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The 'Beccaria moment': revisiting the origins of the modern penal system

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Pierre Musitelli discusses Cesare Beccaria's lasting impact on European criminal law, in celebration of the latest Oxford University Studies in the Enlightenment volume, [Le moment Beccaria: naissance du droit pénal moderne, 1764-1810](#), edited by Philippe Audegean and Luigi Delia.

Published anonymously in Livorno in July 1764, Cesare Beccaria's [On Crimes and Punishments](#) is at the origin of a remarkable moment in European culture. Translations and commentaries appeared instantly in several languages, and this brief work of some 100 pages gave rise to what Michel Porret has called the 'Beccaria moment',¹ referring to the period of intense debate that led to the whole European tradition of penal law being called into question, culminating less than fifty years later in France with the promulgation in 1810 of the [Napoleonic Code pénal](#).

A new book, [Le moment Beccaria. Naissance du droit pénal moderne, 1764-1810](#), edited by Philippe Audegean and Luigi Delia (*Oxford University Studies in the Enlightenment*, 2018) allows us to revisit this 'moment'.

The shock wave caused by *On Crimes and Punishments*

Persuaded that 'knowledge is the pre-condition of enlightened consent to the laws, that itself is the condition of liberty' (Audegean²), Beccaria makes his text accessible to a wide readership. He rejects the use of Latin, and emphasises clarity and concision. He brings together, to quote his first French translator [André Morellet](#), 'the strength of reason and the warmth of feeling'³. In so doing, criminal law – which had hitherto remained the private and confidential domain of the legal profession – becomes a public affair. The 'Milan school' and the group around the journal *Il Caffè* (1764-1766) that includes Beccaria have as their declared aim, to quote [Pietro Verri](#), to dispel 'the fog and mystery that allowed the select few to act with impunity while the greater number remained in misery'.⁴

¹ Michel Porret, *Beccaria: le droit de punir*, Paris, Michalon, 2003, p. 116; and Michel Porret and Élisabeth Salvi (eds.), *Cesare Beccaria. La controverse pénale, XVIII^e-XXI^e siècle*, Presses universitaires de Rennes, 2015, « Introduction. Le moment Beccaria », p. 15-38.

² C. Beccaria, *Des délits et des peines*, translation by Philippe Audegean, Lyon, ENS Éditions, 2009, p. 398.

³ [C. Beccaria], *Traité des délits et des peines, traduit de l'italien* [1765], « Préface du traducteur », p. VIII.

⁴ *Il Caffè*, t. I, *foglio V*, Torino, Bollati Boringhieri, 1998, p. 56.

The aim of *On Crimes and Punishments* is to modernise penal law by establishing it on clear, secular, moderate foundations, so as to fight against the abuses of justice : torture, the scaffold, extreme corporal punishment, the confusion between crime and sin, the arbitrariness of the judiciary, the slowness and secrecy of trials. Penal law is to be brought in line with a sense of legality as defined by the social contract, liberty and the equality of man. This revolution, which established the foundations of the constitutional state, causes a shock wave in Europe of unseen proportions.

To speak of the 'Beccaria moment' is therefore to recognise that the origins of modern criminal law are to be found not just in the modest pages of the Milanese thinker but in the hundreds of texts and speeches that his pages inspired in the following decades, from Voltaire's [Commentaire](#) and the issuing of the [Nakaz](#) by Catherine the Great (1767) to the abolition of the death penalty in Tuscany (1786) and the criminal laws of the young American nation drawn up by Thomas Jefferson, George Washington and John Adams, from the [first French penal code of 1791](#), the product of debates among the *Constituants* in which the name most often cited was Beccaria's, to the Napoleonic code and the work of [Jeremy Bentham](#) (1748-1832). But the 'Beccaria moment' continues in [Victor Hugo's campaign of 1848 to abolish the death penalty](#), or, closer to our times, in 1981, in the actions of [Robert Badinter](#).

To understand the sources of modern criminal law means taking into account both Beccaria's book and its interpretations – in Germany, England, France and Italy – thanks to which a new legal structure gradually emerged, and new principles of punishment meant that the legality of punishments replaced the arbitrary power of the courts.

A 'moment' that remains modern

Beccaria's modernity lies in his having reconceived the problem of punishment in the framework of a new conception of politics born in the Enlightenment period and which is still our own : a framework in which the state's authority is subjugated to the laws protecting individuals. Criminal law is no longer the royal instrument used by the sovereign to guarantee his strength and establish social order, but rather the instrument of citizens to protect and uphold their liberty and safety against public or private violence.

It follows, as the authors show here, that 'the power to punish is revealed in all its tragic ambiguity'⁵, since it may be necessary, to protect citizens from violations that threaten them, to violate the liberty of others, and to threaten their dignity and their physical integrity. How to protect ourselves against the excesses and extremes of the laws that protect us ? This book demonstrates, if it were necessary, that the 'Beccaria moment' remains relevant, and it reminds us of the need today to rethink the principles of the Milanese writer so as to better understand in particular the modern tension between the principles of security and liberal values. It invites us to think about the problems raised by the widespread preventative

⁵ Philippe Audegean and Luigi Delia (eds.), *Le moment Beccaria. Naissance du droit pénal moderne (1764-1810)*, Oxford university studies in the Enlightenment, 2018, introduction, p. 4.

surveillance of individuals in the name of the 'security of the state' at a time when new radical forms of criminality are emerging.

The 'Beccaria moment' of 1764 has clearly passed, yet its aspirations represent unfinished business. In the same way that between the end of the eighteenth century and the beginning of the nineteenth, public debate opened up to problems that had not been envisaged by the author of *On Crimes and Punishments* – in particular the emergence of a new prison regime – his book throws a light today on the present evolution of criminal law, which since the Enlightenment has been a founding and defining element of social order and our institutions. In 2015, Michel Porret elegantly summed up the problem:

As an Enlightened Utopian, Beccaria dreamed of a just city, regulated by constrained force, since excessive punishments encourage brutality in social behaviour [...]. Speaking in the language and culture of his times, Beccaria paves the way for the eventual abolition of capital punishment. Today this humane project is enshrined in European democracies. So at a time when certain European gaols resemble more and more the prison hell deplored by John Howard at the end of the eighteenth century, and when populism sees an ethnic element in criminality, fosters social vindictiveness, and in general questions the Enlightenment legal heritage, condemning the State's role to heal and urging punitive excess in response to problems of security, the generous words of the Italian thinker remain immensely relevant. As if we were still living in the Beccaria moment inaugurated in 1764.⁶

On Friday 12 October 2018, I am pleased to be organising at the École normale supérieure in Paris [a round table debate devoted to the book edited by Philippe Audegean and Luigi Delia](#), in the presence of the authors/editors. Also participating in the discussion are Italo Birocchi (professor of the history of medieval and modern law at the University of Rome La Sapienza), Manuela Albertone (professor of modern history at the University of Turin), and Denis Baranger (professor of public law at the University of Paris II Panthéon-Assas and deputy director of the Institut Michel Villey).

⁶ *Cesare Beccaria. La controversie pénale*, p. 37-38.