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# 1

## Cesare Beccaria

*On Crimes and Punishments*<sup>1</sup>

1764

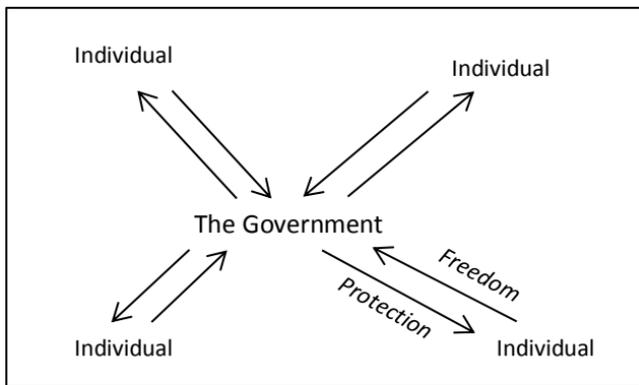
Cesare Beccaria was born into the Italian aristocracy and sent off for Jesuit training at the age of eight. He resented the stifling and inflexible education among the Jesuits. Later, he went on to the University of Pavia, where his performance was less than impressive. According to one biographer, “All that these years seemed to create in the frustrated young man was lethargy and discontent.”<sup>2</sup> He lived in poverty for a brief period when, over a dispute, he lost his father’s financial support. Before the publication of his treatise, *Dei delitti e delle pene* (*On Crimes and Punishments*) in 1764, Beccaria did little to distinguish himself from his contemporaries and was likely considered something of a ne’er-do-well. When he did dedicate himself to his writing project, he spent a mere nine months working on it and he produced one of the most important documents in the history of Western jurisprudence.

*On Crimes and Punishments* was a tightly argued attack on the use of the criminal justice system as a means of political oppression by European aristocracies

of his time. The law of his day was used by kings, popes, and magistrates to torture, vanquish, and annihilate their enemies, and to intimidate their would-be political foes. Little or no evidence was required and there was little or nothing that we would consider judicial oversight. Because of these conditions, it was actually quite daring of Beccaria to publish his work; and it was initially published anonymously. Upon publication, however, when his name was revealed, Beccaria became an overnight sensation, hailed throughout European society as the guiding light of criminal justice reform.

Beccaria's treatise reflected the works of social contract theorists before him, especially that of the 17<sup>th</sup> century Scottish philosopher Thomas Hobbes. Social contract theorists had been interested in the question "why is there government?" This is a timelessly interesting question because where there is government (that is, everywhere), the people are not free; they are *governed*. So why do people allow themselves to be governed? According to Hobbes, without government, life would be "solitary, poor, nasty, brutish and short." That is, without government, people would be tearing at each other's throats, trying to survive or get ahead. So government arose to protect each person from every other person. A contract involves each party giving something in order to receive something in return from the other party. In this case, each individual member of a society gives up a portion of his or her freedom to form a

government in order to receive protection from that government, as depicted in the figure below.<sup>3</sup>



**Figure 1.1: Thomas Hobbes' Social Contract**

The total sum of those freedoms equals the power of the state and, *according to Beccaria, the social contract stipulates that the government can only use that power in order to protect each person from every other person. Any other use of that power constitutes a violation of the social contract.* Thus, when government officials use their power to suppress their opponents, their actions represent a violation of the social contract. Following this logic, Beccaria acknowledged the need for law and for punishments specified by the law, as these are needed to protect each person from every other person. But these need to be applied equally because we have all given equally of our freedom to form a government.

*Beccaria is recognized as being a member of the classical school of criminology. The classical theorists*

*viewed humans as rational beings who mentally weigh the benefits and the costs of their actions. If the benefits of illegal activity outweigh the costs, then crime will be the result.* According to Beccaria, then, the state should apply only enough punishment to make crime irrational; any more than that is a violation of the social contract. In this sense, he advocated for milder forms of punishment than were prevalent in his time. Beccaria writes,

Can the shrieks of a wretch recall from time, which never reverses its course, deeds already accomplished? The purpose can only be to prevent the criminal from inflicting new injuries on its citizens and to deter others from similar acts. . . . *For punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime;* in this excess of evil one should include the certainty of punishment and the loss of the good which the crime might have produced.<sup>4</sup>

*Punishments which are more severe than necessary to deter crime are not only a violation of the social contract, but they can also make crime rational as criminals "are driven to commit additional crimes to avoid punishment for a single one."<sup>5</sup>*

Further, Beccaria argued punishment should be swift and certain because swiftness and certainty reinforce the automatic association between crime and punishment in the minds of the offender and of the public. By the same

token, he opposed the granting of clemency and pardons (and by implication, probation and parole) because these weaken the association between crime and punishment. But, he notes, "As punishments become more mild, clemency and pardon become less necessary."<sup>6</sup>

Beccaria was a staunch opponent of torture and the death penalty, both of which were common at the time. With regards to torture, he writes,

The fact of the crime is either certain or uncertain; if certain, all that is due is the punishment established by the laws, and tortures are useless because the criminal's confession is useless; if uncertain, then one must not torture the innocent, for such, according to the laws, is a man whose crimes are not yet proved.<sup>7</sup>

*As for the death penalty, he argued that the intensity of punishment is less of a deterrent than its duration. The moment of death lasts just an instant and nobody knows what happens afterwards. Some even wish for death as evidenced by suicide rates which are often higher than homicide rates. But nobody wishes for a lifetime of forced labor. The death penalty, he argued, sets an "example of barbarity" and encourages the exact behavior that it is supposed to discourage. It is absurd, he argued, to order a public murder in order to deter murder.*

There are few ideas that are original in Beccaria's treatise, but he audaciously brought these ideas together

under a framework of social contract theory which appealed to his contemporaries and leading figures during the Enlightenment. Responding to the book and addressing Beccaria, Jeremy Bentham, another classical criminologist, proclaimed “Oh, my master, first evangelist of Reason . . . you who have made so many useful excursions into the path of utility, what is there left for us to do? – Never to turn aside from that path.”<sup>8</sup> Six years after its publication, John Adams opened his defense of the soldiers involved in the Boston Massacre with a passage from Beccaria’s treatise. Given that *On Crimes and Punishments* was a must-read for political reformers of his day, there is little doubt that Beccaria provided both moral and intellectual inspiration behind the both the American and French Revolutions; and his ideas are quite pronounced in the Bill of Rights of the U.S. Constitution with its emphasis on the rights of the accused. Centuries later, experts agree that Beccaria’s work had “more practical effect than any other treatise ever written in the long campaign against barbarism in criminal law and procedure.”<sup>9</sup>

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<sup>1</sup> Cesare Beccaria, *On Crimes and Punishments*, translated by Henry Paolucci. Indianapolis: Bobbs-Merrill, 1963.

<sup>2</sup> Elio Monachesi, “Cesare Beccaria,” from *Pioneers in Criminology*, 2<sup>nd</sup> edition, edited by Hermann Mannheim. Montclair, NJ: Patterson Smith, 1972, p. 36.

<sup>2</sup> *On Crimes and Punishments*, pp. 42-43.

<sup>3</sup> What is being referred to in this figure as “the government” Hobbes called “the sovereign.” While there are differences in

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meaning, “the government” better serves our purposes in understanding Beccaria’s work.

<sup>4</sup> *On Crimes and Punishments*, pp. 42-43. Emphasis added.

<sup>5</sup> *Ibid.*, p. 43. Emphasis added.

<sup>6</sup> *Ibid.*, p. 58.

<sup>7</sup> *Ibid.*, p. 30.

<sup>8</sup> Henry Paolucci, Introduction to *On Crimes and Punishments*. Indianapolis: Bobbs-Merrill, 1963, p. xi.

<sup>9</sup> *Ibid.*, quoting a 1952 passage from Harry Elmer Barnes’ and Howard Becker’s *Social Thought from Lore to Science*.