

Excerpt from Sir Thomas More, *Utopia* (1516)

[Editor's Note: In the midst of a conversation about the ills then affecting Europe, More and several of his real-life correspondents, rendered here in a somewhat allegorical form, take up the issue of theft and its punishment. More's suggestions about penal servitude presaged the extensive use of this device in both England its colonies in North America. The conversation also reveals the connection that contemporary commentators and lawmakers drew between the idleness of a realm's "vagabonds" and criminality.]

But, Raphael,' said he to me, 'I would gladly know upon what reason it is that you think theft ought not to be punished by death? Would you give way to it? Or do you propose any other punishment that will be more useful to the public? For since death does not restrain theft, if men thought their lives would be safe, what fear or force could restrain ill men? On the contrary, they would look on the mitigation of the punishment as an invitation to commit more crimes.'

"I answered: 'It seems to me a very unjust thing to take away a man's life for a little money; for nothing in the world can be of equal value with a man's life: and if it is said that it is not for the money that one suffers, but for his breaking the law, I must say extreme justice is an extreme injury; for we ought not to approve of these terrible laws that make the smallest offences capital, nor of that opinion of the Stoics that makes all crimes equal, as if there were no difference to be made between the killing a man and the taking his purse, between which, if we examine things impartially, there is no likeness nor proportion. God has commanded us not to kill, and shall we kill so easily for a little money? But if one shall say, that by that law we are only forbid to kill any, except when the laws of the land allow of it; upon the same grounds, laws may be made in some cases to allow of adultery and perjury: for God having taken from us the right of disposing, either of our own or of other people's lives, if it is pretended that the mutual consent of man in making laws can authorize manslaughter in cases in which God has given us no example, that it frees people from the obligation of the divine law, and so makes murder a lawful action; what is this, but to give a preference to human laws before the divine?

"And if this is once admitted, by the same rule men may in all other things put what restrictions they please upon the laws of God. If by the Mosaical law, though it was rough and severe, as being a yoke laid on an obstinate and servile nation, men were only fined and not put to death for theft, we cannot imagine that in this new law of mercy, in which God treats us with the tenderness of a father, he has given us a greater license to cruelty than he did to the Jews. Upon these reasons it is that I think putting thieves to death is not lawful; and it is plain and obvious that it is absurd, and of ill- consequence to the commonwealth, that a thief and a murderer should be equally punished; for if a robber sees that his danger is the same, if he is convicted of theft as if he were guilty of murder, this will naturally incite him to kill the person whom otherwise he would only have robbed, since if the punishment is the same, there is more security, and less danger of discovery, when he that can best make it is put out of the way; so that terrifying thieves too much, provokes them to cruelty.

"But as to the question, What more convenient way of punishment can be found? I think it is much more easier to find out that than to invent anything that is worse; why should we doubt but the way that was so long in use among the old Romans, who understood so well the arts of

government, was very proper for their punishment? They condemned such as they found guilty of great crimes, to work their whole lives in quarries, or to dig in mines with chains about them. But the method that I liked best, was that which I observed in my travels in Persia, among the Polylerits, who are a considerable and well-governed people. They pay a yearly tribute to the King of Persia; but in all other respects they are a free nation, and governed by their own laws. They lie far from the sea, and are environed with hills; and being contented with the productions of their own country, which is very fruitful, they have little commerce with any other nation; and as they, according to the genius of their country, have no inclination to enlarge their borders; so their mountains, and the pension they pay to the Persians, secure them from all invasions.

"Thus they have no wars among them; they live rather conveniently than with splendor, and may be rather called a happy nation, than either eminent or famous; for I do not think that they are known so much as by name to any but their next neighbors. Those that are found guilty of theft among them are bound to make restitution to the owner, and not as it is in other places, to the prince, for they reckon that the prince has no more right to the stolen goods than the thief; but if that which was stolen is no more in being, then the goods of the thieves are estimated, and restitution being made out of them, the remainder is given to their wives and children: and they themselves are condemned to serve in the public works, but are neither imprisoned, nor chained, unless there happened to be some extraordinary circumstances in their crimes. They go about loose and free, working for the public. If they are idle or backward to work, they are whipped; but if they work hard, they are well used and treated without any mark of reproach, only the lists of them are called always at night, and then they are shut up. They suffer no other uneasiness, but this of constant labor; for as they work for the public, so they are well entertained out of the public stock, which is done differently in different places. In some places, whatever is bestowed on them, is raised by a charitable contribution; and though this way may seem uncertain, yet so merciful are the inclinations of that people, that they are plentifully supplied by it; but in other places, public revenues are set aside for them; or there is a constant tax of a poll-money raised for their maintenance. In some places they are set to no public work, but every private man that has occasion to hire workmen goes to the market-places and hires them of the public, a little lower than he would do a freeman: if they go lazily about their task, he may quicken them with the whip.

"By this means there is always some piece of work or other to be done by them; and beside their livelihood, they earn somewhat still to the public. They all wear a peculiar habit, of one certain color, and their hair is cropped a little above their ears, and a piece of one of their ears is cut off. Their friends are allowed to give them either meat, drink, or clothes so they are of their proper color, but it is death, both to the giver and taker, if they give them money; nor is it less penal for any freeman to take money from them, upon any account whatsoever: and it is also death for any of these slaves (so they are called) to handle arms. Those of every division of the country are distinguished by a peculiar mark; which it is capital for them to lay aside, to go out of their bounds, or to talk with a slave of another jurisdiction; and the very attempt of an escape is no less penal than an escape itself; it is death for any other slave to be accessory to it; and if a freeman engages in it he is condemned to slavery. Those that discover it are rewarded — if freemen, in money; and if slaves, with liberty, together with a pardon for being accessory to it; that so they might find their account, rather in repenting of their engaging in such a design, than in persisting in it.

"These are their laws and rules in relation to robbery, and it is obvious that they are as advantageous as they are mild and gentle; since vice is not only destroyed, and men preserved, but they treated in such a manner as to make them see the necessity of being honest, and of employing the rest of their lives in repairing the injuries they have formerly done to society. Nor is there any hazard of their falling back to their old customs: and so little do travellers apprehend mischief from them, that they generally make use of them for guides, from one jurisdiction to another; for there is nothing left them by which they can rob, or be the better for it, since, as they are disarmed, so the very having of money is a sufficient conviction: and as they are certainly punished if discovered, so they cannot hope to escape; for their habit being in all the parts of it different from what is commonly worn, they cannot fly away, unless they would go naked, and even then their cropped ear would betray them. The only danger to be feared from them is their conspiring against the government: but those of one division and neighborhood can do nothing to any purpose, unless a general conspiracy were laid among all the slaves of the several jurisdictions, which cannot be done, since they cannot meet or talk together; nor will any venture on a design where the concealment would be so dangerous and the discovery so profitable. None are quite hopeless of recovering their freedom, since by their obedience and patience, and by giving good grounds to believe that they will change their manner of life for the future, they may expect at last to obtain their liberty: and some are every year restored to it, upon the good character that is given of them.'

"When I had related all this, I added that I did not see why such a method might not be followed with more advantage than could ever be expected from that severe justice which the counsellor magnified so much. To this he answered that it could never take place in England without endangering the whole nation. As he said this he shook his head, made some grimaces, and held his peace, while all the company seemed of his opinion, except the cardinal, who said that it was not easy to form a judgment of its success, since it was a method that never yet had been tried. "'But if,' said he, 'when the sentence of death was passed upon a thief, the prince would reprieve him for a while, and make the experiment upon him, denying him the privilege of a sanctuary; and then if it had a good effect upon him, it might take place; and if it did not succeed, the worst would be, to execute the sentence on the condemned persons at last. And I do not see,' added he, 'why it would be either unjust, inconvenient, or at all dangerous, to admit of such a delay: in my opinion, the vagabonds ought to be treated in the same manner; against whom, though we have made many laws, yet we have not been able to gain our end.' When the cardinal had done, they all commended the motion, though they had despised it when it came from me; but more particularly commended what related to the vagabonds, because it was his own observation.

"I do not know whether it be worth while to tell what followed, for it was very ridiculous; but I shall venture at it, for as it is not foreign to this matter, so some good use may be made of it. There was a jester standing by, that counterfeited the fool so naturally that he seemed to be really one. The jests which he offered were so cold and dull that we laughed more at him than at them; yet sometimes he said, as it were by chance, things that were not unpleasant; so as to justify the old proverb, 'That he who throws the dice often, will sometimes have a lucky hit.' When one of the company had said that I had taken care of the thieves, and the cardinal had taken care of the vagabonds, so that there remained nothing but that some public provision might be made for the poor, whom sickness or old age had disabled from labor, 'Leave that to me,' said the fool, 'and I

shall take care of them; for there is no sort of people whose sight I abhor more, having been so often vexed with them, and with their sad complaints; but as dolefully soever as they have told their tale, they could never prevail so far as to draw one penny from me: for either I had no mind to give them anything, or when I had a mind to do it I had nothing to give them: and they now know me so well that they will not lose their labor, but let me pass without giving me any trouble, because they hope for nothing, no more in faith than if I were a priest: but I would have a law made, for sending all these beggars to monasteries, the men to the Benedictines to be made lay-brothers, and the women to be nuns