

CRIMINOLOGICAL THOUGHT

Pioneers Past and Present



Robert J. Mutchnick | Randy Martin | W. Timothy Austin

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CRIMINOLOGICAL THOUGHT PIONEERS PAST AND PRESENT



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PREFACE



To The Reader:

When individuals decide to write a book, they often do so for a wide variety of reasons. Some of these are readily apparent; some are not so obvious. All the individuals involved in the writing of this book have taught theory classes both in the field of criminology and in their degree-specific disciplines. Each has, in discussion with the others, admitted some dissatisfaction with the books currently available. In the spirit of the academic discussion, it was suggested, "Why don't we write a book that would fill this void?" After further deliberation, it was agreed that an attempt would be made to bring together those ideas and people whom we believed were instrumental in the understanding and development of criminological thought.

In undertaking this project, we want to provide the reader the opportunity to get to know something about the people who have helped shape the discipline and have influenced our thinking about criminal behavior. It is our belief that knowledge of these pioneers enhances our understanding of their theories and key ideas. By placing all of this within an historical context, the interaction between the evolution of human philosophical and scientific thought and the specific content of criminology should become clearer.

This book is also unique in that it is a complete collaboration—each of us contributed to the development of this work at every step of the process. What the reader discovers in the following pages represents the combined efforts of three individuals who have come to criminology via different routes. Our degrees represent the disciplines of psychology, criminology, and sociology. Each of us brings to this book our own perspective on the developments of criminological thought. It is our expectation that through an integration of different backgrounds and orientations we can contribute to an understanding of the development of key ideas and theory in criminology. In addition, through our own preferences and interests, we take a holistic approach that allows us to introduce several pioneers not traditionally discussed in criminology texts. In addition, we also take a new look at some of the old standards.

This book follows a rather specific and original format for scrutinizing the contributors. Each of the presentations in the book is organized around five subheadings. The first subheading is the biographical sketch. We believe strongly that this aspect of these eminent writers has been glossed over in other texts. Accordingly, a careful, personal, and historical discussion enables the reader to more easily comprehend the pioneer's individual contributions within the overall chronology of the discipline. For example, the fact that Cesare Lombroso and Charles Darwin were contemporaries or that Sigmund Freud's deterministic theory was an outgrowth of the positivistic movement become critical points in understanding the contributions of these pioneers. At times, setting the stage is as important as the characters themselves.

Each chapter also provides the reader with a synopsis of the pioneer's basic assumptions. These assumptions refer to the fundamental concepts or principles that provide the foundations for how each pioneer looks at the world. For some of these pioneers, such basic assumptions are more straightforward and highly documented, as in the case of Cesare Beccaria. For others, this particular aspect of the presentation is more obscure and challenging, but certainly no less important.

The third subheading of each presentation pertains to the “Key Ideas” of the pioneers. It is at this juncture that we offer a discussion of the pioneer's major contributions to criminology. In some cases, the reader finds the contributor's life-works focused primarily on criminology, as exemplified by the writings of Edwin Sutherland and William Sheldon. More often, however, we find that the major writers have not been discipline-specific, and in some instances have been indirectly or marginally concerned with criminology, with an impact not fully realized. This can undoubtedly be said of such a pioneer as Erving Goffman.

Fourth, a part of each presentation is discussed under the subheading “Critique.” An important aim of this text is to offer the reader a succinct review of criticism and support directed toward the pioneers over the years. It becomes apparent that any writer who is farsighted enough to create significant breakthroughs in the discipline must, for the same reason, be prepared to submit their key ideas to careful examination. Consequently, influential writers and their works are scrutinized by their contemporaries, as well as by subsequent pioneers who have thought further the ideas of these earlier scholars.

If one is working from the assumption that science is a process of critical analysis, then no apology need be made if several pioneers are found to have as their primary contribution the stimulation of others to question and challenge. Therefore, the history of criminology, not unlike other sciences, may be seen as a long series of critical dissections and faultfinding. We often reach a point, as in the case of Cesare Lombroso, where a most prominent pioneer is rarely lauded for his original findings but is much praised for his methodology. Similarly, William Sheldon is often scoffed at for insisting, even into the 1950s, that there are causal links between body type and temperament. Nevertheless, his work provided a stepping-stone, frequently through peer review, that allows one to understand more clearly the continuum between biological and social determinism. Moreover, the reader finds that the present pioneers are not immune to active debate, as can be seen in the presentations regarding Sigmund Freud, Cesare Beccaria, or the conflict theorist Richard Quinney.

The “References and Bibliography” section of each presentation forms the fifth subheading and should be seen as an integral part of the text. Although the book does not pretend to be encyclopedic, it directs the reader logically to appropriate related works. Furthermore, a complete name and subject index is provided at the end of the book.

This second edition waited the best part of two decades before being realized. When the first edition was released in 1990, we clearly felt that more needed to be said and included in a subsequent edition. We knew this even before the first edition hit the bookstores. However, the years drifted by much too quickly. As authors, we moved in different directions with our academic careers and research interests even while remaining as faculty in the Department of Criminology at Indiana University of Pennsylvania. Finally, several years ago we pulled ourselves together to rethink our earlier volume on *Criminological Thought: Pioneers Past and Present*.

Do our former decisions regarding which scholars to include in the first volume still make sense today, years later? What changes occurred in the lives of some of the contemporary scholars that require adjustments in the original chapters? Earlier pioneers in criminology may have died since the first edition, and this must be noted. In a number of cases, there have been more modern critiques of the earlier pioneers that can provide fresh insights into a scholar's life and work. In addition, has the discipline of criminology altered so much over the past several decades that it has an impact on our identification of modern-day pioneers? Indeed, has criminology fluctuated to such an extent to require a reshuffling of our earlier decisions? When we were compiling the first edition in the late 1980s, the Internet had yet to make its way into faculty

offices. Today, bibliographic searches are nearly instantaneous, allowing the update of important citations to relevant information not easily accessed in earlier years. Even with our realization that this second edition was not going to be a quick fix, we remained convinced that it was doable and worth the effort.

Fortunately, from an historical perspective, as much as things have changed in criminology, more things have remained the same. Most of the earlier chapters remain intact, but with minor adjustments or clarifications. Those chapters of the first edition portraying living scholars require somewhat more effort than others. For instance, fewer adjustments are required for Cesare Lombroso or Walter Reckless than for scholars who remained active in their careers after the first edition.

Readers will see several new chapters in our list of present-day pioneers. After some banter and debate, we included separate sections for Travis Hirschi and for Marcus Felson. Clearly, as in the earlier edition, and with the ever-expanding number of criminologists, we were confounded with the overwhelming increase of worthy scholars deserving special attention. We wanted to include a larger number of new chapters, but agreed to go with this new version and not to wait so long before again rethinking the pioneers in subsequent years.

As with the first edition, the reader may follow the life and work of a particular pioneer, past or present, from either a chronological or a theoretical perspective. That is, the chapters continue to follow a close chronological order, beginning with earlier scholars such as Beccaria and Lombroso and ending with contemporaries such as Hirschi and Felson. At the same time, one may also skip to specific theoretical viewpoints and focus; for example, on particular traditions in criminology such as Social Ecology, Strain, Conflict, or Control.

As with every project of this nature, it could not be accomplished without the support of a multitude of individuals. We thank Howard Becker, Albert Cohen, Robert Merton, Lloyd Ohlin, Richard Quinney, Gresham Sykes, Travis Hirschi, and Marcus Felson for providing us with valuable information that helped us prepare their chapters. In addition, we acknowledge the materials provided on Walter Reckless by Mrs. Martha Reckless and Simon Dinitz of Ohio State University. James Byrne of the University of Lowell assisted by providing materials on Richard Quinney, while Yves Winken of Universite de Liege provided materials on Erving Goffman.

We would be remiss if we did not recognize the vision and contributions of our editor, Tim Peyton, who has consistently provided his encouragement, support, good counsel, and friendship as we prepared this edition. The completion of this second edition was assisted by a number of doctoral students who deserve recognition—Keith Johnson, Keith Bell, Tony Bezich, and Byung Jun Cho.

Finally, we would like to recognize Indiana University of Pennsylvania for bringing us all together as faculty in the Department of Criminology. Without this serendipitous occasion, this book would most likely not have been written.

Robert Mutchnick
Randy Martin
W. Timothy Austin
July 2008

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CHAPTER 1

CESARE BECCARIA: 1738–1794

I. BIOGRAPHICAL SKETCH

Cesare Bonesara, Marchese di Beccaria, is credited as the author of one of the most influential eighteenth-century publications related to the reform of the criminal justice system. Described by those who knew him as quiet, reserved, and dedicated to the contemplative life, Beccaria was a very private individual who continually shied away from publicity and public appearances; as a consequence, very little is known about his personal life. He was born in Milan, Italy, on March 15, 1738, the son of aristocratic parents, and attended the Jesuit College in Parma, where he did nothing to distinguish himself academically. He dabbled in a number of areas, showing a particular interest in mathematics but not formally pursuing the subject. In 1758, he graduated from the University of Pavia, where he had studied law (Monachesi 1973, 36).

After his college career he returned to Milan. His first marriage was strongly opposed by his father, who did everything he could to prevent it. Ignoring this, Beccaria married and had two children by his first wife. Beccaria married a second time in 1774, three months after the death of his first wife. His second marriage produced a son (Phillipson 1970, 22).

Once he returned to Milan after college, Beccaria joined a group of individuals who called themselves the *Accademia dei Transformati* (Bondanella and Bondanella 1979), a very fashionable literary group. During this period, Beccaria read and was very strongly influenced by Montesquieu's *Persian Letters* and developed "a devotion to social philosophy with a view to effecting reform in many parts of the existing constitution of society" (Phillipson 1970, 4). In addition, Beccaria read the works of Helvetius, d'Alembert, Diderot, Buffon, and Hume, all contemporaries and influential individuals of the day (Beccaria 1963).

It was while he was a member of the Accademia that he met and became friends with Pietro Verri, a noted Italian economist. Impressed with Verri's views, Beccaria left the Accademia dei Transformati to join the *Accademia dei Pugni*, or the "academy of the fists" (Beccaria 1963, xii). Verri and his brother, Alessandro, a creative writer of some note, led the group, and the Accademia met regularly in the Verri household to discuss important issues of the day. At these meetings, members adopted the names of noted individuals, and Beccaria used the name Titus Pomponius Atticus (Phillipson 1970, 5). This new discussion group assumed a stronger political stance, and Beccaria joined because he, like the other members, was unhappy with the "economic organization" of his country (Phillipson 1970). Members wrote on various topics of interest, producing essays designed to challenge the existing structure of eighteenth-century Italian society.

Cesare Beccaria produced his first published work in 1762 entitled *Del Disordine e de' Rimedi delle Monete nello Stato di Milano nell' anno 1762* (*The Disorder*

and *Remedies of the Economy in Milan, 1762*) (Monachesi 1973, 37), a monograph that addressed remedies for problems in Milan's monetary system. This monograph, although an important statement, did not receive the acclaim that would be showered on his later work on penal reform.

Writing apparently wasn't an easy task for Beccaria. He would write for a short period, stop to discuss his thoughts with his colleagues in the Accademia, and then often go to sleep rather than return to his pen. Perhaps mental activity of this sort was a strain on his physical being; or perhaps, as Pietro Verri recounted, it was simply that "Beccaria tended to be lazy and easily discouraged. He needed prodding and even had to be given assignments upon which to work" (Monachesi 1973, 38), and it was Pietro Verri who assigned Beccaria the task of writing about penal reform. Alessandro Verri held the formal position of Protector of Prisoners and regularly traveled into the prisons. Alessandro informed the members of the Accademia with what he had seen and heard while on official business, and members were so incensed that Pietro Verri urged Beccaria to write about it. Alessandro Verri took Beccaria into some of the prisons so that he could view the situation for himself, and in March 1763, Beccaria began work on what would eventually be his most famous essay. He completed the essay in January 1764, and its first edition was published anonymously in July of that same year.

There is some speculation that the completed work, entitled *Dei Delitti e delle Pene* (*On Crimes and Punishments*), might not have been written by Beccaria. When questioned about his role in the production of the monograph, Pietro Verri staunchly maintained that Cesare Beccaria was the author. In a letter, Pietro Verri stated, "I suggested the topic to him, and most of the ideas came out of daily conversations between Beccaria, Alessandro, Ambertenghi and myself" (Beccaria 1963, xiii), but he insisted that the essay "is by the Marquis Beccaria" (Beccaria 1963, xiii). Even though Pietro Verri, in this instance, supported the commonly held belief that Beccaria was the author of *On Crimes and Punishments*, in another communication Pietro Verri indicates that the task of writing is "so laborious for him [Beccaria], and costs him so much effort that after an hour he collapses and can't go on. When he had amassed the materials, I wrote them out, arranged them in order, and thus made a book out of them" (Paolucci 1963, xiv). It has been suggested that Pietro Verri was disappointed with his own literary career and jealous of the success that he himself had helped Beccaria to achieve.

Given the description of Beccaria's work habits, his lack of knowledge of the penal system, the speed with which he finished the essay, and the fact that he produced nothing else of note in his career, the speculation about actual authorship actually provides us with circumstantial support. It appears that it might have been more appropriate if both Beccaria and Pietro Verri had been listed as co-authors of the essay. The issue of authorship, however, in no way affects the importance of the work and the influence it exercised over the justice system. It has also been suggested that the essay was published anonymously because 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" (Monachesi 1973, 38). Whatever degree of validity this second supposition might have, Beccaria was listed as the author beginning with the second printing of the work.

Although he published nothing else of outstanding note, Beccaria was a regular contributor to *Il Caffè*, a journal modeled on Joseph Addison's *Spectator* (Beccaria 1963, xii), published by the Accademia dei Pugni every ten days. Beccaria was involved in writing for

this journal until May 1766, when it ceased publication and the Accademia dei Pugni disbanded, apparently because of internal conflicts among the members (Phillipson 1970).

By this time, Beccaria's essay had been widely distributed and read. He had already received much critical acclaim, and invitations to speak and assist with the revision of criminal codes were logged regularly. In October 1766, Beccaria traveled to Paris to meet with a group of writers known as the *Encyclopaedists*. Voltaire, a member of the group who had read Beccaria's essay, had himself extended two invitations to Beccaria to visit Paris and lecture to his group (Phillipson 1970). In fact, Voltaire based his famous work "Commentary" on Beccaria's essay. Beccaria, however, was not one to seek the limelight; in Paris he soon grew homesick, and after a short period of time he returned to Milan. Beccaria was also invited by the Empress Catherine II to St. Petersburg, Russia, to help with the development of a new criminal code; however, because of his disappointing experience in Paris, Beccaria decided not to travel abroad and declined the invitation.

Beccaria thereafter stayed in Milan, accepting the position of Professor of Political Economy in the Palatine School in 1768. He held this position for two years; then, in April 1771, was appointed "counselor of state and a magistrate" (Phillipson 1970, 22). For the next twenty-three years, Beccaria apparently returned to the quiet, reserved, and contemplative life until his death of apoplexy on November 28, 1794, at the age of fifty-five.

II. BASIC ASSUMPTIONS

At the time Beccaria was writing, the historical ideology was represented by the "theology of the Church Fathers and the doctrine of the divine right of kings" (Vold and Bernard 1986, 19). This historical ideology was being challenged by the forces of reform. The Naturalists, a group of philosophers, posited that society was ordered and that this order "was separate from religious revelation" (Williams and McShane 1988, 14). According to some of the reformers, the mixture of ideas that were the basis of the society during this time included that when people originally developed they lived in what has been described a state of grace. In this state of grace, or innocence, individuals had "free will" to make whatever choices they so desired. In the state of grace, the only form of regulation that existed was what Vold and Bernard (1986) refer to as "psychological reality." Out of necessity, a state emerged that attempted to control behavior through fear of pain. Punishment was the primary method used to instill fear. States could legitimately transfer control of an individual to a "political state" for the purpose of punishment and, in extreme cases, execution.

Part of this viewpoint included the reform orientation of the social contract that Beccaria embraced. In addition to accepting the concept of the social contract as espoused by Hobbes and Rousseau, Beccaria also based many of his ideas concerning crime and punishment on the philosophy of the greatest good for the greatest number. Although the concept is most closely associated with the writings of Jeremy Bentham on utilitarianism, it was Beccaria who influenced Bentham. The concept of *utilitarianism*, although not specifically identified as such, was first used by Beccaria and appeared first in his work. It is likely that Bentham developed the term as a result of his reading of Beccaria's work. In his *An Introduction to the Principles of Morals and Legislation* (1789), "Bentham not only repeats the concept of the greatest happiness for the greatest number, but he further develops the notion of a hedonistic calculus" (Bondanella and Bondanella 1979, 42).

It is important to understand Beccaria's notion of society and the existence of laws as influenced by the concept of the social contract. For Beccaria,

[L]aws are the conditions whereby free and independent men united to form society. Weary of living in a state of war, and 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 tranquillity. The sum of all 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 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 were established to deal with those who transgress against the laws. (Beccaria 1963, 11–12)

The criminal law of eighteenth-century Europe was in general considered barbaric and repressive. Its administration permitted and encouraged incredibly arbitrary and abusive practices. Prosecutors and judges were allowed tremendous latitude in their decision making, and corruption was rampant. Secret accusations and torture were not uncommon, and individuals were often imprisoned on the flimsiest of evidence. Judges had autonomy to the degree that they were afforded unlimited discretion in the punishment of criminals (Monachesi 1973, 39). The “standing” of a person in the community had a direct and overt influence on the handling he could expect from the justice system. Justice, to all intents and purposes, was “relative.”

Referring to the situation as it existed during the last half of the eighteenth century, Phillipson writes that “while offering a climate for change [the century] still saw the existence of the old criminal jurisprudence with all its unmitigated ferocity and lack of reason was still in existence” (1970, 27). With regard to Italy during this time, Phillipson also indicates the period was seen as a time of “recuperation” (1970, 27).

Beccaria understood that it was the responsibility of the legislature to pass laws and determine punishments, and the responsibility of the magistrate or judge to apply the punishment prescribed by law. However, his concern went beyond this basic regimen: “Beccaria, following Montesquieu, warns that every punishment which is not founded upon absolute necessity is tyrannical” (Monachesi 1973, 41). How much punishment is “necessary”? From Beccaria's perspective, using the principle of hedonism, what is necessary is to outweigh the pleasure one derives from an act with just enough pain to make it not worthwhile to engage in the criminal act.

Beccaria's basic philosophy grew out of the Enlightenment. Probably one of the central tenets of his thinking was that “the rights of man had to be protected against the corruption and excesses of existing institutions” (Taylor, Walton, and Young 1973, 1). Beccaria was convinced that the social contract, although restricting a citizen's behavior, did so in the best interests of society:

The view that each citizen should have within his power to do all that is not contrary to the laws, without having to fear any other inconvenience than that which may result from the action itself—this is the political dogma that

should be believed by the people and inculcated by the supreme magistrates with the incorruptible guardianship of the laws. (Beccaria 1963, 67)

III. KEY IDEAS

An understanding of Beccaria's ideas is best gleaned from a detailed review and analysis of his only work that is devoted to the topic of criminal justice, *On Crimes and Punishments*. First published in 1764 in Italian and translated into English in 1768, it is his foremost publication. It is important to recognize that Beccaria did not specifically set out to develop a theory pertaining to crime and justice, but rather simply wanted to delineate the parameters of a just system of dealing with criminals. Whether he intended to or not, Beccaria developed an outline for a theory of justice.

Beccaria divided his text into forty-two short chapters, some of which were less than a page in length and the longest no more than five pages. Phillipson, in his review of Beccaria's work, reduces the forty-two chapters into six general categories:

1. The measures of crimes and punishments
2. The certainty of punishment and the right of pardon
3. The nature and division of crimes and relative punishments
4. A consideration of certain punishments
5. Procedures, including secret accusations and torture
6. The prevention of crimes (1970, 56).

These categories provide the reader with a general sense of the subject matter that Beccaria included in his essay.

Beccaria indicates to the reader that it was his intention not to “diminish legitimate authority”; instead, his text “must serve to increase it” (Beccaria 1963, 4). However, he also believed that the need to increase legitimate authority should be accompanied by a search for truth. He believed that the existing legal system was archaic and needed to have its legal codes updated. It was Beccaria's contention that “a people's customs and laws are always, in point of merit and propriety, a century behind its actual enlightenment” (Phillipson 1970, 57).

LAW AND PUNISHMENT

On the origins of punishment, Beccaria posits that legitimate punishment must emanate from the law. Lasting laws represent the wishes of humankind—if laws do not represent humankind, they will ultimately be changed. Laws must be made by a legislative body, not by individuals, if they are to be impartial. In those places where a sovereign exists, magistrates are necessary because a sovereign should not both make the laws and enforce them. “There must . . . be a third party to judge the truth of the fact. Hence the need for a magistrate whose decisions, from which there can be no appeal, should consist of mere affirmations or denials of particular facts” (Beccaria 1963, 14). For Beccaria, there is no interpretation of the law, only its application. If one were to “consult the spirit” of the law, discretion would be an integral part of the process and corruption would therefore run rampant.

Although the state has the right to punish, the punishment must be proportionate to the offense and no greater than necessary to preserve the peace and security of society. "Punishments that exceed what is necessary for protection of the deposit of public security are by their very nature unjust" (Beccaria 1963, 13). When applying punishment, it is necessary that the punishment

should be the same for the greatest citizen as for the humblest. If it be said that a certain punishment imposed equally on a noble and on a commoner is not really the same by reason of their different education and of the disgrace spread over an illustrious family, the answer is that the measure of punishment is not the sensibility of the particular delinquent, but the public injury, and that is all the greater when committed by a man placed in more favorable circumstances. (Phillipson 1970, 61)

PROOF OF GUILT

Beccaria identifies two types of proofs of guilt—perfect and imperfect. *Perfect guilt* applies to those cases "that exclude the possibility of innocence," whereas *imperfect guilt* applies to

those that do not exclude it. Of the first, a single [proof] suffices for condemnation; of the second, as many [proofs as] are necessary to form a single perfect one; in other words, such that, though each separately does not exclude the possibility of innocence, their convergence on the same subject makes innocence an impossibility. (Beccaria 1963, 21)

The distinction between these two proofs is an important one for our present-day justice system. Usually, we do not have a perfect proof. More often than not, we have an imperfect proof with many pieces of evidence that when considered individually are not sufficient to establish guilt, but when taken collectively are able to acceptably establish guilt. It is this understanding of proof as delineated by Beccaria that is related to our present-day concepts of "probable cause" and "beyond a reasonable doubt."

THE JURY

On the subject of jury, Beccaria called for a panel of peers. Beccaria suggests that "in crimes involving the offense of one citizen against another one-half of those who try the case should be peers of the accused and one-half [should] be peers of the person offended" (Monachesi 1973, 47). Beccaria posited that a jury made up evenly of peers of the accused and peers of the victim would produce a proper balance (Beccaria 1963, 22). During jury selection, the defendant should have the right to reject a potential juror on the grounds of suspicion regarding his impartiality. The division of jurors into peers of the accused and peers of the victim is designed to create a final jury that is as nearly as possible impartial.

WITNESSES

On the subject of the reliability of a witness, the issue of credibility, according to Beccaria, "must diminish in proportion to the hatred, or friendship, or close connections between him and the accused" (Beccaria 1963, 23). The number of witnesses was important to Beccaria. If each side, the prosecutor and the defendant, produced the

same number of witnesses it would be very difficult, if not impossible, for a magistrate to determine guilt. It was therefore necessary for one side to have one more witnesses than the other so that a judgment could be reached. Beccaria also considered it inappropriate to exclude women from serving as witnesses.

SECRET ACCUSATIONS AND TORTURE

As indicated in the Basic Assumption section, secret accusations and torture were a regular part of the justice system up to the late 1700s. These abuses of power were not confined to Italy. Torture, secret accusations, and other barbarisms were found throughout most of Europe. Beccaria believed that if secret accusations were being used, it was because of a “weakness of government” (1963, 25).

When addressing the subject of torture, Beccaria was very clear about his position. Torture was an inappropriate measure to be taken against suspected criminals because individuals were not criminals until they had been convicted of a crime in a court of law. “Every difference between guilt and innocence disappears by virtue of the very means one pretends to be using to discover it” (Beccaria 1963, 32). If tortured, a weak but innocent individual could be forced to confess to a crime he or she did not commit. However, a strong but guilty individual might be able to withstand the torture and thereby be set free.

Of two men, equally innocent or equally guilty, the strong and courageous will be acquitted, the weak and timid condemned, by virtue of this rigorous rational argument: “I, the judge, was supposed to find you guilty of such and such a crime; you the strong, have been able to resist the pain, and I therefore absolve you; you, the weak, have yielded, and I therefore condemn you. I am aware that a confession wrenched forth by torments ought to be of no weight whatsoever, but I’ll torment you again if you don’t confirm what you have confessed.” (Beccaria 1963, 32–33)

The use of torture prior to the determination of guilt is unfair to the person who is innocent and inappropriate for the individual who is guilty. The use of torture is particularly inappropriate because, instead of using evidence as the basis for determining truth, pain and suffering become the guiding principles (Monachesi 1973).

A strange consequence that necessarily follows from the use of torture is that the innocent person is placed in a condition worse than that of the guilty, for if both are tortured, the circumstances are all against the former. Either he confesses the crime and is condemned, or he is declared innocent and has suffered a punishment he did not deserve. The guilty man, on the contrary, finds himself in a favorable situation; that is, if, as a consequence of having firmly resisted the torture, he is absolved as innocent, he will have escaped a greater punishment by enduring a lesser one. Thus the innocent cannot but lose, whereas the guilty may gain. (Beccaria 1963, 33)

INTERROGATIONS

Interrogation was another topic that Beccaria addressed in his *On Crimes and Punishments*. For Beccaria,