what he does in accordance with the general decree or consent.

Spinoza, *Political Treatise*, II, 18–19

- 44 It is fit the ruler should have a power in many cases to mitigate the severity of the law, and pardon some offenders, since the end of government being the preservation of all as much as may be, even the guilty are to be spared where it can prove no prejudice to the innocent.

Locke, *II Civil Government*, XIV, 159

- 45 Since it would be utterly in vain to suppose a rule set to the free actions of men, without annexing to it some enforcement of good and evil to determine his will, we must, wherever we suppose a law, suppose also some reward or punishment annexed to that law. It would be in vain for one intelligent being to set a rule to the actions of another, if he had it not in his power to reward the compliance with, and punish deviation from his rule, by some good and evil, that is not the natural product and consequence of the action itself. For that, being a natural convenience or inconvenience, would operate of itself, without a law. This, if I mistake not, is the true nature of all law, properly so called.

Locke, *Concerning Human Understanding*, Bk. II, XXVIII, 6

- 46 There are some laws and customs in this [the Lilliputians'] empire very peculiar; and if they were not so directly contrary to those of my own dear country, I should be tempted to say a little in their justification. It is only to be wished, that they were as well executed. The first I shall mention, relateth to informers. All crimes against the State, are punished here with the utmost severity; but if the person accused make his innocence plainly to appear upon his tryal, the accuser is immediately put to an ignominious death; and out of his goods or lands, the innocent person is quadruply recompensed for the loss of his time, for the danger he underwent, for the hardship of his imprisonment, and for all the charges he hath been at in making his defence. Or, if that fund be

deficient, it is largely supplied by the Crown. The emperor doth also confer on him some publick mark of his favour; and proclamation is made of his innocence through the whole city.

Swift, *Gulliver's Travels*, I, 6

- 47 They [the Lilliputians] look upon fraud as a greater crime than theft, and therefore seldom fail to punish it with death: for, they alledge, that care and vigilance, with a very common understanding, may preserve a man's goods from thieves; but honesty hath no fence against superior cunning: and since it is necessary that there should be a perpetual intercourse of buying and selling, and dealing upon credit; where fraud is permitted or connived at, or hath no law to punish it, the honest dealer is always undone, and the knave gets the advantage. I remember when I was once interceding with the king for a criminal who had wronged his master of a great sum of money, which he had received by order, and ran away with; and happening to tell his Majesty, by way of extenuation, that it was only a breach of trust; the emperor thought it monstrous in me to offer, as a defence, the greatest aggravation of the crime: and truly, I had little to say in return, farther than the common answer, that different nations had different customs; for, I confess, I was heartily ashamed.

Swift, *Gulliver's Travels*, I, 6

- 48 Ingratitude is among them [the Lilliputians] a capital crime, as we read it to have been in some other countries: for they reason thus; that whoever makes ill returns to his benefactor, must needs be a common enemy to the rest of mankind, from whom they have received no obligation; and therefore such a man is not fit to live.

Swift, *Gulliver's Travels*, I, 6

- 49 Experience shows that in countries remarkable for the lenity of their laws the spirit of the inhabitants is as much affected by slight penalties as in other countries by severer punishments.

If an inconvenience or abuse arises in the state, a violent government endeavours suddenly to redress it; and instead of putting the old laws in execution, it establishes some cruel punishment, which instantly puts a stop to the evil. But the spring of government hereby loses its elasticity; the imagination grows accustomed to the severe as well as the milder punishment; and as the fear of the latter diminishes, they are soon obliged in every case to have recourse to the former. Robberies on the highway became common in some countries; in order to remedy this evil, they invented the punishment of breaking upon the wheel, the terror of which put a stop for a while to this mischievous practice. But soon after robberies on the highways became as common as ever. . . .

Mankind must not be governed with too much

severity; we ought to make a prudent use of the means which nature has given us to conduct them. If we inquire into the cause of all human corruptions, we shall find that they proceed from the impunity of criminals, and not from the moderation of punishments.

Montesquieu, *Spirit of Laws*, VI, 12

- 50 The lawfulness of putting a malefactor to death arises from this circumstance: the law by which he is punished was made for his security. A murderer, for instance, has enjoyed the benefit of the very law which condemns him; it has been a continual protection to him; he cannot, therefore, object to it.

Montesquieu, *Spirit of Laws*, XV, 2

- 51 When any man, even in political society, renders himself by his crimes obnoxious to the public, he is punished by the laws in his goods and person; that is, the ordinary rules of justice are, with regard to him, suspended for a moment; and it becomes equitable to inflict on him, for the benefit of society, what otherwise he could not suffer without wrong or injury.

Hume, *Concerning Principles of Morals*, III

- 52 Let the punishments of criminals be useful. A hanged man is good for nothing, and a man condemned to public works still serves the country, and is a living lesson.

Voltaire, *Philosophical Dictionary*: Civil Laws

- 53 "And why was this admiral killed?" "Because," said they, "he did not kill men enough himself. He attacked the French admiral, and was found guilty of not being near enough to him." "But then," said Candide, "was not the French admiral as far off from the English admiral, as he was from him?" "That is what cannot be doubted," replied they. "But in this country it is of very great service to kill an admiral now and then, in order to make the rest fight better."

Voltaire, *Candide*, XXIII

- 54 The power of the laws depends still more on their own wisdom than on the severity of their administrators, and the public will derives its greatest weight from the reason which has dictated it. Hence Plato looked upon it as a very necessary precaution to place at the head of all edicts a preamble, setting forth their justice and utility. In fact, the first of all laws is to respect the laws: the severity of penalties is only a vain resource, invented by little minds in order to substitute terror for that respect which they have no means of obtaining. It has constantly been observed that in those countries where legal punishments are most severe, they are also most frequent; so that the cruelty of such punishments is a proof only of the multitude of criminals, and, punishing everything

with equal severity, induces those who are guilty to commit crimes, in order to escape being punished for their faults.

Rousseau, *Political Economy*

- 55 It is not only upright men who know how to administer the laws; but at bottom only good men know how to obey them. The man who once gets the better of remorse, will not shrink before punishments which are less severe, and less lasting, and from which there is at least the hope of escaping: whatever precautions are taken, those who only require impunity in order to do wrong will not fail to find means of eluding the law, and avoiding its penalties.

Rousseau, *Political Economy*

- 56 Every malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country; by violating its laws he ceases to be a member of it; he even makes war upon it. In such a case the preservation of the State is inconsistent with his own, and one or the other must perish; in putting the guilty to death, we slay not so much the citizen as an enemy. The trial and the judgment are the proofs that he has broken the social treaty, and is in consequence no longer a member of the State. Since, then, he has recognised himself to be such by living there, he must be removed by exile as a violator of the compact, or by death as a public enemy; for such an enemy is not a moral person, but merely a man; and in such a case the right of war is to kill the vanquished.

Rousseau, *Social Contract*, II, 5

- 57 The frequency of capital punishments . . . rarely hinders the commission of a crime, but naturally and commonly prevents its detection, and is, if we proceed only upon prudential principles, chiefly for that reason to be avoided. Whatever may be urged by casuists or politicians, the greater part of mankind, as they can never think that to pick the pocket and to pierce the heart is equally criminal, will scarcely believe that two malefactors so different in guilt can be justly doomed to the same punishment.

Johnson, *Rambler No. 114*

- 58 He [Johnson] said to Sir William Scott, "The age is running mad after innovation; all the business of the world is to be done in a new way; men are to be hanged in a new way; Tyburn itself is not safe from the fury of innovation." It having been argued that this was an improvement,—“No, Sir, (said he, eagerly,) it is *not* an improvement: they object that the old method drew together a number of spectators. Sir, executions are intended to draw spectators. If they do not draw spectators they don't answer their purpose. The old method was most satisfactory to all parties; the publick was gratified by a procession; the criminal was

supported by it. Why is all this to be swept away?” I perfectly agree with Dr. Johnson upon this head, and am persuaded that executions now, the solemn procession being discontinued, have not nearly the effect which they formerly had. Magistrates both in London, and elsewhere, have, I am afraid, in this had too much regard to their own ease.

Boswell, *Life of Johnson (1783)*

- 59 The right of administering punishment is the right of the sovereign as the supreme power to inflict pain upon a subject on account of a crime committed by him. The head of the state cannot therefore be punished; but his supremacy may be withdrawn from him.

Kant, *Science of Right*, 49

- 60 Judicial or juridical punishment is to be distinguished from natural punishment, in which crime as vice punishes itself, and does not as such come within the cognizance of the legislator. Juridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted *has committed a crime*. For one man ought never to be dealt with merely as a means subservient to the purpose of another, nor be mixed up with the subjects of real right. Against such treatment his inborn personality has a right to protect him, even although he may be condemned to lose his civil personality. He must first be found guilty and *punishable*, before there can be any thought of drawing from his punishment any benefit for himself or his fellow-citizens. The penal law is a categorical imperative; and woe to him who creeps through the serpent-windings of utilitarianism to discover some advantage that may discharge him from the justice of punishment, or even from the due measure of it, according to the Pharisaic maxim: “It is better that *one* man should die than that the whole people should perish.”

Kant, *Science of Right*, 49

- 61 Whoever has committed murder, must *die*. There is, in this case, no juridical substitute or surrogate, that can be given or taken for the satisfaction of justice. There is no *likeness* or proportion between life, however painful, and death; and therefore there is no equality between the crime of murder and the retaliation of it but what is judicially accomplished by the execution of the criminal. His death, however, must be kept free from all maltreatment that would make the humanity suffering in his person loathsome or abominable. Even if a civil society resolved to dissolve itself with the consent of all its members—as might be supposed in the case of a people inhabiting an island resolving to separate and scatter themselves throughout

the whole world—the last murderer lying in the prison ought to be executed before the resolution was carried out. This ought to be done in order that every one may realize the desert of his deeds, and that blood-guiltiness may not remain upon the people; for otherwise they might all be regarded as participators in the murder as a public violation of justice.

The equalization of punishment with crime is therefore only possible by the cognition of the judge extending even to the penalty of death, according to the right of retaliation. This is manifest from the fact that it is only thus that a sentence can be pronounced over all criminals proportionate to their internal *wickedness*; as may be seen by considering the case when the punishment of death has to be inflicted, not on account of a murder, but on account of a political crime that can only be punished capitally.

Kant, *Science of Right*, 49

- 62 The right of pardoning, viewed in relation to the criminal, is the right of mitigating or entirely remitting his punishment. On the side of the sovereign this is the most delicate of all rights, as it may be exercised so as to set forth the splendour of his dignity, and yet so as to do a great wrong by it. It ought not to be exercised in application to the crimes of the subjects against each other; for exemption from punishment would be the greatest wrong that could be done to them. It is only an occasion of some form of treason, as a lesion against himself, that the sovereign should make use of this right. And it should not be exercised even in this connection, if the safety of the people would be endangered by remitting such punishment. This right is the only one which properly deserves the name of a "right of majesty."

Kant, *Science of Right*, 49

- 63 Punishment is regarded as containing the criminal's right and hence by being punished he is honoured as a rational being. He does not receive this due of honour unless the concept and measure of his punishment are derived from his own act. Still less does he receive it if he is treated either as a harmful animal who has to be made harmless, or with a view to deterring and reforming him.

Hegel, *Philosophy of Right*, 100

- 64 It seems to be a contradiction that a crime committed in society appears more heinous and yet is punished more leniently. But while it would be impossible for society to leave a crime unpunished, since that would be to posit it as right, still since society is sure of itself, a crime must always be something idiosyncratic in comparison, something unstable and exceptional. The very stability of society gives a crime the status of something purely subjective which seems to be the product rather of natural impulse than of a prudent will.

In this light, crime acquires a milder status, and for this reason its punishment too becomes milder. If society is still internally weak, then an example must be made by inflicting punishments, since punishment is itself an example over against the example of crime. But in a society which is internally strong, the commission of crime is something so feeble that its annulment must be commensurable with its feebleness. Harsh punishments, therefore, are not unjust in and by themselves; they are related to contemporary conditions. A criminal code cannot hold good for all time, and crimes are only shows of reality which may draw on themselves a greater or lesser degree of disavowal.

Hegel, *Philosophy of Right*, Additions, Par. 218

- 65 Crime and punishment grow out of one stem. Punishment is a fruit that unsuspected ripens within the flower of the pleasure which concealed it.

Emerson, *Compensation*

- 66 Commit a crime, and the earth is made of glass. Commit a crime, and it seems as if a coat of snow fell on the ground, such as reveals in the woods the track of every partridge and fox and squirrel and mole. You cannot recall the spoken word, you cannot wipe out the foot-track, you cannot draw up the ladder, so as to leave no inlet or clew. Some damning circumstance always transpires. The laws and substances of nature—water, snow, wind, gravitation—become penalties to the thief.

Emerson, *Compensation*

- 67 There are some who say, that it is unjust to punish any one for the sake of example to others; that punishment is just, only when intended for the good of the sufferer himself. Others maintain the extreme reverse, contending that to punish persons who have attained years of discretion, for their own benefit, is despotism and injustice, since if the matter at issue is solely their own good, no one has a right to control their own judgment of it; but that they may justly be punished to prevent evil to others, this being the exercise of the legitimate right of self-defence. Mr. Owen, again, affirms that it is unjust to punish at all; for the criminal did not make his own character; his education, and the circumstances which surrounded him, have made him a criminal, and for these he is not responsible. All these opinions are extremely plausible; and so long as the question is argued as one of justice simply, without going down to the principles which lie under justice and are the source of its authority, I am unable to see how any of these reasoners can be refuted. For in truth every one of the three builds upon rules of justice confessedly true. The first appeals to the acknowledged injustice of singling out an individual, and making him a sacrifice, without his con-

sent, for other people's benefit. The second relies on the acknowledged justice of self-defence, and the admitted injustice of forcing one person to conform to another's notions of what constitutes his good. The Owenite invokes the admitted principle, that it is unjust to punish any one for what he cannot help. Each is triumphant so long as he is not compelled to take into consideration any other maxims of justice than the one he has selected; but as soon as their several maxims are brought face to face, each disputant seems to have exactly as much to say for himself as the others. No one of them can carry out his own notion of justice without trampling upon another equally binding.

These are difficulties; they have always been felt to be such; and many devices have been invented to turn rather than to overcome them. As a refuge from the last of the three, men imagined what they called the freedom of the will; fancying that they could not justify punishing a man whose will is in a thoroughly hateful state, unless it be supposed to have come into that state through no influence of anterior circumstances. To escape from the other difficulties, a favourite contrivance has been the fiction of a contract, whereby at some unknown period all the members of society engaged to obey the laws, and consented to be punished for any disobedience to them; thereby giving to their legislators the right, which it is assumed they would not otherwise have had, of punishing them, either for their own good or for that of society. This happy thought was considered to get rid of the whole difficulty, and to legitimate the infliction of punishment, in virtue of another received maxim of justice, *Volenti non fit injuria*; that is not unjust which is done with the consent of the person who is supposed to be hurt by it. I need hardly remark, that even if the consent were not a mere fiction, this maxim is not superior in authority to the others which it is brought in to supersede. It is, on the contrary, an instructive specimen of the loose and irregular manner in which supposed principles of justice grow up. This particular one evidently came into use as a help to the coarse exigencies of courts of law, which are sometimes obliged to be content with very uncertain presumptions, on account of the greater evils which would often arise from any attempt on their part to cut finer. But even courts of law are not able to adhere consistently to the maxim, for they allow voluntary engagements to be set aside on the ground of fraud, and sometimes on that of mere mistake or misinformation.

Again, when the legitimacy of inflicting punishment is admitted, how many conflicting conceptions of justice come to light in discussing the proper apportionment of punishments to offences. No rule on the subject recommends itself so strongly to the primitive and spontaneous sentiment of justice, as the *lex talionis*, an eye for an eye

and a tooth for a tooth. Though this principle of the Jewish and of the Mahometan law has been generally abandoned in Europe as a practical maxim, there is, I suspect, in most minds, a secret hankering after it; and when retribution accidentally falls on an offender in that precise shape, the general feeling of satisfaction evinced bears witness how natural is the sentiment to which this repayment in kind is acceptable. With many, the test of justice in penal infliction is that the punishment should be proportioned to the offence; meaning that it should be exactly measured by the moral guilt of the culprit (whatever be their standard for measuring moral guilt): the consideration, what amount of punishment is necessary to deter from the offence, having nothing to do with the question of justice, in their estimation: while there are others to whom that consideration is all in all; who maintain that it is not just, at least for man, to inflict on a fellow-creature, whatever may be his offences, any amount of suffering beyond the least that will suffice to prevent him from repeating, and others from imitating, his misconduct.

Mill, *Utilitarianism*, V

68 "Why," began the elder, "all these sentences to exile with hard labour, and formerly with flogging also, reform no one, and what's more, deter hardly a single criminal, and the number of crimes does not diminish but is continually on the increase. You must admit that. Consequently the security of society is not preserved, for, although the obnoxious member is mechanically cut off and sent far away out of sight, another criminal always comes to take his place at once, and often two of them. If anything does preserve society, even in our time, and does regenerate and transform the criminal, it is only the law of Christ speaking in his conscience. It is only by recognising his wrong-doing as a son of a Christian society—that is, of the Church—that he recognises his sin against society—that is, against the Church. So that it is only against the Church, and not against the State, that the criminal of to-day can recognise that he has sinned. If society, as a Church, had jurisdiction, then it would know when to bring back from exclusion and to reunite to itself. Now the Church having no real jurisdiction, but only the power of moral condemnation, withdraws of her own accord from punishing the criminal actively. She does not excommunicate him but simply persists in motherly exhortation of him. What is more, the Church even tries to preserve all Christian communion with the criminal. She admits him to church services, to the holy sacrament, gives him alms, and treats him more as a captive than as a convict. And what would become of the criminal, O Lord, if even the Christian society—that is, the Church—were to reject him even as the civil law rejects him and cuts him

off? What would become of him if the Church punished him with her excommunication as the direct consequence of the secular law? There could be no more terrible despair, at least for a Russian criminal, for Russian criminals still have faith. Though, who knows, perhaps then a fearful thing would happen, perhaps the despairing heart of the criminal would lose its faith and then what would become of him? But the Church, like a tender, loving mother, holds aloof from active punishment herself, as the sinner is too severely punished already by the civil law, and there must be at least someone to have pity on him. The Church holds aloof, above all, because its judgment is the only one that contains the truth, and therefore cannot practically and morally be united to any other judgment even as a temporary compromise. She can enter into no compact about that. The foreign criminal, they say, rarely repents, for the very doctrines of to-day confirm him in the idea that his crime is not a crime, but only a reaction against an unjustly oppressive force. Society cuts him off completely by a force that triumphs over him mechanically and (so at least they say of themselves in Europe) accompanies this exclusion with hatred, forgetfulness, and the most profound indifference as to the ultimate fate of the erring brother."

Dostoevsky, *Brothers Karamazov*, Pt. I, II, 5

- 69 Remember particularly that you cannot be a judge of anyone. For no one can judge a criminal until he recognises that he is just such a criminal as the man standing before him, and that he perhaps is more than all men to blame for that crime. When he understands that, he will be able to be a judge. Though that sounds absurd, it is true. If I had been righteous myself, perhaps there would have been no criminal standing before me. If you can take upon yourself the crime of the criminal your heart is judging, take it at once, suffer for him yourself, and let him go without reproach. And even if the law itself makes you his judge, act in the same spirit so far as possible, for he will go away and condemn himself more bitterly than you have done. If, after your kiss, he goes away untouched, mocking at you, do not let that be a stumbling-block to you. It shows his time has not yet come, but it will come in due course. And if it come not, no matter; if not he, then another in his place will understand and suffer, and judge and condemn himself, and the truth will be fulfilled. Believe that, believe it without doubt; for in that lies all the hope and faith of the saints.

Dostoevsky, *Brothers Karamazov*, Pt. II, VI, 3

- 70 Raskolnikov smiled again. He saw the point at once, and knew where they wanted to drive him. He decided to take up the challenge.

"That wasn't quite my contention," he began simply and modestly. "Yet I admit that you have

stated it almost correctly; perhaps, if you like, perfectly so." (It almost gave him pleasure to admit this.) "The only difference is that I don't contend that extraordinary people are always bound to commit breaches of morals, as you call it. In fact, I doubt whether such an argument could be published. I simply hinted that an 'extraordinary' man has the right . . . that is not an official right, but an inner right to decide in his own conscience to overstep . . . certain obstacles, and only in case it is essential for the practical fulfilment of his idea (sometimes, perhaps, of benefit to the whole of humanity). You say that my article isn't definite; I am ready to make it as clear as I can. Perhaps I am right in thinking you want me to; very well. I maintain that if the discoveries of Kepler and Newton could not have been made known except by sacrificing the lives of one, a dozen, a hundred, or more men, Newton would have had the right, would indeed have been in duty bound . . . to *eliminate* the dozen or the hundred men for the sake of making his discoveries known to the whole of humanity. But it does not follow from that that Newton had a right to murder people right and left and to steal every day in the market. Then, I remember, I maintain in my article that all . . . well, legislators and leaders of men, such as Lycurgus, Solon, Mahomet, Napoleon, and so on, were all without exception criminals, from the very fact that, making a new law, they transgressed the ancient one, handed down from their ancestors and held sacred by the people, and they did not stop short at bloodshed either, if that bloodshed—often of innocent persons fighting bravely in defence of ancient law—were of use to their cause. It's remarkable, in fact, that the majority, indeed, of these benefactors and leaders of humanity were guilty of terrible carnage. In short, I maintain that all great men or even men a little out of the common, that is to say capable of giving some new word, must from their very nature be criminals—more or less, of course. Otherwise it's hard for them to get out of the common rut; and to remain in the common rut is what they can't submit to, from their very nature again, and to my mind they ought not, indeed, to submit to it. You see that there is nothing particularly new in all that. The same thing has been printed and read a thousand times before. As for my division of people into ordinary and extraordinary, I acknowledge that it's somewhat arbitrary, but I don't insist upon exact numbers. I only believe in my leading idea that men are *in general* divided by a law of nature into two categories, inferior (ordinary), that is, so to say, material that serves only to reproduce its kind, and men who have the gift or the talent to utter a *new word*. There are, of course, innumerable sub-divisions, but the distinguishing features of both categories are fairly well marked. The first category, generally speaking, are men conservative in tempera-

ment and law-abiding; they live under control and love to be controlled. To my thinking it is their duty to be controlled, because that's their vocation, and there is nothing humiliating in it for them. The second category all transgress the law; they are destroyers or disposed to destruction according to their capacities. The crimes of these men are of course relative and varied; for the most part they seek in very varied ways the destruction of the present for the sake of the better. But if such a one is forced for the sake of his idea to step over a corpse or wade through blood, he can, I maintain, find within himself, in his conscience, a sanction for wading through blood—that depends on the idea and its dimensions, note that. It's only in that sense I speak of their right to crime in my article (you remember it began with the legal question). There's no need for such anxiety, however; the masses will scarcely ever admit this right, they punish them or hang them (more or less), and in doing so fulfil quite justly their conservative vocation. But the same masses set these criminals on a pedestal in the next generation and worship them (more or less). The first category is always the man of the present, the second the man of the future. The first preserve the world and people it, the second move the world and lead it to its goal. Each class has an equal right to exist. In fact, all have equal rights with me—and *vive la guerre éternelle*—till the New Jerusalem, of course!"

Dostoevsky, *Crime and Punishment*, III, 5

- 71 Porfiry began gaily, looking with extraordinary simplicity at Raskolnikov (which startled him and instantly put him on his guard), "certainly quite right in laughing so wittily at our legal forms, he-he! Some of these elaborate psychological methods are exceedingly ridiculous and perhaps useless, if one adheres too closely to the forms. Yes . . . I am talking of forms again. Well, if I recognise, or more strictly speaking, if I suspect some one or other to be a criminal in any case entrusted to me . . . you're reading for the law, of course, Rodion Romanovitch?"

"Yes, I was . . ."

"Well, then it is a precedent for you for the future—though don't suppose I should venture to instruct you after the articles you publish about crime! No, I simply make bold to state it by way of fact, if I took this man or that for a criminal, why, I ask, should I worry him prematurely, even though I had evidence against him? In one case I may be bound, for instance, to arrest a man at once, but another may be in quite a different position, you know, so why shouldn't I let him walk about the town a bit, he-he-he! But I see you don't quite understand, so I'll give you a clearer example. If I put him in prison too soon, I may very likely give him, so to speak, moral support, he-he! You're laughing?"

Raskolnikov had no idea of laughing. He was

sitting with compressed lips, his feverish eyes fixed on Porfiry Petrovitch's.

"Yet that is the case, with some types especially, for men are so different. You say evidence. Well, there may be evidence. But evidence, you know, can generally be taken two ways. I am an examining lawyer and a weak man, I confess it. I should like to make a proof, so to say, mathematically clear, I should like to make a chain of evidence such as twice two are four, it ought to be a direct, irrefutable proof! And if I shut him up too soon—even though I might be convinced *he* was the man, I should very likely be depriving myself of the means of getting further evidence against him. And how? By giving him, so to speak, a definite position, I shall put him out of suspense and set his mind at rest, so that he will retreat into his shell. They say that at Sevastopol, soon after Alma, the clever people were in a terrible fright that the enemy would attack openly and take Sevastopol at once. But when they saw that the enemy preferred a regular siege, they were delighted, I am told and reassured, for the thing would drag on for two months at least. You're laughing, you don't believe me again? Of course, you're right, too. You're right, you're right. These are all special cases, I admit. But you must observe this, my dear Rodion Romanovitch, the general case, the case for which all legal forms and rules are intended, for which they are calculated and laid down in books, does not exist at all, for the reason that every case, every crime for instance, so soon as it actually occurs, at once becomes a thoroughly special case and sometimes a case unlike any that's gone before. Very comic cases of that sort sometimes occur. If I leave one man quite alone, if I don't touch him and don't worry him, but let him know or at least suspect every moment that I know all about it and am watching him day and night, and if he is in continual suspicion and terror, he'll be bound to lose his head. He'll come of himself, or maybe do something which will make it as plain as twice two are four—it's delightful. It may be so with a simple peasant, but with one of our sort, an intelligent man cultivated on a certain side, it's a dead certainty. For, my dear fellow, it's a very important matter to know on what side a man is cultivated. And then there are nerves, there are nerves, you have overlooked them! Why, they are all sick, nervous and irritable! . . . And then how they all suffer from spleen! That I assure you is a regular gold mine for us. And it's no anxiety to me, his running about the town free! Let him, let him walk about for a bit! I know well enough that I've caught him and that he won't escape me. Where could he escape to, he-he? Abroad, perhaps? A Pole will escape abroad, but not here, especially as I am watching and have taken measures. Will he escape into the depths of the country perhaps? But you know, peasants live there, real rude Russian

peasants. A modern cultivated man would prefer prison to living with such strangers as our peasants. He-he! But that's all nonsense, and on the surface. It's not merely that he has nowhere to run to, he is *psychologically* unable to escape me, he-he! What an expression! Through a law of nature he can't escape me if he had anywhere to go. Have you seen a butterfly round a candle? That's how he will keep circling and circling round me. Freedom will lose its attractions. He'll begin to brood, he'll weave a tangle round himself, he'll worry himself to death! What's more he will provide me with a mathematical proof—if I only give him long enough interval. . . . And he'll keep circling round me, getting nearer and nearer and then—flop! He'll fly straight into my mouth and I'll swallow him, and that will be very amusing, he-he-he-he! You don't believe me?"

Dostoevsky, *Crime and Punishment*, IV, 5

- 72 When we do not at all understand the cause of an action, whether a crime, a good action, or even one that is simply nonmoral, we ascribe a greater amount of freedom to it. In the case of a crime we most urgently demand the punishment for such an act; in the case of a virtuous act we rate its merit most highly. In an indifferent case we recognize in it more individuality, originality, and independence. But if even one of the innumerable causes of the act is known to us we recognize a certain element of necessity and are less insistent on punishment for the crime, or the acknowledgment of the merit of the virtuous act, or the freedom of the apparently original action. That a criminal was reared among malefactors mitigates his fault in our eyes. The self-sacrifice of a father or mother, or self-sacrifice with the possibility of a reward, is more comprehensible than gratuitous self-sacrifice, and therefore seems less deserving of sympathy and less the result of free will. The founder of a sect or party, or an inventor, impresses us less when we know how or by what the way was prepared for his activity. If we have a large range of examples, if our observation is constantly directed to seeking the correlation of cause and effect in people's actions, their actions appear to us more under compulsion and less free the more correctly we connect the effects with the causes. If we examined simple actions and had a vast number of such actions under observation, our conception of their inevitability would be still greater. The dishonest conduct of the son of a dishonest father, the misconduct of a woman who had fallen into bad company, a drunkard's relapse into
- drunkenness, and so on are actions that seem to us less free the better we understand their cause. If the man whose actions we are considering is on a very low stage of mental development, like a child, a madman, or a simpleton—then, knowing the causes of the act and the simplicity of the character and intelligence in question, we see so large an element of necessity and so little free will that as soon as we know the cause prompting the action we can foretell the result.
- On these three considerations alone is based the conception of irresponsibility for crimes and the extenuating circumstances admitted by all legislative codes. The responsibility appears greater or less according to our greater or lesser knowledge of the circumstances in which the man was placed whose action is being judged, and according to the greater or lesser interval of time between the commission of the action and its investigation, and according to the greater or lesser understanding of the causes that led to the action.
- Tolstoy, *War and Peace*, II Epilogue, IX
- 73 The lawyers defending a criminal are rarely artists enough to turn the beautiful terribleness of his deed to his advantage.
- Nietzsche, *Beyond Good and Evil*, IV, 110
- 74 The criminal type is the type of the strong human being under unfavourable conditions, a strong human being made sick. What he lacks is the wilderness, a certain freer and more perilous nature and form of existence in which all that is attack and defence in the instinct of the strong human being *comes into its own*.
- Nietzsche, *Twilight of the Idols: Expeditions of an Untimely Man*
- 75 Criminals do not die by the hands of the law. They die by the hands of other men.
- Shaw, *Man and Superman*, Maxims for Revolutionists
- 76 Assassination on the scaffold is the worst form of assassination, because there it is invested with the approval of society.
- Shaw, *Man and Superman*, Maxims for Revolutionists
- 77 Crime is only the retail department of what, in wholesale, we call penal law.
- Shaw, *Man and Superman*, Maxims for Revolutionists