

Cesare Beccaria: Utilitarianism, Contractualism and Rights

Mario Ricciardi and Filippo Santoni de Sio

If you are visiting Milan, you will discover that ‘Cesare Beccaria’ is a Milanese household name. Walking through the streets downtown – in an area familiar to shoppers – is Cesare Beccaria Square, and everyone has heard of the high school, or of the juvenile prison, named after this illustrious citizen of the past. While walking through the square, somebody might even direct your attention to a bronze, a replica of an original Nineteenth century marble by Giuseppe Grandi, which shows a man no longer young, stout; from his clothing and hairstyle he is easily recognisable as a nobleman of the Eighteenth century. He is absorbed in his thoughts – some books are at his feet – suggesting that he must be a scholar, maybe a philosopher. Those asking for further information about the thoughtful man on the pedestal will easily satisfy their curiosity. Even in these forgetful times anybody will tell them that he is Cesare Beccaria, the author of *On Crimes and Punishments*. This answer exemplifies the phenomenon of a literary work that almost overwhelms the memory of its author. According to Luigi Settembrini, *On Crimes and Punishments* is more than a book, it is “a fact of history, because it marks the time when torture and atrocities were abolished in criminal trials, and people began to wonder whether it is really necessary to wage death on those guilty of a crime” (1878: 67). For the Neapolitan scholar, who wrote in the Nineteenth century, roughly one hundred years after the publication of Beccaria’s book, the phenomenon we have mentioned above is already a *fait accompli*, inspiring ambiguous praise. Cesare Beccaria – Settembrini says – “wrote less than anybody else, and became the most notorious of all: his name is a concept of justice and humanity, and therefore will never be forgotten” (1878: 67). Today we can say that Settembrini’s judgement, which sounds like a prophecy, has come true. We have not forgotten Beccaria’s name, and indeed we associate it with the struggle for justice and humanity in punishment that was one of the dominant themes of the Enlightenment. One might say that the statue itself is the symbolic representation of this fact, since it was built where apparently lied the Executioner’s home, in front of the building

that had once been home to the Royal prisons. Such has been the popularity of *On Crimes and Punishments*, that its success can easily obscure the fact that Beccaria was a much more prolific writer than Settembrini's comment suggests, and that his book does not deal exclusively with Crimes and Punishments.

Cesare Beccaria Bonesana was born in Milan on the 15th of March 1738, the eldest son of the Marquis Francis Xavier and his second wife Maria Visconti di Saliceto. Cesare spent his childhood between the family palazzo in via Brera in Milan and the family estate in Gessate. When he was eight years old, he was sent to the Collegio Farnese in Parma, a Jesuit institution, which at the time was regarded as the most distinguished boarding school for children of aristocratic families from the Austrian provinces of Lombardia. Cesare attended the Collegio Farnese until 1754. We know that in their teaching the Jesuits were particularly keen on classical literature, mathematics and languages. One of Beccaria's biographers writes that, according to the Jesuits, the young aristocrat had "a vivid and fertile imagination, and also a tendency to change his mood between depression and excitement for the slightest reason" (Maestro 1973: 6). However, despite his volatile personality, in Parma Beccaria was noted for his mathematical talent. Later, in a letter to André Morellet, the first French translator of *On Crimes and Punishments* (hereafter *CP*), Beccaria described Jesuit education as "fanatical and servile" to the point of choking in his mind the "feelings of humanity" (Venturi ed. 1965: 362). Reading this letter, one realises that in Parma he was unhappy, but there is no evidence as to what precisely caused these feelings. Possibly a clue is in one passage in *CP* § XXXI, where seminaries and colleges run by clerics are described as "those institutions where ardent youth is penned up and in which, as an insurmountable barrier to every other sort of interaction, all of the burgeoning natural vigour burns out in ways useless to humanity and even bring on premature old age". Maybe it wasn't religious education in itself to arouse revulsion in Beccaria. The words he uses in the aforementioned passage suggest a sense of physical and mental duress, something that stifles rather than promote human flourishing.

After leaving college, Beccaria enrolled at the University of Pavia, where he obtained a law degree in 1758. Probably this choice was undertaken in the hope to follow in the footsteps of his paternal uncle, Nicola Francesco Beccaria, a member of the college of Lawyers, and judge in Pavia and Milan. Despite having a title that in other European countries is frequently associated with large fortunes, the Beccaria were comfortably well off, but they did not live in luxury. We can assume, therefore, that the prospect of a legal career, or of an employment in the imperial administration, was by no means contemptible for the young man just graduated from University (and maybe also for his father on whom he depended for his livelihood). However, on his return in Milan, Bec-

caria lead for some time the relatively carefree life of the young man of good family, taking part to literary competitions as a member of the *Accademia dei Trasformati*. Then, within a few months, between 1760 and 1761, two meetings will change the life of the young aristocrat.

The first meeting was with Pietro Verri, another young aristocrat, born in Milan in December 1728. Though ten years older than Beccaria, Verri had many interests in common with him. A deep affinity which survived to the end of their friendship. Through Verri, Beccaria came into contact with a group of bright young intellectuals, which nourished literary ambitions and had developed a passion for the new philosophical ideas coming from France, Scotland and England (Israel 2012: 336-348). In the letter to Morellet, Beccaria reconstructs this journey of discovery through the names of the authors and the titles of the works that shaped his intellectual development: Montesquieu and his *Lettres persanes*, Helvetius and his *L'esprit*, and then Buffon, Diderot, Hume, d'Alembert, and finally Condillac, who Beccaria met during a visit in Milan. With Pietro Verri, and with his younger brother Alessandro, Beccaria founded in 1761 a group that will take the name of *Accademia dei Pugni* ("Academy of Fists", an allusion to the liveliness of the discussions). The meetings of this club were held in Verri's palace in Contrada del Monte (now via Montenapoleone). Among those present were: Pietro and Alessandro Verri, Cesare Beccaria, Luigi Lambertenghi, Giuseppe Visconti di Saliceto, Pietro Secco Comneno and, until 1762, the Cremonese Giambattista Biffi. In 1763, Abbot Alfonso Longo joined the group. Beccaria and his friends of the *Accademia dei Pugni* were depicted by Antonio Perego in a painting which nicely captures the atmosphere of the meetings of the "Coterie" of Milan. Seated at a table, on the left of the painting, Alessandro Verri and Cesare Beccaria sit facing each other; the first writes and the second reads (and he seems so absorbed as not even notice what is happening around him). On the other side of the room Luigi Lambertenghi and Pietro Verri, also seated, are playing backgammon. Alfonso Longo's face is not portrayed (he is shown from the back because the painter had never seen him). Giambattista Biffi is standing behind Beccaria and Verri. Giuseppe Visconti di Saliceto, finally, reads a letter while walking in the room from the right.

Just before he founded with his friends the *Accademia dei Pugni*, Beccaria had met the sixteen year old Teresa Blasco, the daughter of an officer. Her social position was far from distinguished, but she was strikingly beautiful and of lively character. Soon the two fell in love and decided to marry, defying Beccaria's father opposition. This was particularly unfortunate from the point of view of the betrothed, because Teresa did not had a dowry worthy of the name, and Cesare had no independent means of livelihood. To everyone's surprise,

and perhaps even to himself, “the lazy Beccaria” (the expression is from a letter to Verri in 1764), after some hesitation, decided to resist the paternal will. In a dramatic letter, hand-delivered to the recipient, Cesare wrote to Francis Xavier: “please leave me free to follow my destiny. If the result of my decision will be bad, as you say, it will be my fault, not the fault of my parents. I did everything I could in order to please you, against my own soul, but now I cannot change anymore”. The letter was written on February 14, 1761, a few days after Cesare left his father’s house to get married without the blessing of his parents. The young couple faced a difficult period which ended only when the birth of a daughter, Giulia – who will become the mother of the writer Alessandro Manzoni – softened the attitude of the old Marquis towards them.

In his early twenties Cesare Beccaria has crowned his dream of love. He should have been happy, but instead the restless character who had impressed the Jesuits made itself felt soon. In the summer of 1763, while he was in Gessate in a depressed mood, he wrote to Gianbattista Biffi alluding to “new ideas” and “philosophical views” that he hoped will help him get out of his state of prostration (Venturi ed. 1965: 114). The story of how from these readings would emerge, in a few months of work, *On Crimes and Punishments*, the first edition of which came out anonymously, in Livorno, in 1764, is in a letter written by Pietro Verri: “[...] Beccaria was bored and a bore. In desperation, he asked for a theme, I suggested this, knowing that for a man eloquent and of lively imagination it was perfectly fit. But he knew nothing of our criminal methods. Alessandro, who was the *protettore dei carcerati* (the public defender of prisoners), promised him assistance. Beccaria began to write on pieces of paper disconnected ideas, we supported him with enthusiasm, and gave him so much encouragement that he wrote a large crowd of ideas. After lunch we went out for a walk, and there was talk of the errors of criminal jurisprudence. We disputed and questioned, and in the evening he wrote; but it is so laborious for him to write, and it costed him such an effort that after an hour he felled and he couldn’t stand to go on. Having collected the material, I wrote and gave an order, and a book took shape” (Venturi ed. 1965: 122). The existence of manuscripts not written in Beccaria’s hand has been the object of speculations by those who wanted to rise doubts on *CP*’s authorship. Yet Pietro Verri in the aforementioned letter leaves no room for doubt: “the book is of the Marquis Beccaria. I gave him the argument, and most of the thoughts are the result of conversations that were held daily between Beccaria, Alessandro, Lambertenghi and me” (Venturi ed. 1965: 122). A reconstruction confirmed several years later, and in great detail, by Alessandro, Pietro’s brother, in a letter addressed to Isidoro Bianchi (Venturi ed. 1965: 124-126).

The description given by the Verri brothers fits very easily with what we have learned in recent years from the study of other groups of intellectuals who worked closely together, developing their ideas in the course of an intensive dialogue and on the basis of common readings. Context-sensitivity helps the reader find his way in the jungle of references and allusions, and formulate some conjectures on the mutual influences and the intellectual debts that the Milanese have with the outside world. Thus, for example, it is not surprising that the phrase “the greatest happiness of the greatest number”, which will inspire Jeremy Bentham’s imagination when he read *CP*, found an echo in Pietro Verri’s meditations on the happiness. Here is still useful Beccaria’s letter to Morellet. Two points are to be emphasized. One is that in which Beccaria says to his interlocutor to be indebted to Helvetius of most of his ideas. The other is that in which he writes: “the profound metaphysics of Mr. Hume was a revelation to me and elevated my spirit. I recently read the eighteen volumes of his historical work with infinite pleasure. He is a politician, a philosopher and a historian of the highest order” (Venturi ed. 1965: 365). Why Helvetius and Hume are so interesting for Beccaria? The answer to this question is probably that he was impressed by the idea of society as a scheme of cooperation for mutual benefit that in the writings of the two philosophers is articulated in ways that are different but far from incompatible. For the Milanese philosophers, Helvetius, and in particular his call, which he addressed to the moralists, to take the point of view of a legislator that has as his purpose the public happiness, was more easily adaptable to the prospects of a regime of enlightened and reformist despotism such as the Habsburg Empire (Israel 2012). On the other hand, the reference to a network of “agreements useful to the greatest number” which Beccaria uses to explain social and political obligations suggests the influence of Hume. As noted by Philippe Audegean, it would be out of place, as some have done, to ascribe to Beccaria a theory of justice, that of utilitarianism, which finds its complete and consistent formulation only later, thanks to Bentham, who indeed often acknowledges the influence of the writings of Beccaria on his intellectual development (Audegean 2010: 119-170). Beccaria’s theory of punishment in the early chapters of *CP* is closer to some Twentieth century versions of contractualism than to utilitarianism. Like Hart and Rawls, Beccaria combines the idea of cooperation for the mutual benefit with an elucidation the idea of fair terms of cooperation by means of an hypothetical contract. His affinity to these contemporary theories is clear when Beccaria wrote: “[i]t was, thus, necessity that forced men to give up part of their personal liberty, and it is certain, therefore, that each is willing to place in the public fund only the least possible portion, no more than suffices to induce others to defend it. The aggregate of these least possible portions constitutes the right to punish; all that

exceeds this is abuse and not justice; it is fact but by no means right" (*CP* § II). Indeed, there is a dialectics between utilitarian, contractualist, and right-based arguments in Beccaria's work. This dialectics is sometimes surprisingly rich and complex, often more complex than many presentations of his work would allow; other times, however, Beccaria's arguments are disappointingly simple and just sketched, in a way that many of his admirers have not always admitted.

For instance, Beccaria has often been presented in recent times as the philosopher who has showed the moral impermissibility of death penalty, up to become one of the heroes of death penalty abolitionists all over the world. In his article Davies convincingly shows how this fame is not fully deserved. It is not fully deserved, firstly, because Beccaria's famous contractualist argument against death penalty is only one side of Beccaria's discussion of the topic. Beccaria also explicitly admitted of some exceptional occasions in which death penalty is morally justified, and he cannot therefore count as a "total abolitionist". Beccaria explicitly admitted the existence of exceptional cases in which death penalty is allowed by relying on an argument from what Davies calls "Public security" as well as on a straightforward utilitarian argument from deterrence – two lines of reasoning that do not fit very well with Beccaria's public image of an uncompromising opponent of death penalty. Moreover, Beccaria's fame as one of the greatest supporters of the abolition of death penalty is not fully deserved because, according to Davies' analytic reconstruction, his general arguments against death penalty are not always clearly stated nor are they always supported by a rock-solid philosophical analysis. Beccaria assumes that no one entering a social contract would ever rationally accept to give the society the power to intentionally deprive one of the members of the association from their most valuable good, namely life. However, as Beccaria does not clearly explain upon *what kind* of contract the State relies, or *under which conditions* this contract is made, his general conclusion seems to be at least unwarranted. There may well be, in general, very strong right-based arguments against death penalty, but these seem to be missing in Beccaria's dialectics, that is here exclusively based on utilitarian and contractualist arguments.

Beccaria's reasoning on punishment in general, however, is also more complex than some of his XX century's admirer have recognized. In his essay, White claim that the leading theorists of the "Law and Economics" movement – Gary Becker and Richard Posner – have legitimately credited Beccaria as a pioneer of the utilitarian project of a "mathematical approach" to the study of crime and punishment, and a strong supporter of a rational evaluation of the deterrent effect of punishment; still, they have at the same time failed to recognize other important aspects of Beccaria's theory. For instance, they have failed to note that Beccaria's discussion on crime and punishment also involves a fre-

quent reference to non-utilitarian values like the idea of a proportion between the punishment and the harm inflicted by the criminal to society, or even the idea of the necessity of a matching between the kind of crime and punishment; so that, for example, Beccaria claims that crimes against persons should always be punished with corporal penalties. However, as White rightly claims, Beccaria's non-full-compliance with the present-day "Law and economic" approach to crime and punishment, far from being a weakness on Beccaria's part, is one of his points of strength. Indeed, not only Beccaria's reference to a plurality of values to be enforced or respected by the criminal law – he sometimes evokes, for example, also values such as publicity, clarity, equality – brings him very close to some contemporary non-utilitarian legal theorists like Fuller; but also does Beccaria's endorsement of both consequentialist and retributivists' elements in his theory of punishment bring him closer to Hart's and Rawls' "mixed" theory of punishment rather than to purely utilitarian theories.

Admittedly, there are also respects under which Beccaria's theory of crime and punishment is just disappointingly simple. In particular, in his essays *Jacquette* strongly criticizes Beccaria's refusal to recognize any relevance to intentions in the criminal law. In contrast with the complex and nuanced arguments put forward by him on other topics, here Beccaria's attitude is that of an uncompromising consequentialism, one that sounds very far from contemporary legal theory and practice. How could basic legal distinctions such as those between murder and manslaughter be ever recognized without considering the agent's intentions? How may the different kinds and degrees of culpability commonly recognized by the criminal law be properly identified without considering the agent's mental states? In this part of his work, Beccaria's displays not only an unjustified scepticism toward the relevance of the offender's mental attitudes for his culpability and punishment, but also a more general scepticism towards the possibility of giving any reliable, objective, accounts of human agents' plans and intentions. From this point of view, be it said as a possible mitigation of his fault, Beccaria has been a victim of his own ambition to build a "mathematical" theory of crime and punishment, as much as a victim of the strong non-cognitivist trend in the theory of action of his time.

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Mario Ricciardi
mario.ricciardi@unimi.it
Università di Milano

Filippo Santoni de Sio
f.santonidesio@tudelft.nl
Delft University of Technology