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PIONEERS IN CRIMINOLOGY

IX. Cesare Beccaria (1738–1794)

ELIO MONACHESI

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CESARE BECCARIA

One seeks in vain for any clues in Cesare Beccaria's childhood and adolescence which would be even slightly suggestive of the renowned essay on penal reform that he was to write—an essay which showered upon him the acclaim and plaudits of some of the best minds in the world in which he lived. As a matter of fact, Beccaria in his early years did little more than to demonstrate that he was just ordinary intellectually and not too much interested in nor concerned with scholarly pursuits. It is true that he showed some flair for mathematics, but in general, his scholastic activities could hardly be considered predictive of the authorship of *Dei delitti e delle pene*.

EARLIER YEARS

Milan was the birth place of Cesare Bonesana, Marquis of Beccaria, and the date of his birth was March 15, 1738. He died on November 28, 1794. Both his father and mother were members of the aristocracy and amongst his ancestors were persons who had achieved distinction in various fields of endeavor. Beccaria received his early schooling at the Jesuit College in Parma and later studied law at the University of Pavia. He was graduated from the University of Pavia in 1758. The years he spent under the tutelage of the Jesuits at Parma, were by his own admission and evaluation, unprofitable. He rebelled against the authoritarian methods of instruction, and the inflexible and dogmatic demeanor of his teachers tended to make the subject matter taught unstimulating and uninspiring. For a period he found mathematics attractive, this subject too, however, soon failed to intrigue him further. The years he spent exposed to what was then considered the essentials of an education of an aristocrat failed to produce in Beccaria a modicum of enthusiasm for scholarship. All that these years seemed to create in the frustrated young man was lethargy and discontent. These drab and stifling educational experiences may have played, however, an important part in the creation of Beccaria's essay on penal reform. Perhaps we are merely speculating when we suggest that the nature of Beccaria's formal education directly contributed to the formulation of the arguments against the *status quo* so forcibly recorded in his essay. It does seem, however, that in his tightly knit and succinct indictment of the prevailing penal practices, one can discern protestations against unrewarding and detestable early educational experiences.

With his formal education completed Beccaria returned to Milan and shortly after developed an interest in philosophical works. This interest was apparently kindled by Montesquieu's *Lettres persanes*. In this satire on the religious and political institutions of Montesquieu's world Beccaria found that something which he had so sorely missed before. The interest thus aroused led him to read and to digest the philosophical writings of others and especially those of the French Encyclopedists. In addition to philosophy he also began to read extensively of literature. Beccaria's interest in penology and crime was, however, aroused by his friendly association with two stimulating and intellectually keen brothers, Pietro and Alessandro Verri. These two men, Pietro, a distinguished Italian economist, and Alessandro, a creative writer of note attracted to them a group of young men dedicated to the study and discussion of literary and philosophical subjects. It is to membership in this group of brilliant young men, that met for study in the Verri home, that Beccaria owes the incentive and the encouragement which eventually resulted in the essay on penal reform. The environment provided by the intellectually stimulating discussions which followed the serious study of the many social problems of the day aroused in Beccaria an intense and fervent desire to question many aspects of eighteenth century society. He found in Pietro Verri and in other members of the group the spark needed to set in motion his creative powers.

Beccaria's first published work appeared in 1762 and was entitled: *Del disordine e de' rimedi delle monete nello stato di Milano nell' anno 1762*. This monograph, of practically no current significance, dealt with the plight and needed remedies for

the monetary system of the State of Milan. It is however, in many respects quite original and provocative and does demonstrate that Beccaria possessed the ability to write clearly, and forcibly.

HIS FAMOUS ESSAY

Although Beccaria seemed to have at last found the intellectual interests, which he had never acquired during his formative years, amongst his imaginative and scholarly friends, he was by no means consumed by an eagerness to write. As his friend and mentor, Pietro Verri recounted, Beccaria tended to be lazy and easily discouraged. He needed prodding and even had to be given assignments upon which to work. It was such assignment, given to him by Verri, that eventually culminated in the essay *Dei delitti e delle pene*. Beccaria, so the story goes, knew nothing of penology when he undertook to deal with the subject. Fortunately, however, Alessandro Verri, who held the office of Protector of Prisoners, was able to give Beccaria the help and the suggestions he needed. Work was begun on the essay in March, 1763 and the manuscript was completed in January 1764. It was first published anonymously in July 1764 when Beccaria was barely a little more than twenty-six years of age. The essay was an immediate success, acclaimed almost by all who read it. However, not all who read it agreed with Beccaria. The fact that the essay was at first published anonymously suggests that its contents were designed to undermine many if not all of the cherished beliefs of those in position to determine the fate of those accused and convicted of crime. The essay was a tightly reasoned devastating attack upon the prevailing systems for the administration of criminal justice. As such it aroused the hostility and resistance of those who stood to gain by the perpetuation of the barbaric and archaic penological institutions of the day.

In order to appreciate the reason Beccaria's brief essay *Dei delitti e delle pene*, created such excitement, enthusiasm and controversy one needs to recall the state of the criminal law in continental Europe at the time the essay first appeared.

The existent criminal law of eighteenth century Europe was, in general, repressive, uncertain and barbaric. Its administration permitted and encouraged incredibly arbitrary and abusive practices. The agents of the criminal law, prosecutors and judges, were allowed tremendous latitude in dealing with persons accused and convicted of crime, and corruption was rampant throughout continental Europe.

Fantastic as it may now seem to many now living in certain parts of the world, the criminal law of eighteenth century Europe vested in public officials the power to deprive persons of their freedom, property and life without regard for any of the principles which are now embodied in the phrase "due process of law". Secret accusations were in vogue and persons were imprisoned on the flimsiest of evidence. Torture, ingenious and horrible, was employed to wrench confessions from the recalcitrant. Judges were permitted to exercise unlimited discretion in punishing those convicted of crime. The sentences imposed were arbitrary, inconsistent and depended upon the status and power of the convicted. Punishments inflicted upon the more unfortunate of the offenders were extremely severe. A great array of crimes were punished by death not infrequently preceded by inhuman atrocities. Equality before the law as a principle of justice was practically non-existent, but rather the treat-

ment accorded persons depended solely upon the station in life of the offender and upon the power that he and his friends could exercise over the agents of the law. In practice, no distinction was made between the accused and the convicted. Both were detained in the same institution and subjected to the same horrors of incarceration. This same practice prevailed in regard to the convicted young and old, the murderer and the bankrupt, first offenders and hardened criminals, men and women. All such categories of persons were promiscuously thrown together free to intermingle and interact.

This was the status of the criminal law and it is against this backdrop of abuses, vagaries, cruelties and irrationalities that we must place Beccaria's treatise in order to appreciate its human and revolutionary character. Many other enlightened humanitarians had, before Beccaria, protested against the prevailing customs, it was, however, left to Beccaria to make the most succinct and effective plea for the reform of the criminal law.

As one reads the first pages of *Dei delitti e delle pene*, one finds the roots of Beccaria's thought and general intellectual orientation. Although well versed in the writings of the French Encyclopedists, the essential reformative characteristics of his treatise on penology stem from his study of the works of Montesquieu and his acceptance of the contract theory of society so ably presented by Rousseau.

Thus, in the closing paragraph of the introduction to his treatise, Beccaria after having briefly noted the deplorable state of the criminal law and of the administration of justice writes that, "The immortal Montesquieu had but briefly considered this matter; and the truth, which is indivisible, has prompted me to follow in the steps of this great man. Thinking men, for whom I write, will know, however, how to distinguish between that which is his and that which is mine. I will consider myself fortunate, if like him, I can obtain the secret thanks of the obscure and peaceful disciples of reason and inspire that gentle sentiment with which all sensitive persons respond to whosoever pleads the cause of humanity."¹ In these words Beccaria not only pays credit to Montesquieu as a source of many of his own ideas but also suggests that his treatise is primarily intended to stimulate action designed to bring about a sweeping reform in European criminal law.

The social contract theory of the state phase of Beccaria's thinking is revealed in the opening paragraph of Chapter I of his essay. Thus he writes, "Laws are the conditions whereby free and independent men unite to form society. Weary of living in a state of war, and of enjoying a freedom rendered useless by the uncertainty of its perpetuation men willingly sacrifice a part of this freedom in order to enjoy that which is left in security and tranquility. The sum of all of the portions of the freedom surrendered by each individual constitutes the sovereignty of a nation, deposited in and to be administered by a legitimate sovereign. It was not, however, alone sufficient to create this depository of freedom, it was also essential to defend this sovereignty from private usurpation of every man who would want not only that portion of the sovereignty that he individually had contributed but also that which had been contributed by all others. . . . It is because of this that punishments

¹ *Dei delitti e delle pene* (6th edition), 1766, pp. 12-13. This translation and others that follow are not literal, but are, rather, attempts to put Beccaria's words in present day English.

were established to deal with those who transgress against the laws.²² Thus, we note that the basis of punishment lies, according to Beccaria, in the necessity to restrain men from encroaching upon the freedom of one another defined and established by the terms (laws) of a social contract.

The social contract theory of the State is the major premise of Beccaria's penological syllogism and if one grants the tenability of this basic proposition, the rest of Beccaria's argument is not only logical but also compellingly persuasive.

The right to punish transgressors is an essential consequence of the nature and scope of the contractual relations of men in society. It, the right to punish, must exist and be exercised if men are to be prevented from disrupting their orderly social existence. But Beccaria, following Montesquieu, warns that every punishment which is not founded upon absolute necessity is tyrannical. Punishment is legitimate only when it is employed by the Sovereign to defend the sovereignty of all against the depredation of any single individual. The right to punish should be exercised only by the Sovereign when it is necessary to defend the liberty and rights of all the people.

Having set forth this basic principle Beccaria then proceeds to suggest that if it is accepted certain consequences inevitably follow. First, he declares that punishment for crime is established only by law and the power to enact penal laws can only be vested in the "Legislator", who represents all members of a society. No magistrate, who is himself a member of society, can with any justification inflict upon another any penalty not ordained by law. Nor can any magistrate, regardless of circumstances, either increase or decrease, or change in any fashion, the punishment prescribed by law. It is the "Legislator" that determines the penalties and it is the duty of magistrates to inflict such penalties exactly as they have been prescribed.

The second consequence following the acceptance of the principle is that the laws of a society apply equally to all members of society regardless of their station. This, Beccaria, indicates stems from the contractual nature of society. Exceptions to this all binding principle cannot be tolerated since to do so would in effect result in encouraging the development of anarchy.

Further, the Sovereign can enact laws which are general in scope and in applicability, binding upon all members of society. He cannot, however, judge whether any specific person has violated the terms of the social contract. If he should attempt to play such a role, it would divide society into two parts; one part represented by the Sovereign who would be the accuser and affirm that a violation of the terms of the contract had occurred, and the other part consisting of the accused, who in turn would deny that a violation of contract had actually taken place. It is, therefore, necessary, Beccaria suggests, that a third party be given the duty of determining whether in fact a violation had occurred. In short, a magistrate is needed to resolve the issue from whose findings of the fact no appeal should be permitted and which consist of a simple negation or affirmation of the fact.

A third consequence deduced from Beccaria's major premise centers upon the severity of punishment. Beccaria states if it can be demonstrated that severe punish-

²² Op. cit., pp. 13-14.

ment, although not in itself contrary to public welfare, is useless in the prevention of crime such severe punishment is contrary to enlightened reason and justice.

Further, since judges or magistrates are not legislators, they have no right or authority to interpret penal laws. This is the function of the Sovereign who represents all members of a society. The task of judges consists in determining whether a person has or has not acted contrary to law. And in doing so, judges should conduct the inquiry by adhering strictly to the rules of logic. Decisions should be in the form of a syllogism wherein the law constitutes the major premise and the action of the individual whether it be or not be in conformity with the law, the minor premise. To punish or not to punish, or to grant freedom, should be the conclusion. For judges to go beyond the limits circumscribed by the rules of syllogistic reasoning results in usurpation of the power of legislators and in the introduction of ambiguity and uncertainty into the judicial process. Judges should never be permitted to interpret the laws but should confine their work to the application of laws. The inequities that may arise from a policy of strict application of penal laws, cannot, according to Beccaria be compared in their untoward effect with the inequities that are the results of a policy which permits judges to interpret them. Such a policy produces intolerable conditions wherein persons are placed at the mercy of the whimsical and venal emotions of magistrates. The power to remedy the untoward effects of existent laws should be vested in legislators and not in judges. It is only under such a governmental system, that it is possible to obtain the maximum security for the life, property and freedom of persons.

To insure that judges keep within their proper and prescribed sphere of action is not enough. Beccaria declares that laws, penal and otherwise must be written in a language so as to render them completely understandable to the people. Obscurantism in the law paves the way for interpretation and despotism. "The more widely known and widely understood is a code of laws the lesser the number of crimes, because, and undoubtedly, ignorance of the laws and the uncertainty of the consequences of transgressions of laws facilitates the expression of human passions."³ By implication a society without writing can never attain a fixed form of government in which power to govern is vested in the whole and not in any single part of this whole, and in which the laws are not subject to alteration or subversion in the interest of the few.

Up to this point we have tried to outline in brief the essential and central ideas of Beccaria's treatise. These basic propositions constitute the major motifs of his argument and, if one grants Beccaria their tenability the remainder of his essay is an exposition of their logical implications. The structure he erected on these foundations will be found to be a devastating and logically reasoned assault upon the shortcomings and inhuman inconsistencies of the criminal and penal law of his day.

WHY AND HOW PUNISH?

Why should crimes be punished? How should crimes be punished? These are the important questions to which Beccaria next devotes attention. Again, briefly, he declares that the necessity for punishment of crimes is inherent in the compact consummated when men agreed to live together. Men are by nature self-seeking and

³ Op. cit., p. 28.

motivated to gain all that they can from one another. These self-centered individualists must, however, be kept within bounds if the society they willingly created is to endure. It is therefore necessary to find a method to achieve this end and punishment is that method. To Beccaria, the primary purpose of punishment is to insure the continued existence of society. Furthermore, the amount and nature of punishment inflicted against transgressors should vary in proportion to the degree to which an act of an individual endangers the existence of society. It is, Beccaria believes, in the common interest of all members of society that crimes should not be committed and that crimes should be prevented. It becomes necessary, therefore, to provide legislators with means to achieve these objectives. The goals or objectives can be attained by the enlightened utilization of punishment which should be inflicted in measures commensurate with the effects of the crime upon society. It follows that the more threatening the crime is to societal welfare and existence, the more severe the punishment inflicted should be. The only measure of the seriousness of crimes is the amount of harm done to society.

Beccaria, next turns his attention to a classification of crimes. Three categories of crimes are noted, based on varying degrees of injury done to society by their perpetrators. The first category consists of crimes considered to be most injurious to society. Such crimes as high treason, or acts of an individual against the State or its representatives are considered by Beccaria to be most serious since such crimes threaten the existence of all members of society. Second in seriousness and in importance are crimes that injure the security and property of individuals. The third category of crimes are those that are disruptive of public peace and tranquility, such as riots, rabble rousing, inciting disorder, etc. These categories of crimes, as indicated, are considered to represent different degrees of harm to society and to its members, and as such, should carry different penalties whose severity would differ as the seriousness of the crime differs.

The essential end of punishment is not, says Beccaria, to torment offenders nor to undo a crime already committed. It is rather, to prevent offenders from doing further harm to society and to prevent others from committing crimes. Punishment is thus looked upon as an educative process and the types of punishments selected and how they are imposed should always be done so as to make the greatest impact and the most enduring impression upon all members of society, while inflicting the least pain on the body of the offender.

To be effective as a deterrent to crime, punishment should be both prompt and inevitable, applied to all alike for similar crimes. It is not cruelty nor severity, Beccaria believes, that renders punishment an effective deterrent, but rather its certainty. To this end, Beccaria suggests that the accused should be tried as speedily as possible in order to reduce to a minimum the time that elapses between the commission of the crime and its punishment. This Beccaria declares will produce a more lasting effect and tend to strengthen the association between crime and punishment. He further believes that the sought-for connection between crime and punishment can be made more impressive where it is possible to make the punishment analogous to the crime. It is for this reason that Beccaria questions the utility of punishing lesser crimes in the obscurity of prisons.

It is the strength of the association of crime and punishment that Beccaria be-

lieves to be the most effective deterrent. It is not the severity of punishment but rather its certainty that leaves a lasting impression on the minds of men. He contends therefore, that punishments that are severe, cruel and inhuman do not prevent crime. As a matter of fact he argues that extremely severe penalties actually encourage persons to commit crimes. Thus, he states, "The certainty of punishment, even though it [punishment] be moderate will always make a stronger impression, than the fear of one more severe if it is accompanied by the hope that one may escape that punishment, because men are more frightened by an evil which is inevitable even though minor in nature. Further, if the punishment be too severe for a crime men will be led to commit further crimes in order to escape punishment for the crime."⁴ He suggests that history indicates the existence of an association between inhuman and violent punishments and the most atrocious and bloody of crimes, for the legislators and offenders were both motivated by the same ferocious spirit. "As punishment becomes more cruel and more severe, the minds of men . . . grow more hardened and calloused . . . In order to insure that a penalty will produce the desired effect it is sufficient to provide that the *evil* attendant the penalty exceeds the *good* expected of the crime."⁵ In every calculation of the excess of evil over good, it is necessary to include the certainty of the penalty and the denial of the expected advantage produced by the crime. Anything that goes beyond is superfluous and is therefore tyrannical.

THE DEATH PENALTY

The death penalty is next considered by Beccaria and he argues that it is neither legitimate nor necessary. He proposes that men in forming the social compact did not deposit with the Sovereign their right to life. To have done so would have been illogical since the primary reason for the creation of society was to better insure the right of men to live. Life is the greatest of all human good and no man willingly gives to another man the authority to deprive him of his life.

If, as Beccaria has contended, the only reasonable basis of punishment is its effectiveness as a deterrent of crime then the death penalty must be considered useless. The death of an offender is a passing spectacle leaving no enduring impression upon those who witness the execution. Penalties which are continued over a period of time and which are known to be continuous are, according to Beccaria, much more efficacious than penalties which are merely momentary. Capital punishment, even though it be inflicted in a most cruel fashion cannot be made lasting beyond a certain point—the victim eventually dies, and though spectators are shocked and revolted by the spectacle, the fear aroused in them is only passing in its effect. It is the anticipation of continued suffering and terror that is the more efficient as a method of deterrence. But even then Beccaria warns that the severity of punishment should be just enough to prevent others from committing crimes rather than to torment the criminal.

The death penalty is unreasonable on another score. The execution of an individual though it may be authorized by law is an act of violence and barbarity. It represents an injustice in that it renders an act legitimate in payment for an equivalent

⁴ Op. cit., p. 113.

⁵ Op. cit., p. 114.

act of violence. Its infliction is no more than homicide even though it is in repayment of homicide. It constitutes an act of ferocity intended to curb ferocity.

ADMINISTRATION OF JUSTICE

Beccaria next devotes attention to a consideration of several of the procedural phases of the administration of criminal justice. He is outspoken regarding many of the abuses residing in the pre-conviction practices of his day. To Beccaria the use of torture to extract confessions from offenders is intolerable and should never be permitted. No one, he insists, has the right to maltreat or punish an individual until after he has been convicted. The utilization of torture before and during the trial of an accused is looked upon as an infamous test of the truth and a completely barbaric custom. He contends that no one is a criminal until he is found guilty of having committed a crime, consequently, to punish a person before he has been duly found guilty is to impose upon that person punishment which goes far beyond any reasonable limit. The employment of torture makes pain and suffering, rather than established evidence, the test of truth.

Beccaria is also unalterably opposed to the utilization of secret accusations. Where such practices exist they constitute proof of the weakness of government, and render men false and treacherous. No one can effectively defend himself against secret accusers and Beccaria believes that the practice cannot be justified on any count. Beccaria strongly believes in public accusations followed by a public trial of the accused to determine the falsity or validity of the accuser and the accusation. All trials, he insists, should be public and every man should be tried by his peers. Differences in rank or station should be disregarded when the life, liberty and fortune of an individual is in question. On such matters class differences should not be the basis upon which the guilt or innocence of a citizen is decided. Beccaria, does however, suggest that in crimes involving the offence of one citizen against another one half of those who try the case should be peers of the accused and one half be peers of the person offended. It is through this means that Beccaria hopes to achieve that impartiality necessary to a fair trial. The accused should also be given the right to exclude up to a point, a number of judges whose impartiality he has reason to question.

PREVENTION OF CRIME

"It is better to prevent crimes, then to punish them."⁶ This, Beccaria believes to be the basic character of good legislation which in actual practice means leading men to the attainment of maximum happiness and minimum misery. How would you then prevent crimes? First, enact laws that are clear and simple and let them apply equally to all men. These laws must be for all and not in favor of nor against any class or any segment of society. They should also be feared, but the law alone must be feared and not men, for the fear of men, Beccaria argues, is a source of crime. The laws should also be certain so as to render the consequences of crime not problematical but rather inevitable. It should be the primary interest of magistrates to insure the observance of laws rather than to punish their violation.

Would you prevent crime? Beccaria again asks. Then reward virtue—make virtue

⁶ *Op. cit.*, p. 188.

a desired goal of men. But more than this is needed to prevent crime. Every effort should be made to increase and extend knowledge, since, Beccaria believes that human liberty should be accompanied by enlightenment. The most effective method for the prevention of crime is a perfect system of education.

Dei delitti e delle pene ends with the following admonition: "So that any punishment be not an act of violence of one or of many against another, it is essential that it be public, prompt, necessary, minimal in severity as possible under given circumstances, proportional to the crime, and prescribed by the laws."⁷

CONCLUSION

The above briefly discussed essentials of Beccaria's penal philosophy made a tremendous impact upon the enlightened and kindred minds of his day. His book, as already noted, was an immediate success in most of Europe. The acclaim it received was not because its contents were exclusively original, as a matter of fact, many of the reforms Beccaria advocated had been proposed by others, but rather because it constituted the first successful attempt to present a consistent and logically constructed penological system—a system to be substituted for the confusing, uncertain, abusive and inhuman practices inherent in the criminal law and penal system of his world. His brief treatise was in many respects propagandistic and a well reasoned attack on the prevailing customs. It called for sweeping reforms in all phases of the administration of criminal justice. The book, easily read, and exceptionally lacking in the usual trappings of pedantry was most opportune and formulated in a convincing fashion the hopes and desires of a great many vigorous and outspoken reformers of his day. It had the power to rally to the cause it pleaded the energies and efforts of most of the enlightened minds of the eighteenth century Europe. Beccaria's slim but potent book was a success primarily because it advocated changes deemed desirable and supported by public opinion. It appeared at a moment marked by a growing revolt against despotism and absolutism—it was the product of an era given to the serious questioning of the sanctity and utility of prevailing social institutions. There are reasons for believing that the essay would have failed to impress or to have attracted but passing attention had it not appeared when it did. Europe was ready for it in 1764 and what Beccaria said in it was employed to assault and eventually destroy many of the customs and traditions of eighteenth century society by the protagonists of a new order. Chief amongst these was the brilliant and able Voltaire, who, perhaps, more than anyone else prepared the way for the implementation of the reforms that Beccaria proposed.

Without such perspective the present-day reader of Beccaria's essay is quite apt to see little that is new or striking in the essay, since what Beccaria proposed and so ably argued for in 1764 has been in great part achieved in the modern world. We must, however, remember that it was Beccaria's rapier-like thrusts at the barbarism and inhumanity of the penology of his day that played a tremendously significant role in bringing about the present day penal practices. It is not an exaggeration to regard Beccaria's work as being of primary importance in paving the

⁷ Op. cit., p. 205.

way for penal reform for approximately the last two centuries. The reader will find proposed in his essay, practically all of the important reforms in the administration of criminal justice and in penology which have been achieved in the civilized world since 1764.

With the publication of *Dei delitti e delle pene* Beccaria's literary productivity comes rather abruptly to an end. After a visit to Paris in 1776, he was appointed Professor of Political Economy in the Palatine School of Milan in 1768, and held this post for only two years. The lectures he delivered on political economy were collected and published (1804) ten years after his death and represent his only other major published creative work.

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