

Torture

Cesare Bonesana

Cesare Bonesana (1738–1794) was the Marchese di Beccarria and an Italian jurist. The following argument against the use of torture, especially by legal authorities, is excerpted from his *Trato dei Delitti e delle Pene* (*On Crimes & Punishments*), written in 1764.

A cruelty consecrated among most nations by custom is the torture of the accused during his trial, on the pretext of compelling him to confess his crime, of clearing up contradictions in his statements, of discovering his accomplices, of purging him in some metaphysical and incomprehensible way from infamy, or finally of finding out other crimes of which he may possibly be guilty, but of which he is not accused.

A man cannot be called guilty before sentence has been passed on him by a judge, nor can society deprive him of its protection till it has been decided that he has broken the condition on which it was granted. What, then, is that right but one of mere might by which a judge is empowered to inflict a punishment on a citizen whilst his guilt or innocence are still undetermined? The following dilemma is no new one: either the crime is certain or uncertain; if certain, no other punishment is suitable for it than that affixed to it by law; and torture is useless, for the same reason that the criminal's confession is useless. If it is uncertain, it is wrong to torture an innocent person, such as the law adjudges him to be, whose crimes are not yet proved.

What is the political object of punishments? The intimidation of other men. But what shall we say of the secret and private tortures which the tyranny of custom exercises alike upon the guilty and the innocent? It is important, indeed, that no open crime shall pass unpunished; but the public exposure of a criminal whose crime was hidden in darkness is utterly useless. An evil that has been done and cannot be undone can only be punished by civil society insofar as it may affect others with the hope of impunity. If it be true that there are a greater number of men who either from fear or virtue respect the laws than of those who transgress them, the risk of torturing an innocent man should be estimated according to the probability that any man will have been more likely, other things being equal, to have respected than to have despised the laws.

But I say in addition: it is to seek to confound all the relations of things to require a man to be at the same time accuser and accused, to make pain the crucible of truth, as if the test of it lay in the muscles and sinews of an unfortunate wretch. The law which ordains the use of torture is a law which says to men: "Resist pain; and if Nature has created in you an inextinguishable self-love, if she has given you an inalienable right of self-defence, I create in you a totally contrary affection, namely, an heroic self-hatred, and I command you to accuse yourselves, and to speak the truth between the laceration of your muscles and the dislocation of your bones."

This infamous crucible of truth is a still-existing monument of that primitive and savage legal system which called trials by fire and boiling water, or the accidental

decisions of combat, judgments of God, as if the rings of the eternal chain in the control of the First Cause must at every moment be disarranged and put out for the petty institutions of mankind. The only difference between torture and the trial by fire and water is, that the result of the former seems to depend on the will of the accused, and that of the other two on a fact which is purely physical and extrinsic to the sufferer; but the difference is only apparent, not real. The avowal of truth under tortures and agonies is as little free as it was in those times the prevention without fraud of the usual effects of fire and boiling water. Every act of our will is ever proportioned to the force of the sensible impression which causes it, and the sensibility of every man is limited. Hence the impression produced by pain may be so intense as to occupy a man's entire sensibility and leave him no other liberty than the choice of the shortest way of escape, for the present moment, from his penalty. Under such circumstances the answer of the accused is as inevitable as the impressions produced by fire and water; and the innocent man who is sensitive will declare himself guilty, when by so doing he hopes to bring his agonies to an end. All the difference between guilt and innocence is lost by virtue of the very means which they profess to employ for its discovery.

Torture is a certain method for the acquittal of robust villains and for the condemnation of innocent but feeble men. See the fatal drawbacks of this pretended test of truth—a test, indeed, that is worthy of cannibals; a test which the Romans, barbarous as they too were in many respects, reserved for slaves alone, the victims of their fierce and too highly lauded virtue. Of two men, equally innocent or equally guilty, the robust and courageous will be acquitted, the weak and the timid will be condemned, by virtue of the following exact train of reasoning on the part of the judge: “I as judge had to find you guilty of such and such a crime; you, AB, have by your physical strength been able to resist pain, and therefore I acquit you; you, CD, in your weakness have yielded to it; therefore I condemn you. I feel that a confession extorted amid torments can have no force, but I will torture you afresh unless you corroborate what you have now confessed.”

The result, then, of torture is a matter of temperament, of calculation, which varies with each man according to his strength and sensibility; so that by this method a mathematician might solve better than a judge this problem: “Given the muscular force and the nervous sensibility of an innocent man, to find the degree of pain which will cause him to plead guilty to a given crime.”

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