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## Cesare Beccaria

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## CESARE BECCARIA

RICHARD V. SIPE\*

The year 1764 stood in the anteroom of destiny. One phase of the struggle between France and England had ended. The American Revolution was just ahead. War and misgovernment had left France bitter and disillusioned. The yeast of revolt was at work. It was a period of confusion, perplexity and doubt. "It was the best of times, it was the worst of times, \* \* \* it was the spring of hope, it was the winter of despair."<sup>1</sup>

Jacques swung by the chain under Monseigneur's carriage and left his calling card attached to a dagger that had come to rest in Monseigneur's heart.<sup>2</sup>

In France one might have his hands cut off, his tongue torn out and his body burned alive.

In "merrie England" crime and disorder were rampant. The hangman was ever busy. It was a "melancholy truth," that among the variety of actions which men were daily liable to commit, no less than a hundred and sixty had been declared by act of parliament to be felonies without benefit of clergy; that is to say, worthy of instant death.<sup>3</sup>

In autocratic Russia the Empress Elizabeth discontinued infliction of the death penalty.<sup>4</sup> Catherine the Great continued the policy of her predecessor with respect to capital punishment and in 1766 ordered its abolition throughout the Russian Empire.<sup>5</sup>

Apparently the motivating influence for the edict issued by the empress was a book written by a somewhat cynical, diffident and retiring Italian, who, on one or two occasions, in the latter part of his life, when the King of Naples came to visit him, purposely absented himself in order to avoid the irksomeness of the interview. This man was Marchese

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1. Charles Dickens, "Tale of Two Cities", c. 1.

2. Charles Dickens, "Tale of Two Cities", c. 9.

3. 4 Bl. Comm. \*18.

4. Beccaria, "Crimes and Punishments" (Newbery ed. 1785) c. 28, p. 105.

5. 5 Encyc. Brit. (14th ed. 1946) 37. "Catherine II."

Di Cesare Bonesana Beccaria.<sup>6</sup> His book was entitled "An Essay on Crimes and Punishments."

Beccaria was born March 15, 1738, in Milan, Italy. His family belonged to the nobility. He attended a Jesuit college at Parma for eight years. In school he did not show any remarkable capacity in his work nor did he reveal a studious inclination.

Notwithstanding his seeming lethargy and inapplication while a student, he had a brilliant and versatile mind. Through his interest in different sciences and the circumstances of his life he was led to write on a variety of subjects and succeeded marvelously in every one of them.

An able mathematician, he wrote a noteworthy treatise on the "Nature of Style."

He belonged for twenty-five years to the highest magistracy. He published for the Austrian government "excellent reports on corn stores, on the reform of coinage, on weights (proposing a metric system based on astronomical properties, 1780), on demographical questions" and other subjects, "all of which were marked by the greatest lucidity and precision and full of ideas ahead of his times."

In 1768 a chair of political economy was founded for him by the Austrian government in Milan.

One curious excursion into speculative mathematics was an article written for "il Caffè," a paper published by the "Accademia dei Pugni," a society to which he belonged. Its title was an "Algebraical Essay on Smuggling." In it Beccaria solved analytically the problem, "How much of a given quantity of merchandise must merchants smuggle, so as not to be winners or losers, although the remaining portion of the merchandise be confiscated?" This might be worthy of study by our modern boot-leggers and black marketeers.

6. The biographical portions of this article are taken from the following works:

Maestro, Marcello T., "Voltaire and Beccaria as Reformers of Criminal Law," New York, Columbia Univ. Press, 1942.

Phillipson, Coleman, "Three Criminal Law Reformers: Beccaria, Bentham, Romilly," London, J. M. Dent & Sons, 1923.

Farrer, James A., "Crimes and Punishments," including a new translation of Beccaria's "Dei Delitti e delle Pene," London, Chatto & Windus, 1880.

Beccaria, Cesare Bonesana, "Crimes and Punishments," published by E. Newbery in London in 1785. The pagination may not correspond to that of any other edition.

7. 1 Palgrave, "Dictionary of Political Economy" (1894) 127, "Beccaria Cesare Bonesana."

Soon after his return from college to Milan at the age of 21, he read Montesquieu's *Persian Letters*. This work awakened his interest and gave him a mission. He devoted himself to a social philosophy which had for its purpose the effecting of reforms in many parts of the then existing social order.

Many of the young nobles of that time studied law. Beccaria was no exception but unlike the majority of law students, he was not satisfied with mastering its tests or applying it to particular cases. Instead, he sought to reduce every positive or customary law to its living actualities. Thus he contemplated the principles of criminal legislation from the point of view of conditions for progress, the advance of civilization, the happiness of the individual, and the general interest of the community.

During the years 1760 to 1766 Beccaria's life in Milan had two main interests. The first was his wife Teresa; the second was a small circle of friends which had formed a society known as the "Accademia dei Pugni."

Teresa was a young girl Beccaria had married after much parental opposition which culminated in having Beccaria confined, under virtual arrest, in his own home for three months. This opposition led to nothing but an appeal by the prospective bride's father to Archduchess Maria Theresa of Austria and the marriage altar in February, 1761.

The "Accademia (or societá) dei Pugni" was composed of young men of talent and enthusiasm. The leader of this group was Pietro Verri, in whose house the friends met to read, to work, to hold consultations and discussions on social and political affairs, to study select works of French, English, and Italian literature and philosophy, to summarize them and make excerpts from them. Pietro's younger brother, Alessandro, held the public position of "Protector of Prisoners," in which capacity he visited prisons, investigated the grievances of the prisoners, and, where possible, urged reasons for their defense or pardon. The wretched sights he witnessed made a profound impression on him, which he was able to transmit to the members of the Society.

In March, 1763 Beccaria, then 26 years old, began his celebrated work on crimes and punishments (*Dei Delitti e delle Pene*), and completed it in January, 1764.

Never was a book produced in such a left-handed manner.

Each member of the society, except Beccaria, had some project on which he was working. For want of something to do he was like a house cat always under the feet of the family. Finally to relieve not only Beccaria, but themselves as well, Pietro Verri assigned him the subject of crimes and punishments. Beccaria went to work. The results were astonishing.

The book scintillates with epigrams. He is credited with being the first to say that a law should have "this only end in view, the greatest happiness of the greatest number."<sup>8</sup>

Expressing the same idea in other words he said: "This is the fundamental principle of good legislation, which is the art of conducting men to the maximum of happiness and to the minimum of misery . . ." <sup>9</sup>

Other of his sayings are: "If every individual be bound to society, society is equally bound to him. . ." <sup>10</sup>

"I should have everything to fear if tyrants were to read my book; but tyrants never read."<sup>11</sup>

"Pleasure and pain are the only springs of action in beings endowed with sensibility."<sup>12</sup>

"Happy the nation where the knowledge of the law is not a science!"<sup>13</sup>

"Liberty is at an end whenever the law permits that, in certain cases, a man may cease to be a person and become a thing."<sup>14</sup>

"Substituting the ideas of justice and duty with that

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8. 3 Encyc. Brit. (14th ed. 1946) 285, "Beccaria, Cesare Bonesana." This expression may have originated with Francis Hutcheson (1694-1746) but if Beccaria was not its author, he gave the phrase popularity and was the channel through which it was returned to English economists. 1 Palgrave, "Dictionary of Political Economy" (1894) 127, "Beccaria, Cesare Bonesana"; 2 id. at 346, "Hutcheson, Francis."

In his sketch of Bentham, Palgrave in a note quotes Bentham as saying, "Priestly was the first (unless it was Beccaria) who taught my lips to pronounce this sacred truth." However, it appears that Priestly first used the expression "greatest good to the greatest number" in 1768.

It is proper to mention that Palgrave gives the year of Beccaria's birth as 1735, but it seems certain that 1738 is the correct year.

9. Beccaria, "Crimes and Punishments" (Newbery ed. 1785) c. 41, p. 164.

10. Id. at c. 3, p. 11.

11. Id. at c. 4, p. 17.

12. Id. at c. 6, p. 25.

13. Id. at c. 14, p. 51.

14. Id. at c. 20, p. 79.

of the right of the strongest is equally dangerous to those who exercise it, and to those who suffer."<sup>15</sup>

"The coin of honor is inexhaustible."<sup>16</sup>

"Prescription does not run against truth."<sup>17</sup>

"The history of mankind is an immense sea of errors, in which a few obscure truths may here and there be found."<sup>18</sup>

But with it all, Beccaria was not in fact a pessimist. He wished those who thought his time was the worst of all times to "contemplate the effects of what was so improperly called, ancient simplicity, and good faith; humanity groaning under implacable superstition; the avarice and ambition of a few, staining, with human blood, the thrones and palaces of kings; secret treasons, and public massacres; every noble a tyrant over the people; and the ministers of the gospel of Christ, bathing their hands in blood, in the name of the God of all mercy. We may talk as we please of the corruption and degeneracy of the present age, but happily we see no such horrid examples of cruelty and oppression."<sup>19</sup>

Beccaria was capable of severe self criticism. In his chapter on Bankrupts, he drops a note in which he says: "In a former edition of this work \* \* \* I said that the honest bankrupt should be kept in custody, as a pledge for his debts, or employed as a slave to work for his creditors. I am ashamed of having adopted so cruel an opinion. I have been accused of impiety; I did not deserve it. I have been accused of sedition; I deserved it as little. But I insulted all the rights of humanity, and was never reproached."<sup>20</sup>

His ideas on the foundations of a lawful social order are expressed as follows: "Laws are the conditions under which men, naturally independent, unite themselves in society. Weary of living in a continual state of war, and of enjoying a liberty which became of little value, from the uncertainty of its duration, they sacrificed one part of it, to enjoy the rest in peace and security. The sum of all these portions of the liberty of each individual constituted the sovereignty of a nation; and was deposited in the hands of the sovereign,

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15. *Id.* at c. 8, p. 33.

16. *Id.* at c. 45, p. 174.

17. *Id.* at c. 28, p. 115.

18. *Id.* at c. 28, p. 115.

19. *Id.* at c. 5, p. 20.

20. *Id.* at c. 34, p. 145.

as the lawful administrator. But it was not sufficient only to establish the deposit; it was also necessary to defend it from the usurpation of each individual, who will always endeavor to take away from the mass, not only his own portion but to encroach on that of others."<sup>21</sup>

The Constitution of the United States echoes this when it says "We the people \* \* \* do ordain and establish" and "All powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Beccaria then lays down the proposition that "every act of authority of one man over another, for which there is not an absolute necessity, is tyrannical." It is upon this principle that the sovereign's right to punish crimes is founded. It is based upon the necessity of defending the public liberty entrusted to the sovereign's care from the usurpation of individuals. "Punishments are just in proportion as the liberty, preserved by the sovereign, is sacred and valuable." All that extends beyond this is abuse, not justice.<sup>22</sup>

The sovereign, who represents the society itself, can only make general laws, to bind the members. But the sovereign has no right to judge whether any individual has violated the law and thus breached the social compact. The reason for this is, there are two parties, one represented by the sovereign, who insists upon the violation of the contract, and the other is the person accused, who denies it. It is necessary that there should be a third person to decide this contest; that is to say, a judge or magistrate.<sup>23</sup> Our Constitution translated this reasoned theory into fact and provided for an independent judiciary.

It may sound strange to us though, when he goes on to say that judges in criminal cases have no right to interpret the penal laws because they are not legislators. "In every criminal case the judge should reason syllogistically. The major should be the general law; the minor, the conformity of the action, or its opposition to the law; the conclusion, liberty or punishment."

"There is nothing more dangerous than the common axiom: the spirit of the laws is to be considered. To adopt

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21. *Id.* at c. 1, p. 5.

22. *Id.* at c. 2, p. 7.

23. *Id.* at c. 3, p. 11.

it is to give way to a *torrent* of opinions. This may seem a paradox to vulgar minds" but "our knowledge is in proportion to the number of our ideas. The more complex these are, the greater is the variety of positions in which they may be considered. Every man has his own particular point of view, and at different times, sees the same objects in very different lights. The spirit of the laws will then be the result of the good or bad logic of the judge; and this will depend on his *good* or *bad digestion*; on the violence of his passions; on the rank and condition of the accused, or on his connections with the judge and on all those little circumstances, which change the appearance of objects in the fluctuating mind of man." Hence the fate of a delinquent might change many times in passing through the different courts, and his life and liberty become victims of the false ideas or ill humor of the judge, who would mistake the vague result of his own confused reasoning for the just interpretation of the laws. The same crimes are punished in a different manner at different times in the same tribunals, because the judge did not consult the constant and invariable voice of the law.<sup>24</sup>

The "torrent" of opinions is upon us. The reference to the good or bad digestion of the judge has become an over-worked aphorism.

Beccaria insists that all laws should be plain. Obscurity is an evil. People should be able to read and understand the laws by which they live.<sup>25</sup>

The central idea in his chapter on the proportion between crimes and punishments is that this proportion should be fixed. The first degree should consist of those which immediately tend to the dissolution of society, and the last, of the smallest possible injustice done to a private member of that society. Between these extremes will be comprehended all actions contrary to the public good, which are called criminal, and which descend by insensible degrees, decreasing from the highest to the lowest. The wise legislator will mark the principal divisions, without disturbing the order. Any action not comprehended in the above mentioned scale will not be called a crime or punished as such.<sup>26</sup>

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24. *Id.* at c. 4, p. 14.

25. *Id.* at c. 5, p. 18.

26. *Id.* at c. 6, p. 23.



In this connection Beccaria throws in some dictum which is worth quoting. He says: "Whoever reads, with a philosophic eye, the history of nations, and their laws, will generally find that the ideas of virtue and vice, of a good or a bad citizen, change with the revolution of ages; not in proportion to the alteration of circumstances, and consequently conformable to the common good; but in proportion to the passions and errors by which the different law-givers were successively influenced. He will frequently observe that the passions and vices of one age are the foundation of the morality of the following; that violent passion, the offspring of fanaticism and enthusiasm, being weakened by time, which reduces all the phenomena of the natural and moral world to an equality, become, by degrees, the prudence of the age, and a useful instrument in the hands of the powerful or artful politician. Hence the uncertainty of our notions of honor and virtue; an uncertainty which will ever remain, because they change with the revolutions of times, and names survive the things they originally signified; they change with the boundaries of states, which are often the same both in physical and moral geography."<sup>27</sup>

Returning to the classification of crimes, Beccaria lays down the rule that crimes are to be measured only by the injury done to society. They err, therefore, who imagine that a crime is greater or less, according to the intention of the person by whom it is committed; for this will depend upon the actual impression of objects on the senses, and on the previous disposition of the mind; both will vary in different persons, and even in the same person at different times, according to the succession of ideas, passions, and circumstances. Upon that system it would be necessary to form, not only a particular code for every individual, but a new penal law for every crime.<sup>28</sup>

Granted that crimes are to be estimated by the injury done to society, crimes of the highest degree are those most destructive of society, such as treason. Next in order come crimes that are destructive of the security of individuals. This security being the principal end of all society, and to which every citizen has an undoubted right, it is indispensably necessary that to these crimes, such as attempts against

27. *Id.* at c. 6, p. 24.

28. *Id.* at c. 6, 7, pp. 21, 26.

the life and liberty of a citizen, the greatest punishment should be assigned. Under this head we comprehend not only assassinations and robberies, committed by the populace, but by *grandees* and magistrates.<sup>29</sup>

In this connection he contends that every member of society has a right to do any thing that is not contrary to the law, without fearing any other inconveniences than those which are the natural consequences of the action itself. This is a political dogma, which should be defended by the laws, inculcated by the magistrates, and believed by the people—a sacred dogma, without which there can be no lawful society. It is a just recompense for our sacrifice of that universal liberty of action, common to all sensible beings, and limited only by our natural powers. By this principle our minds become free, active, and vigorous; by this alone we are inspired with that virtue which knows no fear, so different from that pliant prudence, worthy of those only who can bear a precarious existence.<sup>30</sup>

In connection with dueling, Beccaria makes a suggestion that might be given a wider application. He asks why duels are not so frequent among common people as amongst the great. He answers: because they wear swords and commonly regard each other with distrust and jealousy.<sup>31</sup>

To control riots, street disorders and other crimes, he suggests the illumination of the streets during the night, at the public expense; guard stations in different quarters of the city, discourses in churches and harangues in support of the interest of the public in parliament and public meeting in order to prevent the dangerous effects of the misguided passions of the people.<sup>32</sup>

The credibility of the witness is in proportion as he is interested in declaring or concealing the truth. Women, persons under sentence of death and those branded with infamy should not be excluded from the witness stand. The testimony of all persons should be credited when they have no interest in giving false testimony. The words used by the accused are not reliable evidence when repeated by other witnesses, because the same words may have either a sinis-

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29. *Id.* at c. 8, pp. 31, 33.

30. *Id.* at c. 8, p. 32.

31. *Id.* at c. 10, p. 38.

32. *Id.* at c. 11, p. 40.

ter or harmless meaning depending on the manner in which they are spoken and the accent and inflection of the voice.<sup>33</sup> At this point he takes a fling at legislators and lawyers. He says: "The absurd practices of legislators are often the effect of timidity, which is a principle source of the contradictions of mankind. The legislators, (or rather lawyers, whose opinions, when alive, were interested and venal, but which after their death become of decisive authority, and are the sovereign arbiters of the lives and fortunes of men) terrified by the condemnation of some innocent person, have burthened the law with pompous and useless formalities, the scrupulous observance of which will place anarchy on the throne of justice; at other times, perplexed by atrocious crimes of difficult proof, they imagined themselves under a necessity of superseding the very formalities established by themselves; and thus, at one time, with despotic impatience, and at another with feminine timidity, they transform their solemn judgments into a game of hazard."<sup>34</sup>

He declares that every man should be tried by his peers and that all trials should be public, in order that opinion, which is the best, or perhaps the only, cement of society, may curb the authority of the powerful, and the passions of the judge.<sup>35</sup>

Secret accusations are condemned with all the vigor he can command. After answering the arguments in favor of such accusations, he closes by saying, "Were I to dictate new laws in a remote corner of the universe, the good of posterity, ever present in my mind, would hold back my trembling hand, and prevent me from authorizing secret accusations."<sup>36</sup>

He showed that social degradation followed ubiquitous espionage as surely as day follows night.<sup>37</sup>

Torture was, of course, condemned by Beccaria.<sup>38</sup>

One interesting comment is on fanaticism. He says painful and corporal punishments should never be applied to fanatics. The remedy against them is public disapprobation and ridicule.<sup>39</sup>

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33. *Id.* at c. 13, pp. 44, 48.

34. *Id.* at c. 13, p. 46.

35. *Id.* at c. 14, p. 52.

36. *Id.* at c. 15, p. 56.

37. *Id.* at c. 15, p. 53.

38. *Id.* at c. 16, p. 57.

39. *Id.* at c. 23, p. 86.

With further respect to punishments "severity" is to give way to "certainty." That a punishment may produce the effect desired, it is sufficient that the evil it occasions should exceed the good expected from the crime, including in the calculation the certainty of the punishment and the privation of the expected advantage. In addition, the punishment should be sufficient to serve as an example and deterrent to others. All severity beyond this is superfluous, and therefore tyrannical.<sup>40</sup>

At a time when offenses which are now considered trivial were punishable by death, he advocated the absolute abolition of the death penalty and as in every other instance gave his reasons, which are the reasons still advanced by those who oppose the infliction of this penalty.<sup>41</sup>

He called for a reform of the horrible prison system, the promiscuous throwing together of old and young, men and women, innocent, suspects, and guilty, first offenders and habitual criminals; he denounced the rigours of detention before trial; and urged an alteration of the foul conditions of jails.<sup>42</sup>

Beccaria opposed sanctuaries and said that the law should follow every subject as the shadow follows the body.<sup>43</sup> He opposed rewards for apprehending criminals on the ground that it encourages treachery and exhibits weakness on the part of law enforcement agencies.<sup>44</sup>

He asks rhetorically: "Would you prevent crimes? Let the laws be clear and simple; let the entire force of the nation be united in their defense; let them be intended rather to favor every individual, than any particular class of men; let the laws be feared and the laws only. The fear of the laws is salutary, but the fear of men is a fruitful and fatal source of crimes."

"Would you prevent crimes? Let liberty be attended with knowledge, strive to reward virtue, have an educational system which will lead the pupil to virtue by the easy road of sentiment, and withhold him from evil by the infallible power of necessary inconveniences, rather than by command,

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40. Id. at c. 27, p. 98.

41. Id. at c. 28, p. 102.

42. Id. Introduction, p. 4; c. 29, p. 119.

43. Id. at c. 35, p. 147.

44. Id. at c. 36, p. 150.

which only obtains a counterfeit and momentary obedience."<sup>45</sup>

With reference to pardons and the exercise of clemency, Beccaria advocates cutting the punishment to the minimum required by the nature of the crime and then doing away with pardons and clemency. This is in line with his theory of "certainty" not "severity."<sup>46</sup>

What then is the conclusion of the whole matter? It is "that a punishment may not be an act of violence of one, or of many, against a private member of society; it should be public, immediate and necessary; the least possible in the case given; proportioned to the crime and determined by the laws."<sup>47</sup>

Within a short time knowledge of his treatise spread to many parts of Europe and also in America.

He was invited to visit Paris. This trip best shows Beccaria's strange personality. He was eager to have this distinction bestowed on him, but he did not wish to leave home, and especially his wife. So, only by the persuasions of his friends could he at last tear himself away from her after vowing he would write to her constantly, which he certainly did. When scarcely thirty miles away, Beccaria wrote: "I am continually oscillating between joy and hypochondria." Now and again he is a prey to hallucinations, and has fits of fear in the night. He gets it into his head that his wife is dead or ill, and wants to go back at once. His desire to return is stayed only by the fear of being a laughing-stock to his friends at home. In a letter to his wife he assures her he will not be able to be absent the whole six months, for which period the journey was planned, and asks her to prepare the way for his return, by telling his friends that the French climate does not agree with him. "Soon we shall see each other again," he adds, "for I fear there is no other remedy for my sadness." However, he managed to survive, and reached Paris, October 18, 1766. On October 19 he writes to his wife, saying he has safely arrived after suffering many inconveniences, and is weary of the journey. He says: "Remember that I love you tenderly, that I prefer my dear wife, my children, my family, my friends in Milan, and you chiefly, to the whole of Paris," and he begs her to take this

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45. *Id.* at c. 41, p. 165.

46. *Id.* at c. 46, p. 175.

47. *Id.* at c. 47, p. 178.

as a literal truth, and not as a mere compliment. The society of some of the leading literary men and philosophers of Europe, as well as that of some of the most intellectual and charming women of Paris, evidently proved an extremely inadequate substitute for his adored wife. Writing but a week after his arrival, he assures her confidentially that his health is good, but advises her to proclaim the contrary, so as to afford a decent pretext for his earlier return. "Nothing distracts me; nothing can make me forget that you are away from me. If I had the means necessary to get you to come here, I would do so; but it is impossible; the expense is very great. I shall therefore return to Milan." He also encloses a fictitious letter, in which he speaks of his bad health, so that she may show this one to his friends. Teresa, in her letters to her husband, did not forget that he was in the center of fashion; unlike his, her affection was not an undivided obsession. So he writes: "I remember the cut of the costume, and the commissions you charged me with; I shall fulfill them faithfully and with pleasure; I shall have the consolation of bringing you the things personally." In another letter he gives her a description of Paris, and dilates on the French theatre. He says that all the men of letters receive him gladly and that what they say of him and do for him might turn the heads of some people, but he hopes this will not occur in his case. He observes that in their intercourse one is struck by their simplicity of manners, ease, decorum, politeness, reciprocal regard, and at the same time perfect freedom; and he adds that there is no jealousy among them, or ostentation of superiority—so prevalent among his own countrymen. On November 14 he writes of his incorrigible melancholy, and says everything calls him back. He tells her he has a costume for her, which will not find its equal in Milan, and he promises to get the face pomade she had asked for. Then presumably with dress in one hand and face cream in the other, he made a rapid journey back home.

Teresa died in 1774 at the age of 29. In about eleven weeks he remarried. Such is man's constancy to a broken heart.

Beccaria's essay is among the first of the world's influential books. In our own Constitution we find embodied his ideas of a grant of power by the people to the govern-

ment with a reservation in themselves of all powers not expressly granted; no secret accusations; public trial by one's peers; an independent judiciary; no cruel or unusual punishments and no corruption of the blood.

In England, Blackstone quoted Beccaria. The index to his commentaries makes no mention of Beccaria but in leafing through book IV, I found seven references to him, most of them rather patronizing. For instance, listen to this from Blackstone. "I shall not here enter into any minute inquiries concerning the local constitutions of other nations: the inhumanity and mistaken policy of which have been sufficiently pointed out by ingenious writers of their own (citing Beccaria). But even with us in England, where our crown law is with justice supposed to me more nearly advanced to perfection; where crimes are more accurately defined, and penalties less uncertain and arbitrary; where all our accusations are public, and our trials in the face of the world; where torture is unknown, and every delinquent is judged by such of his equals, against whom he can form no exception nor even a personal dislike;—even here we shall occasionally find room to remark some particulars that seem to want revision and amendment."<sup>48</sup>

Then only a few pages beyond this, he sets out the law as: "Hence it is, that for a servant to rob his master is in more cases capital, than for a stranger; if a servant kills his master, it is a species of treason; in another it is only murder; to steal a handkerchief or other trifle of above the value of twelve pence, privately from one's own person, is made capital."<sup>49</sup>

"Crimes and Punishments" became an immediate "best seller". It passed through six editions in eighteen months and was translated into twenty-two European languages.<sup>50</sup> A printer in Naples asked the King's authority to reprint the book "in order that the money of purchasers might remain in the kingdom." Four editions of the English translation had been issued by 1785, the translator stating in his preface that perhaps no book, on any subject, was ever received

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48. 4 Bl. Comm. \*3.

49. 4 Bl. Comm. \*16.

50. 3 Encyc. Brit. (14th ed. 1946) 285, "Beccaria, Cesare Bonesana."

with more avidity, more generally read, or more universally applauded.<sup>51</sup>

Recognition came from the great of that day. Among them were Frederick the Great, Maria Theresa and the Duke of Wurttemberg. The "Economic Society" of Berne awarded the unknown author a gold medal. In 1767 he was invited to St. Petersburg by Catherine the Great, to assist in the preparation of her proposed code of laws. Judging from the Paris trip, you may be sure that Beccaria did not go. Following the publication of his book in 1764, Catherine had ordered capital punishment abolished.<sup>52</sup>

Leopold II (1747-1792), Grand Duke of Tuscany, abolished the Inquisition, abrogated the death penalty and equalized land taxes.<sup>53</sup>

While of only pamphlet proportions, Beccaria's treatise is certainly the most brilliant single contribution to criminal law reform that has ever appeared. His principles and conclusions were adopted and elaborated by Voltaire, Bentham and Romilly. They have been utilized by all contemporary and subsequent reformers. His work was, in the main, original and independent. His was the "voice", not the "echo".

Bentham referred to him as "my master, first evangelist of reason \* \* \* thou who speakest reason on laws, while in France they speak only jargon, which, however, is reason itself compared with the English jargon." But the best evidence of his influence is the present state of our criminal law. Up to the time his book appeared, there had been nothing but centuries of savage punishments by still more savage men. In recent years there has been a reversion in some countries to secret police, secret arrests, secret charges, secret trials and the terror of the unseen hand. This can produce only social degradation and mutual danger. It leaves no "last clear chance".

Beccaria's belief that duels among the great are caused by wearing swords and commonly regarding each other with distrust and jealousy is capable of wider application. Followed to its logical conclusion it leads to disarmament among

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51. Beccaria, "Crimes and Punishments" (Newbery ed. 1785) Preface of translator, p. IV.

52. "Grand Instructions for Framing a New Code of Laws for the Russian Empire," No. 2110.

53. 13 Encyc. Brit. (14th ed. 1946) 943 "Leopold II."



the nations. The next step might well be the adoption of the boycott-insurance plan of the late Dean Wigmore for the enforcement of peace.<sup>54</sup> It remains true, however, that any such program would be incomplete without a reorganization of the Security Council of the United Nations. Leagues based on nationalism have never succeeded. Their foundations have not been secure. The ally of today is the enemy of tomorrow. The base should be broadened. A bona fide will to peace dictates that the Security Council of the United Nations be organized along racial rather than nationalistic lines and in utter disregard of such ideas as "balance of power" and "spheres of influence".

No one is so naive as to believe that any such plan will be adopted. Why? Because it could be made a real organization for peace instead of war and has possibilities of success. It could be one of those "obscure truths" that occasionally surface on the "immense sea" of human errors. History indicates, however, that we would rather flirt with destruction than be bored by peace.

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54. Wigmore, "Bullets or Boycotts" (1943) 29 A.B.A.J. 491.