

## **Crime and Punishment in the Eyes of Cesare Beccaria**

### *An Analysis of an Enlightenment Penal Law Reform*

The Ph.D. dissertation is centred around a relatively concise, but extremely influential book: Cesare Beccaria's treatise *On Crimes and Punishments (Dei delitti e delle pene)*. This work, first published in 1764, sums up in a clear, yet intellectually penetrating way all the main Enlightenment principles of a complex penal law reform. In its time, the book was not only of great philosophical importance and it not only changed the way western societies perceived crime and punishment, but it also served as a concrete guideline for various penal law reformers. It is therefore by no means an overstatement to say that it caused a true paradigm shift in both legal and moral philosophy. The main aim of the thesis is to give a legal-philosophical account of Beccaria's thoughts on crime and punishment, to examine their historical as well as moral background and show the actual impact they had on the legislation of many different, mainly European states.

The first chapters of the dissertation are focused on Beccaria's life, his intellectual background and his formative influences (particularly the French, English and Scottish Enlightenment, the social contract theory, utilitarianism, Montesquieu's thoughts on penal law, etc.). These chapters also pay detailed attention to the state of contemporary European criminal law as it was critically reflected by the intellectual mainstream of the Enlightenment. A brief case-study of the Calas Case (1761), which is one of the most significant judicial errors in human history and which serves as a good example of the malfunctioning of the pre-enlightenment penal system, is also included. What follows is a critical examination of Beccaria's treatise *On Crimes and Punishments*. Throughout the text, detailed attention is paid to all the key parts of Beccaria's teaching, which are introduced and explained in a contextual manner, reflecting their different philosophical, ethical and historical sources. This part is concerned in particular with certain specific problems of legal and moral philosophy that Beccaria dealt with and that are still relevant today, namely the question of punishment, its purpose and justification (including Kant's and Hegel's critique), the problem of judicial discretion, (im)morality of capital punishment and torture, mildness of punishments and their proportionality to the committed crimes, equality before the law, just criminal procedure etc. A single chapter is then dedicated to the concrete (and almost immediate) impact that Beccaria's work had on legislation in different parts of the western world, especially in Austria, France and the United States, but also elsewhere.

Finally, in the conclusion, first a brief account of the prevailing "Foucaultian" interpretation is given, trying to argue that "disciplination of citizens" cannot be automatically regarded as Beccaria's primary aim, since this is not compatible with certain significant aspects of his legal and moral thought. Instead, an alternative proposition is offered, claiming that Beccaria may be perceived as a thinker who truly aimed at humanising the penal system, but also unintentionally caused its formalisation. In this respect, Beccaria may be understood as one of the most influential founders of an impersonal, bureaucratic judicial system. Following is an attempt to analyse this feature of Beccaria's thought and to demonstrate some of its problematic consequences in a larger context, relying primarily on Aristotle's *Nicomachean Ethics*, Adorno's and Horkheimer's *Dialectic of Enlightenment*, as well as some other inspirational texts of modern phenomenology and legal philosophy.

**Keywords:** Beccaria, criminal law, ethics, Enlightenment, reform, capital punishment, torture, purpose of punishment, humanity, legal formalism