

剑桥政治思想史原著系列（影印本）

CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

“论犯罪与刑罚” 及其他著作

On Crimes and Punishments and Other Writings

Beccaria

贝卡里亚

Edited by

RICHARD

BELLAMY

中国政法大学出版社

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“论犯罪与刑罚”
及其他著作
*On Crimes
and Punishments
and Other Writings*

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剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

本丛书已出版著作的书目，请查阅书末。

CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

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However, the further deterioration of state finances due to the Seven Years War of 1756–63 gave a fresh stimulus to the reorganisation of the province and its integration into the political structure of the Empire. In 1759 a new impetus was given to the reform movement by the appointment of Count Carlo di Firmian, whom Beccaria came to regard as his protector as minister plenipotentiary. Supported by the Austrian Minister of Foreign Affairs, Count Kaunitz, the next decade witnessed a concerted attack on ecclesiastical powers and immunities and the undermining of the position of local notables.

Beccaria's and his colleagues' writings belong to this second phase. Members of the ruling aristocracy, they nevertheless rejected the juridical mentality of their parents. Pietro Verri's clash with his father was particularly emblematic of this generational conflict. Gabrielle Verri had played an important part in the counter-attack of the Milanese establishment against the incursions of the Austrian government, defending in a series of works the local legal and administrative traditions of the Lombard region. Pietro, however, bitterly criticised the antiquarian and jurisprudential culture that then predominated in Milan and placed all state affairs in the hands of lawyers and scholars. Unlike either his brother Alessandro or Beccaria, he never took a legal degree. Instead, he escaped to fight in the Seven Years War. When in 1761, after an unsuccessful attempt to seek employment in Vienna, he returned to Milan, it was as a champion of the very reforms his father was attempting to block.

When Verri renewed his acquaintance with Beccaria in 1761 he found a willing disciple. Born in 1738, the eldest son of a reasonably wealthy noble family, Beccaria had become similarly estranged from his parents due to their attempts to prevent his marriage to Teresa Blasco, whom they considered socially inferior. As he confessed in his letter to André Morellet, reproduced below, his 'philosophical conversion' to the writings of the French Enlightenment dated from this period (p. 122). Rousseau's recently published *La Nouvelle Héloïse*, in particular, offered a new discourse of moral sensibility that echoed his own romantic temperament and concerns. His first child, born in 1762, was symbolically named Giulia, after Julie – the heroine of the novel. Encouraged by Verri, in whose house he and his wife found temporary refuge, Beccaria's

Beccaria wrote his treatise whilst a member of a short-lived group of intellectuals known as the *Accademia dei pugni*, or Academy of Fisticuffs. This society, which lasted from 1762 to 1766, consisted of a small number of young men who regularly met to discuss and study together. Self-consciously modelled on the circle of French *philosophes* gathered around the *Encyclopédie*, they were a far less formal association than the numerous other literary societies and academies that abounded in Italy at this time. The name was adopted by Pietro Verri, their prime mover, when he learned that their discussions had the reputation of becoming so heated that they ended up in a fight. Between 1764 and 1766, members of the 'academy' also published the periodical *Il caffè* as a means of disseminating their ideas.

Although their interests were wide-ranging, their activity was essentially centred on winning over the Austrian rulers of Lombardy to a broad programme of reform and to bringing attention to themselves as potential agents of these changes within the imperial administration. The Habsburgs had held Lombardy since 1707, but did not begin the process of reform until the end of the War of the Austrian Succession in 1748. The initial impetus in Lombardy, as elsewhere, was the need to improve the administration of finances and the economy in order to reduce the massive deficit created by the cost of war. As Beccaria indicated in his inaugural lecture as Professor of Cameral Sciences, the most significant element of the reform programme was the completion of a new land register, the *catasto*. Begun in the 1740s, it was completed by the Florentine official Pompeo Neri in 1757. Outlining his aims in an important report in 1750, which set the agenda for all later reforms, Neri had proposed the abolition of all taxes except for those on land and the removal of all the exemptions allowed to nobles and the Church. The new register also offered an opportunity for redrawing the provincial and district boundaries, a review of the methods employed for the collection of taxes and a reappraisal of customs tariffs.

These measures brought the Habsburg regime into conflict with the Lombard establishment, for they threatened the independence and privileges of Church, patriciate and aristocracy. These groups resisted the reforms through numerous legal battles and appeals to precedent. Initially these countermeasures had some success.

abolition of *fidecommessi*, entails and other special rights of nobility that restricted the exchange of property and the free movement of labour. He contended that the commercial system not only required a more formally egalitarian society, in which there were no social barriers to freedom of contract and to trade, but led to the resulting prosperity being more equally distributed as well. Verri also shared Hume's conception of money as a universal commodity that oiled the wheels of commerce by providing a uniform medium of exchange, and had corresponding worries about the dangers of paper credit and inflation. As the extracts reproduced below indicate, Beccaria's lectures of 1769-70, posthumously published as *Elements of Public Economy*, developed substantially similar arguments.

Verri's programme fitted with the interventionist tendencies of the Habsburg regime and their central concern with increasing state revenue. Even the egalitarian aspect of Verri's thought found an echo in the Austrians' desire to dismantle those privileges of the *ancien régime* which stood in the way of the process of centralisation and reform. The earliest publications of the group gathered around Verri were concerned with championing particular economic and fiscal policies associated with his theories. Verri began his campaign with an essay on the salt tax (1761) and from 1762-3 was engaged in composing his extensive *Considerations on the Commerce of the State of Milan*, in which he provided a comprehensive analysis of the decline of Lombard trade and the need to revive it through legal reform, internal free trade and the abolition of the tax farm. Beccaria's first publication was a pamphlet *On the Monetary Disorders and their Remedies in the State of Milan in 1762*, in which he employed his skills as a mathematician to advocate the need for a stable rate of exchange in preference to Milan adopting its own currency as the best means of facilitating trade. Running through all these proposals was a desire to reduce the laws regulating trade to a more systematic order that reflected the rational economic calculations of individuals rather than a complex pattern of entrenched traditions, privileges and special interests. Both Verri and Beccaria were able to fashion powerful criticisms of the existing system with these new analytical tools. Beccaria's brief essay on smuggling of 1764, for instance, offered a classic early application of the mathematical formulation of rational choice theory in order

conflict with his family developed into a thoroughgoing critique of the values and social system that underlay their opposition. The passages in *On Crimes* dealing with parental tyranny are only the most obvious indicators of the links Beccaria made between the organisation of the family and that of society as a whole. Like Verri, his aim became the substitution of the existing irregular, particularist and custom-bound legal system, based on hereditary rights and the personal rule of the monarch and nobility, by a regular, centralised and rational system of justice that was equal for all and grounded in the rule of law.

Against the traditionalist thinking of the lawyers and the Church, Verri, Beccaria and their circle placed the developing languages of political economy and of a secular morality that sought to harness and cultivate, rather than to repress, the passions. Verri's writings on these subjects provide the necessary starting point for any consideration of Beccaria's thought. For Beccaria's ideas largely developed through daily discussion of his friend's views. Indeed, as the Note on the text shows, Verri played a major role in initiating and eventually editing Beccaria's most important work.

Whilst in Vienna, Verri had drafted his *Elements of Commerce*, which he later published in *Il caffè*. This treatise reflected the neo-mercantilism of writers such as Melon and Forbonnais, who tempered their advocacy of *laissez-faire* with a continuing role for the state, particularly in fostering domestic manufacturing industry, and a general concern to discourage foreign imports in order to secure a favourable national trade balance. Although he later modified the protectionist aspects of his views, ultimately favouring the abandonment of all restrictive practices such as guilds or the granting of monopolies for example, Verri remained largely indifferent to physiocratic ideas. He argued that stimulating the manufacturing and the export market would bring about an increase in agricultural production and a rise in population of their own accord. More in tune with the advanced economic theories of the time were his ideas on luxury and equality. Here Verri followed David Hume in believing that luxury provided a necessary incentive for work and industrial innovation, both creating wealth and destroying privilege in the process by forcing landowners to dissipate their wealth in conspicuous consumption, and with it their economic power. To foster further the breakdown of feudal ties, he advocated the

by providing for the greater satisfaction and refinement of human needs.

Similar assumptions underlay Beccaria's writings. His study of crimes and punishments has often been treated as narrowly focussed on the issue of penal reform. Even Verri, who grew jealous at the fame the work brought his 25-year-old protégé, was apt to dismiss it as a limited exercise that he had set his young companion in applying the reformer's ideas to a specific problem. The book was much more ambitious, however. Beccaria sought to establish a legal framework that reflected the general programme of the reformers to replace the existing system of semi-feudal privileges, customs and honours with a new conception of social organisation, based on a regular system of justice involving equal laws for all. This project was intimately connected to the academy's understanding of human nature and their views on political economy, which furnished him with the principles that guided his work. His purpose was to make punishment the chief instrument of reform by leading human beings, via their reason and passions, to the progressive promotion of the public happiness. As we shall see, however, Beccaria conceived this proposal in essentially liberal terms, as requiring the state to allow individuals to pursue their happiness in their own way so long as they did not harm others in the process.

As Beccaria made clear in his prefatory note To the Reader, appended to the fifth edition in reply to his critics, his aim was to provide an entirely secular account of the origins and function of law. He studiously avoided appeals to either revelation or natural law, making a clear distinction between God's justice, which was best left to Him, and terrestrial justice. The foundation of Beccaria's theory was human nature and in particular 'ineradicable human sentiments' (p. 10). Beccaria shared Verri's positive evaluation of the function of pain. Whilst he believed 'pleasure and pain are the motive forces of all sentient beings', he thought 'every act of our will is always proportional to the strength of the sensory impression that gives rise to it' (pp. 21, 41). As he later specified, this meant that 'the proximate and efficient cause of actions is the flight from pain, their final cause is the love of pleasure', since 'man rests in good times and acts when in pain' (p. 157). Indeed, in his *Elements of Public Economy* (1769) he maintained that even the prospect of

to quantify how high tariffs could be before contraband proved worthwhile. Although many of their specific suggestions were ignored, the activity of these reformers brought them to sufficient prominence for the Austrian government ultimately to place many of them in important positions within the Lombard administration. Both Verri (in 1765) and Beccaria (from 1771), for example, ended up on the Supreme Council of the Economy, a body that had been in part created in response to their ideas.

Underlying these economic proposals, with their attack on feudal attitudes and practices, was a new account of human motivation and morals. The link between economics, ethics and psychology was provided by the concept of happiness – the subject of Verri's *Meditations on Happiness* of 1763, which was published shortly before Beccaria's treatise on punishment, and at the time was occasionally attributed to him. Giuseppe Ricuperati has called this book, rather than Beccaria's more famous work, the true 'manifesto of the Accademia dei pugnì'. Enunciating a conception of legitimacy that was to be fundamental to Beccaria's argument, Verri declared that 'The end of the social pact is the well-being of each of the individuals who join together to form society, who do so in order that this well-being becomes absorbed into the public happiness or rather the greatest possible happiness distributed with the greatest equality possible.' In accordance with the lessons of the new political economy, the maximisation of public wealth and happiness required the equal protection of individuals. Behind his qualified utilitarian goal lay a hedonistic psychology and associationist epistemology principally derived, albeit with important modifications, from Locke, Helvétius and Condillac. Verri shared the contemporary view that the passions were the springs of human action. However, he continued to accord reason a decisive role in the refinement and direction of our passional urges. Moreover, he treated the flight from pain rather than the pursuit of pleasure *per se* as the decisive factor. Happiness, therefore, consisted of more than the passing enjoyment of mere pleasurable sensations. Rather, it was achieved through the rational pursuit of our interests through the removal of obstacles to our well-being, such as poverty. In this way, the spread of ideas or enlightenment and the programme of economic and social reform came together, with the one producing the other and promoting in the process the progressive civilisation of society

tham credited him with being 'the father of *Censorial Jurisprudence*' – the first thinker to attempt a critical or 'censorial', as opposed to a merely expository, account of the law, which sought to demystify and correct the prejudices and confused reasoning that guided most contemporary legal decision making. Indeed, Beccaria provided Bentham with one of his most important tools of criticism. For Beccaria not only followed Locke in seeking to analyse complex ideas into their simple, experience related parts. As H. L. A. Hart has observed, he also anticipated Bentham's elaboration of this technique in order to deconstruct the supposed logical fictions that in their eyes constituted the bulk of our traditional legal and moral concepts. Both thinkers appreciated that terms such as 'right', 'duty' and 'obligation' could not be defined readily in terms of concrete material objects and their effects upon us. As Beccaria put it, such words were 'abbreviated symbols of a rational argument and not of an idea' (p. 12). It was necessary, therefore, to look not for definitions of these words alone but of the complete sentence or argument within which they were employed. Only then would it be possible to translate such statements into others in which the words to be explained did not appear and were replaced instead by things which could be directly experienced and analysed in terms of pleasure and pain – a procedure Bentham called *paraphrasis*. For both thinkers, notions of obligation and of duties, which lay behind doctrines of rights, were all abbreviations for the argument that we will suffer a sanction unless we behave in a particular way. As a result, our basic legal and political vocabulary boiled down to the possibility of punishment or the infliction of pain if we do not act in a stipulated manner. The establishment of the right to punish, therefore, provided the key to our understanding of the whole legal and political system and consequently was the starting point for Beccaria's theory.

Beccaria agreed with Hobbes that the asocial state was one of war, and that fear and the desire for security provided the motivation for uniting to form society. Characteristically, it was the prospect of pain rather than of pleasure that moved us to act. However, he was far from believing that we sacrificed all our liberty to the Leviathan in return for the protection it offered us. On the contrary, he contended that we give up only the smallest portion of our liberty, i.e. that portion necessary for us to enjoy the remaining

pleasure or of greater utility acted upon us only indirectly, via the pain resulting from the anxiety associated with the possibility of its not being achieved (p. 163). In this way, Beccaria was able to avoid one of the classic dilemmas confronting a social ethic based on a hedonistic psychology – namely, the worry that people will prefer either a very low level of contentment or base pleasures to the struggle to achieve quantitatively and qualitatively higher levels of fulfilment. On his view, we can never be fully satisfied. We are continuously driven on by the fear of being deprived of our present pleasures combined with a constant dissatisfaction with those pleasures created by the possibility of there being even greater pleasures to be attained. The resulting continual expansion of human needs was at the heart of his account of the progress of society, explaining the development of commerce through the multiplication of luxury goods as well as the role of law.

Beccaria followed the empiricist argument of Locke and Helvétius in attributing all human knowledge, including morality, to the operation of impressions upon our senses. However, he did not interpret this process in a totally mechanistic or deterministic manner. In common with Verri, he retained an element of the rationalist view in attributing a distinct function to human reason in the ordering and synthesising of our sense impressions. Moreover, far from reason being the slave of the passions, as in Hume, both the Italians believed that the distinctiveness of human beings lay in their capacity to control and channel them rationally. Civilisation resulted from the cultivation of this capacity. The spread of ideas or enlightenment became in this way directly related to the promotion of reform (see *On Crimes*, chapter 42).

This modified empiricist epistemology provided the basis for Beccaria's attempt to place the law on what he regarded as a more rational footing. In general terms, law had to be clear and punishment speedy, certain and an economical deterrent so as to ensure an indisputable association of ideas between pain and crime. A rational legal system required that laws be as precise as possible, with judicial discretion reduced to a minimum, so that all citizens knew where they stood and could reason accordingly.

This approach, though present to some degree in Helvétius, was to become very influential, especially through the work of Jeremy Bentham, who found Beccaria's work extremely suggestive. Ben-

exact words were 'the greatest (*massima*) happiness shared among the greater (*maggiore*) number'.

Unfortunately, even this formulation offers a poor guide to Beccaria's meaning. The notion of division might suggest that he had in mind average as opposed to aggregate utility, whilst the use of the comparative (*maggiore*) instead of the superlative (*massima*) potentially indicates that he might have meant 'the greatest happiness of the majority' rather than of the 'largest number'. However, Beccaria's discussion of the utilitarian injunction elsewhere reveals that such inferences would be wrong and that his own wording here is also misleading and imprecise. In these other passages, it becomes clear that his meaning is much closer to that expressed by Verri in his *Meditazioni*, cited above, who together with Hutcheson, Helvétius, and (less directly) Bacon and Rousseau inspired his thesis. From these sources, it emerges that Beccaria was concerned to maximise equally the happiness of each person – a goal he shared not just with Verri but with other members of the *Caffè* group. Thus, in the *Fragment on Smells* (1764) he defines the public good as 'the greatest sum of pleasures, divided equally amongst the greatest number of people', whilst in his *Reflections on the Barbarousness and Civilisation of Nations and on the Savage State of Man* he went so far as to describe 'barbarity' as a disequilibrium between knowledge and opinion, on the one hand, and 'each individual's needs and greatest expectations of happiness', on the other. More importantly, in his *Elements of Public Economy* he defined the sovereign as the 'just and equitable distributor of public happiness' and this latter as 'the happiness of all those individuals that are subject to him'. Consequently, he included amongst his list of 'false ideas of utility', enumerated in chapter 40 of *On Crimes*, any attempt 'to give a multitude of sensible beings the symmetry and order of brute inanimate matter' or doctrines that 'separate the public good from the good of each individual' (pp. 101–2).

There can be no doubt, then, that Beccaria took both the contractarian and the utilitarian aspects of his doctrine seriously and sought to combine them. Was this synthesis confused, as Bentham's remarks about Beccaria's 'false sources' and 'obscure notions' lead one to believe he thought? Or can a coherent thread be found that links the two into a form of contractarian utilitarianism, in which the good of the individual cannot be sacrificed to the common

part in peace and tranquillity (p. 11). As a result, law was justified only to the extent that it was limited to what was required to preserve the maximal amount of individual liberty possible.

Beccaria employed the idea of a social contract more as a theoretical device for setting limits to the legitimacy of law than as an actual historical act to explain its origins. However, in the same chapter he made reference to a classic utilitarian justification for law. If there were a sufficiently large secondary literature on Beccaria to contain interpretative disputes, this combination of contractarian and utilitarian arguments would no doubt have given rise to 'the Beccaria problem'. For it is generally argued that the utilitarian argument either negates the contractarian or renders it unnecessary and vice versa. On the one hand, utilitarians have tended to regard the notion of a social contract as either redundant or a pernicious fiction. If the purpose of government is to secure optimal welfare then our obligation to obey any law lasts so long as it performs this function better than any alternative and no longer. Contractarian notions of consent and related considerations of natural rights seem beside the point and merely serve to help individuals withdraw their support for the general good. On the other hand, social contract theorists have suggested that utilitarianism fails to show a sufficient degree of equality of concern and respect for the differences between individuals. They accuse utilitarians of potentially sacrificing the individual to the greater good of society as a whole. From their perspective, the contract argument appears as a way of ensuring that individuals are not used as a means for some collective purpose.

The seeming confusion arising from Beccaria's mixture of these apparently conflicting arguments draws additional plausibility from the fact that the first English translation of Beccaria's book wrongly credited its author with making 'the greatest happiness of the greatest number' the benchmark of all laws and other human arrangements. In the hands of Bentham, this principle became the sole foundation of morals and legislation and was employed by him in a merciless attack on all contractarian and rights-based arguments. However, although Bentham owed the wording of his formula – if not the ideas behind it – to this source, and in spite of the fact that all subsequent English translators have continued to attribute it to Beccaria, the Italian never employed the phrase. His

every citizen rather than by pursuing the greatest possible aggregate utility. Although it is not clear that Beccaria appreciated that his attempt to equalise happiness might conflict with his desire to maximise happiness, forced to choose between the two he invariably opted for the former rather than the latter. Second, by making the rules subject to a contract, Beccaria effectively blocked the collapse of rule into act utilitarianism, which would have allowed the government to weigh each case on its particular merits. Both these moves served to prevent the utilitarian reasoning which he employed as an effective tool of social criticism and reform being used in certain instances to sacrifice the individual to the common good. These considerations were of the utmost importance for Beccaria's theory of punishment. They enabled him to escape some of the problems associated with purely utilitarian theories of economical deterrence and to adopt a compromise theory, not dissimilar to that proposed by contemporary philosophers such as John Rawls and H. L. A. Hart, which found room for the concerns of retributivists as well.

Very briefly, the respective merits and demerits of the retributive and utilitarian views of punishment have been traditionally described as follows. For the utilitarian, punishment is forward-looking. Its basic purpose is the reduction of crimes, and hence pain, in the future. From this perspective, past wrongs cannot be undone, merely prevented from reoccurring by making illegal actions less attractive than legal ones. For the retributivist, in contrast, punishment is backward-looking. It follows from guilt and aims to ensure that wrongdoers suffer in proportion to their wrongdoing. Retributivists have made two general and related criticisms of the utilitarian view, both of which strike at the heart of Beccaria's theory. First, they claim that utilitarianism might lead to the imposition of excessive punishments for relatively minor offences. For the gain to society resulting from deterring multiple minor infractions of the law by administering a severe exemplary punishment, such as hanging some one for double parking, might outweigh the pain caused to the unfortunate individuals selected to be made an example of. Second, they have argued that utilitarianism could even justify punishing an innocent person for a crime they did not commit: for example, if the real criminal could not be apprehended and a conviction was necessary to prevent people losing faith in the effectiveness of the forces of law and order and a consequent

good? The general drift of Beccaria's theory suggests that he attempted the latter, anticipating in the process a number of arguments more usually associated with Bentham's most famous disciple and critic, J. S. Mill.

Like Mill, Beccaria contended that human welfare was tied up with the protection of certain basic interests, most particularly the security of person and possessions. The moral justification for protecting these interests, however, did not depend upon notions of natural right. Their basis lay in considerations of utility, as being essential to human life and the pursuit of happiness. Moreover, when individual interests came into conflict utility again became the benchmark for resolving these clashes. Indeed, such reasoning underpinned Beccaria's understanding of the moral foundations of the state. Beccaria contended that our interests could not be guaranteed without the legal sanctions and regulatory mechanisms provided by government. However, as we saw, he believed that the agreement to obey the law involved a trade-off, whereby individuals sacrificed a part of their liberty to preserve the greatest possible liberty over all. Both the purpose and limits of government, therefore, were set by what Beccaria regarded as the utilitarian goal of securing the greatest possible happiness of each and every citizen. For to achieve this utilitarian goal we had to submit to a number of general rules which applied equally to all and which were upheld by some authoritative power. The idea of the social contract became in this way both a means for expressing the central utilitarian concern that in minimising pain and maximising pleasure we show equal respect for the interests of each individual and a device for justifying our obligation to uphold this maxim. On this view, the only laws we could and should agree to were those concerned with the furtherance of human well-being, the most vital of which were those prohibiting harm to our vital interests. As a consequence, the only rights that either state or citizen might validly claim flowed from their mutual obligation to preserve those human interests necessary to the reduction of pain and the promotion of happiness.

Beccaria's mixture of contractarianism and utilitarianism served therefore to modify the latter in two main respects. First, the contract established that the purpose of government was to govern according to rules that promoted the public happiness by giving the greatest possible protection to the vital interests of each and