

ON CRIME: MALA IN SE AND MALA PROHIBITA

Let us now examine the criminal law. In any jurisdiction, there are two categories of crime: *mala in se* and *mala prohibita*. *Mala in se* are evils in themselves: for instance, murder and treason. These are evils in themselves because in committing these crimes, a criminal violates the common interest of a state. *Mala in se* crimes are distinguished from *mala prohibita* crimes. These crimes violate legislative or customary convention; becoming evils because they are assumed to be evil rather than true evils against the common interest. This means *mala prohibita* crimes are the result of false conclusions from valid premises or apparent crimes built on unsound principles. An example of *mala prohibita* crimes include present legislation in England against narcotics (Misuse of Drugs Act 1971) and prejudice (Equality Act 2010). And so *mala prohibita* crimes are crimes simply because someone says they are: often disregarding the laws of nature.

Mala in se crimes are violations of the natural law: justly punished with retribution and incarceration. *Mala prohibita* crimes are the result of ideological fancies of the heart: assuming false processes of human nature; often with harmful consequences to man's body and soul.

In short, *mala in se* are the sole ground for true criminal violation. Because *mala prohibita* are built on an assumption, they ignore facts per se, and so are built on false foundations.

Many have come to accept *mala prohibita* as legal and moral evils. As legalists, clinging onto their ideals like newborns to their mother's bosom, believers in the validity of *mala prohibita* crimes believe drug use, school boys fighting and dislike of others' opinions should form a criminal violation. Behind the assumptions of *mala prohibita*, her disciples — followers of hedonism, Marxism and logical positivism — believe the best way to solve problems is not to overcome them, but to pretend they do not exist or stare terrified in front of them and wait for *deus ex machina* to save the day. Not only is this approach to criminal law reckless, it is dangerous. It relies on others, most often the natural lawyers, to solve, to interpret, to make the rules of life their exclusive province. Although, the laws exist to serve the common interest. To survive as laws, they must be known to all. And only the natural law is capable of doing this. For the natural law applies to all individuals at all times; learnt by understanding the purpose of natural objects. Therefore, in serving the common interest, the natural law — and *mala in se* crimes as its servant — is the true system of principles to punish criminal violations.

For when we speak of *mala prohibita* crimes, we speak of private issues. Some between the body and soul; others between members of a family; and others still, at most, between disputing merchants. As for *mala in se*, as for criminal law, and true law, these are the concern of the common interest. Murder and treason are a question of keeping the peace and defending the realm. How absurd would it be to say private consumption of opium will lead directly to a breach of the peace?

Naturally, using narcotics is a harmful activity. Nevertheless, this harm comes not from the roar of legislation, nor some moral imperative per se, but because it surrenders one's will power to another source. It means one's decisions are made dependant on another substance separate from one's soul, and so the harm of narcotics comes from the route, the process towards weakness. Narcotics are a toxic filter which obscure the raw strength of man's will power. A similar story is told with other

mala prohibita crimes. They are evil because they undermine a man's competency, not because they undermine the common interest.

The opposite to weakness is strength: far from civil obedience at the hand of a constable. And strength, like all human virtues, come from education. The solution to *mala prohibita* crimes is education: in childhood, a thorough education in Aristotelean ethics (be it in school or in church); in later life, through self tuition and the continued lessons learnt in that public assembly we call the parish church. It is only the truly evil, those who voluntarily wish for weakness, who are worthy of the whip of state. And only when these violations undermine the common interest. Therefore, *mala prohibita* crimes are really acts, or events, of ignorance. *Mala in se*, however, are worthy of retribution.

Mala in se are worthy of punishment because they violate the needs of the common interest. *Mala prohibita* are ideological whims, often determined by past tantrums, equating words on paper to earthly solutions to evil. In intention, *mala prohibita* appear to seek to do good. In principle, *mala prohibita* are evil, lead to evil and are determined by evil. Nothing good comes from something bad. They are evil because they put assumption before fact; making them as clumsy as they are dangerous. Would Socrates act on advice from a screaming child? In reserving criminal violations to *mala in se*, states will overcome the confusion and harm that obeying *mala prohibita* has done to the advantage of the state and the citizen's happiness. By carrying on with the growth and protection of *mala prohibita* crimes, states will continue to dampen the happiness of their people and so undermine the capacity and prosperity of the state.

Repeal *mala prohibita* legislation, learn the natural law, grow a happy state.