

cognella | ACADEMIC PUBLISHING

SNEAK PREVIEW

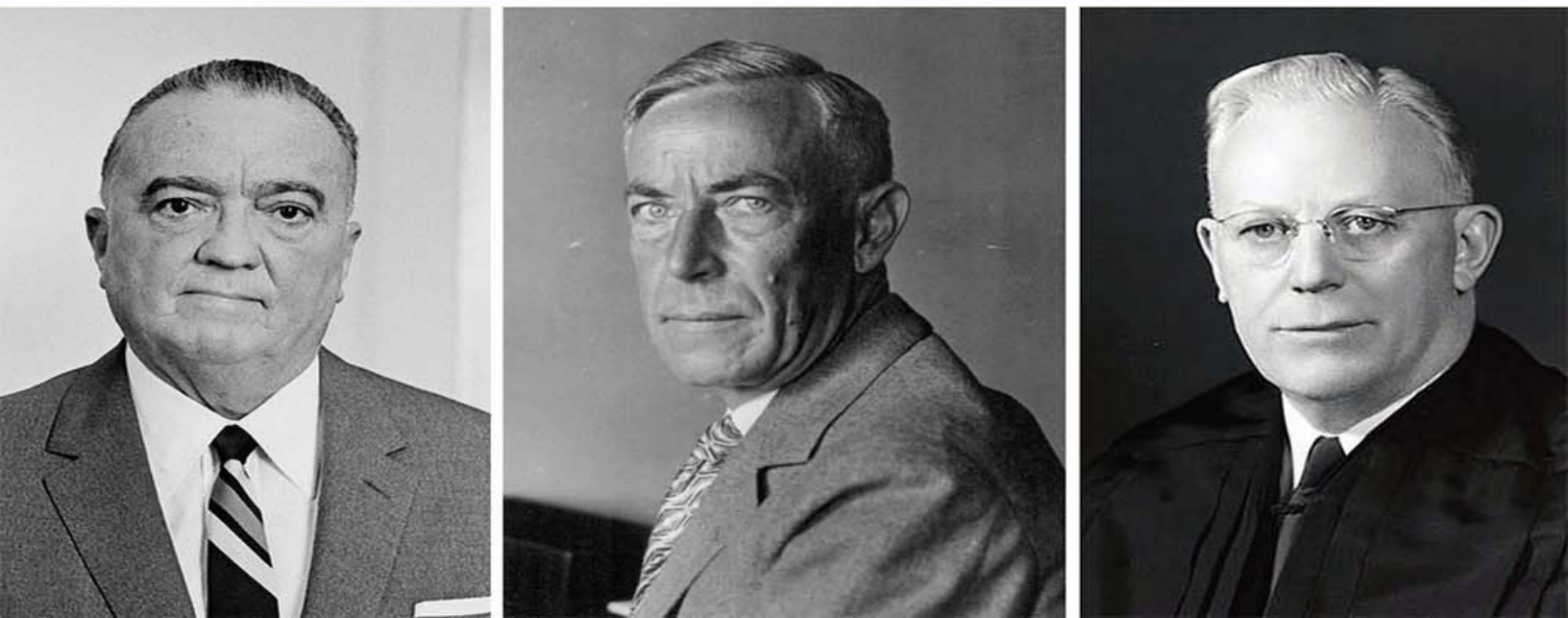
For additional information on adopting this title for your class, please contact us at
800.200.3908 x501 or **info@cognella.com**

FIRST EDITION

WHO SHAPED THE AMERICAN CRIMINAL JUSTICE SYSTEM

INNOVATORS AND PIONEERS

JAMES WINDELL



FIRST EDITION

WHO SHAPED THE AMERICAN CRIMINAL JUSTICE SYSTEM?

Innovators, Pioneers, and Trailblazers

By James Windell

cognella® | ACADEMIC PUBLISHING

Bassim Hamadeh, CEO and Publisher
Mary Jane Peluso, Senior Specialist Acquisitions Editor
Leah Sheets, Associate Editor
Jess Estrella, Cover Designer
Alexa Lucido, Licensing Coordinator
Joyce Lue, Interior Designer
Kassie Graves, Director of Acquisitions and Sales
Jamie Giganti, Senior Managing Editor

Copyright © 2018 by Cognella, Inc. All rights reserved. No part of this publication may be reprinted, reproduced, transmitted, or utilized in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying, microfilming, and recording, or in any information retrieval system without the written permission of Cognella, Inc. For inquiries regarding permissions, translations, foreign rights, audio rights, and any other forms of reproduction, please contact the Cognella Licensing Department at rights@cognella.com.

Trademark Notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

Cover credits: Underwood & Underwood / Public Domain.
George W. Harris and Martha Ewing / Public Domain.
Source: https://commons.wikimedia.org/wiki/File:Clarence_Darrow.jpg.
Public Domain.
Marion S. Trikosko / U.S. News & World Report / Public Domain.
Copyright © by Depositphotos/georgios.
Copyright © by Depositphotos/georgios.

Printed in the United States of America

ISBN: 978-1-5165-1300-0 (pbk) / 978-1-5165-1301-7 (br)



CONTENTS

PREFACE v

INTRODUCTION viii

PART I. PIONEERS OF CRIMINAL JUSTICE LAW

CHAPTER 1: CESARE BECCARIA (1738–1794) 1

CHAPTER 2: JAMES MADISON (1751–1836) 21

PART II. CRIMINOLOGICAL PIONEERS

CHAPTER 3: JAMES Q. WILSON (1931–2012) 40

CHAPTER 4: TRAVIS HIRSCHI (1935–2017) 63

PART III. POLICING INNOVATORS

CHAPTER 5: AUGUST VOLLMER (1876–1955) 79

CHAPTER 6: J. EDGAR HOOVER (1895–1972) 98

CHAPTER 7: JACK MAPLE (1952–2001) 121

PART IV. COURT PIONEERS

CHAPTER 8: LUCY LOUISA FLOWER (1837–1921) 136

CHAPTER 9: EARL WARREN (1891–1974) 153

CHAPTER 10: CLARENCE DARROW (1857–1938) 187

PART V. CORRECTIONS INNOVATORS

CHAPTER 11: JOHN AUGUSTUS (1785–1859) 226

CHAPTER 12: SAMUEL GRIDLEY HOWE (1801–1876) 243

CHAPTER 13: ZEBULON BROCKWAY (1827–1920) 263

CHAPTER 14: THOMAS MOTT OSBORNE (1859–1926) 288

INDEX 315

PREFACE

How much would you learn about such notable criminal justice figures as Cesare Beccaria, August Vollmer, J. Edgar Hoover, and James Q. Wilson from reading the best criminal justice textbooks that we have? The answer is simple: little or nothing.

This is not to say that most introductory criminal justice and criminology textbooks do a poor job of teaching what students need to learn about criminal justice and criminology. Far from it. By and large, they do a great job of introducing students to the key elements of the criminal justice field. But students will come away from introductory courses with almost no appreciation of the great pioneers and innovators who helped shape our criminal justice system.

Over the years, in teaching various criminal justice courses, I was frequently frustrated by the dearth of information about the individuals who helped develop the American criminal justice system. I wanted to know more about some of these innovators; not only about their accomplishments, but also about their personal lives. Who were these people? How did they come to initiate new theories, procedures, and practices that made them criminal justice heroes? Furthermore, I wanted my students to have a better sense of the people whose ideas and work built the foundations of our criminal justice system.

The leading textbooks typically allot few pages to biographies of the important people in criminal justice history. Of course, when the people most instrumental in shaping and designing our criminal justice system are noted, most often that mention is no more than a paragraph. As a result of my personal desire to teach my students more about the personalities who contributed to our justice system, I began putting together biographies in my lectures. From that grew my interest in writing a book of biographies of some of the most

influential figures in the American criminal justice system. The result is this book.

Who Shaped the American Criminal Justice System? is designed to be a supplementary textbook for courses as varied as Introduction to Criminal Justice, History of Criminal Justice, Criminological Theory, and Corrections. It starts with biographies of two pioneers in criminal justice law—Cesare Beccaria and James Madison. But in addition to Beccaria and Madison, you will discover biographies of the great policing trailblazers August Vollmer and J. Edgar Hoover, along with court and legal pioneers and the great corrections innovators.

Since many, if not most, introduction to criminal justice and introduction to criminology textbooks follow a similar formatting of the contents, this book is also designed to fit in with the major introductory textbooks. For instance, there are fourteen biographies, which conforms to the typical term or semester of fourteen weeks. The book is divided into five parts, with two or more biographies in each part. The two historical figures of Beccaria and Madison are discussed in Part I. These chapters can be assigned to students as readings when the primary textbooks deal with the history of criminal justice. Part II, titled Criminological Pioneers, is positioned to supplement discussion of criminological theories. Part III contains the biographies of three policing innovators, and these will best accompany a class section on policing and law enforcement. Often following law enforcement is one of the other major components of a survey of criminal justice: the courts. Part IV devotes chapters to three court pioneers: Lucy Flower, Clarence Darrow, and Earl Warren. The final section likewise is aimed at corresponding to corrections, one of the last components typically discussed in introductory courses. Part V, thus, includes biographies of John Augustus, Samuel Gridley Howe, Zebulon Brockway, and Thomas Mott Osborne.

Each biography includes a review of the individual's formative years and influences. The development of their major theories is discussed and usually set within a social or cultural time period. The significance of their writings and work are explored, and each biography ends

with an assessment of the pioneer's legacy in criminal justice. At the end of each biography are Discussion Questions, Important Names and Terms, Recommended Readings for more information about the individual profiled, and References. These features allow instructors to use individual chapters as readings for class discussion or written assignments. Instructors will also find that lecture PowerPoint slides are available as well as a test bank. Active learning features that will aid students include the material at the end of each biography, along with flash cards and sample test questions on a textbook website.

I would like to acknowledge the people who have contributed to this book in one way or another. First, I would like to thank my wife, Jane, and our friend David Cutting, who patiently listened to my initial ideas for this book. Next, I would like to thank the Cognella team, including Mary Jane Peluso, Jamie Giganti, and Leah Sheets, for their assistance in bringing this book to fruition. Their ideas and suggestions have been invaluable. I am also grateful for the comments and suggestions offered by Professor Marvin Zalman, whose understanding and knowledge of the history of criminal justice played a significant part in some of my decisions to include or exclude certain biographies in this book. Thank you also to the following reviewers who provided feedback on the book: Dr. James C. Brown, Utica College, and Deb Brydon, Mount Mercy University.

In attempting to understand how ideas, policies, and practices have become standard in the field of criminal justice, it's always important to attempt to understand the people who brought innovations and new ideas to the field. This book focuses on fourteen key people who truly had a major impact on the development of our criminal justice system. I hope that these biographies spark the interest of criminal justice students and, in turn, inspire them to become innovators and trailblazers of the future.

INTRODUCTION

The idea for this book grew out of the author's curiosity. When reading criminal justice textbooks and teaching various criminal justice courses, I was intensely curious about the pioneers and innovators of criminal justice. Names—Cesare Beccaria, August Vollmer, John August, Thomas Mott Osborne, to name just four—would show up in textbooks, but typically with little more than a few sentences that generally only told about the person's most significant achievement. So, I would ask myself, "But who was this person, and what led him (or her) to be a leading figure in this field? What were they really like?"

That curiosity developed into the concept of this book. As the concept developed, I found that I had several primary goals:

1. To provide both students and professors with more in-depth information about some of the criminal justice pioneers who are frequently mentioned in textbooks;
2. To deliver readable and engrossing short biographies that included personal and family details that would enable students to gain a broader understanding of the people who shaped our criminal justice system;
3. To place the ideas and theories of the pioneers of criminal justice in the context of their lives and times; and
4. To organize a book in such a way that it would be a useful and practical supplement to go along with the most popular criminal justice introductory textbooks.

Before describing the organization of this book, I would like to comment on the selection of the people whose biographies are contained in this book. As might be expected, it was not easy to decide which figures to include and which to leave out. There are some

biographies among the chapters of this book that I am sure most people would agree belong here. For instance, I think few would quibble with the decision to include James Madison, Thomas Mott Osborne, John Augustus, and August Vollmer. Less obvious choices are Cesare Beccaria, Zebulon Brockway, James Q. Wilson, Lucy Flower, and Jack Maple.

Beccaria, many would agree, should be included in any book about the history of criminal justice. But since he was not an American, does he deserve a place in this book that purports to give the stories of individuals who helped shape the American criminal justice system? I contend that he does, and the reasons will become clear when you read that chapter.

Lucy Flower is perhaps the least well-known figure in this book, yet her influence in the development of the juvenile court should not, in my opinion, be overlooked. Also, it could be argued that she was the first woman to have a significant impact on the American criminal justice system.

And, while many criminal justice instructors might insist that James Q. Wilson and George Kelling's 1982 "Broken Windows" article is a must for any criminal justice reading list, the same instructors and professors might take issue with including Wilson in this book. However, I believe his influence was so pervasive in the years from the early 1960s right up to today that it seemed essential to include him so students could see him as a person as well as an outstanding researcher and writer.

The reasoning that led to the inclusion of James Q. Wilson and Lucy Flower is related to what was extremely important to me as both a criminal justice lecturer and as an ongoing criminal justice student. The people who actually had an impact on the evolution of the American criminal justice system should be included in a book like this. I tried to include people in various areas of criminal justice. And not only was it important in the planning of these chapters to present them as individuals who contributed to criminal justice, but to show them as people who were influenced by their

experiences, as well as by family and friends. In short, I wanted to portray them as people who were more than innovators or creative thinkers.

I don't blame the authors of textbooks for not including more information about the great thinkers or innovative geniuses. Having written textbooks, I fully understand that although the author might like to go more in depth to explain who certain people were and how they contributed to the field, there are often practical limitations imposed on authors.

Of course, anyone who is truly interested in learning more about an important figure in criminal justice history could search out biographies, autobiographies, and articles about them. However, as will become evident by reviewing the references at the end of each chapter, you will find that biographies, particularly of individuals who were born prior to the beginning of the twentieth century, sometimes require extraordinary persistence in tracking down the resources needed to gain a well-rounded portrait of these pioneers. Certainly, it would be difficult for students, many of whom are often less skilled at research and frequently less resourceful at ferreting out lesser-known references, to devote the time and energy to learning about people in this book.

It is also important to understand more about the organization in this book. As indicated, one of my goals was to make this book a valuable supplemental text for teachers and professors of criminal justice. To accomplish this, I paid careful attention to the leading criminal justice and criminology textbooks and how they were organized. What I discovered was that most textbooks (including my own, *The American Criminal Justice System*) are organized in terms of the main components of the criminal justice system. That is, most are organized around what we usually refer to as cops, courts, and corrections. While many textbooks start with an overview of the history of criminal justice, ways to measure the amount of crime in our society, and the causes of crime, these introductory and background chapters are usually followed by a few chapters on law enforcement, several on courts,

and a handful on corrections. Therefore, this book is organized so that instructors can assign readings from this book as they teach more or less in the order dictated by a majority of the most popular textbooks.

For example, when teaching about the history of criminal justice, the chapters devoted to Cesare Beccaria and James Madison can be assigned and discussed to enhance student's understanding of the history of how the American criminal justice evolved. When discussing criminological theories, the biographies in Part II on James Q. Wilson and Travis Hirschi can be assigned. When covering the chapters on policing and law enforcement, the three chapters comprising Part III (August Vollmer, J. Edgar Hoover, and Jack Maple) may be assigned to provide students with a more intimate understanding of three important people from three different eras in the field of law enforcement. The succeeding parts of the book (Court Pioneers and Corrections Innovators) can be used to supplement the student's grasp of key figures in courts and corrections.

One final note about the number of biographies in this book: I find that most textbooks have from thirteen to twenty chapters, and most semesters or terms run about fourteen weeks. Thus, there was a purpose in limiting the number of biographies to fourteen, since this would allow approximately one assigned chapter per week.

I sincerely hope that this book and its fourteen biographies will complement and increase the student's understanding of how our criminal justice developed, and the people behind the theories, the development, and the ever-evolving field of criminal justice. I believe this is what every teacher wants for their students.

1

CESARE BECCARIA

The Father of Criminology

Cesare Beccaria was an Enlightenment philosopher who wanted to apply the rationalist perspective to the judicial, penal, and criminal justice systems of his time. He was born in Italy in the eighteenth century and rarely ventured far from his home in Milan. His seminal work, *Dei delitte e delle pene* (*On Crimes and Punishments*), was first published anonymously. However, the influence of this small, somewhat disjointed book reached every country in Europe and colonial America. His criminal courts reforms were praised by rulers, philosophers, and American founding fathers, such as Thomas Jefferson and John Adams, and his ideas seeped into the United States Constitution and the Declaration of Independence. His concepts of criminal justice still resound today, and on the strength of *On Crimes and Punishments*, a strong case can be made that, indeed, Cesare Beccaria is the Father of Criminology.

Born in Milan, Italy, on March 15, 1738, Cesare Beccaria's father was an aristocrat born of the Austrian Habsburg Empire, although he earned only a modest income. Cesare Beccaria received his primary education at a Jesuit school in Parma, Italy, and he would later describe his early education as "fanatical" and oppressive of "the development of human feelings" (Monachesi, 1973). Despite his frustration at school, Beccaria was an excellent math student, which is evident in some parts of *On Crimes and Punishments*. Following his education at the hands of the Jesuits, he attended the University of Parma, receiving a degree in law in 1758.

Showing a rebellious spirit, he proposed to sixteen-year-old Teresa Blanco against his father's wishes, and they eloped in 1761. However, with the birth of a baby girl in 1762, and following the persuasive arguments of his friends, he asked his father for forgiveness. The couple was forgiven, and they returned to the Beccaria family fold and later would have two additional children. Family and family life, as it turned out, were important to Beccaria, who was described as shy and prone to mood swings, which alternated from fits of anger to bursts of enthusiasm, followed by periods of depression and lethargy (Paolucci, 1963).



A Portrait of Cesare Beccaria

https://commons.wikimedia.org/wiki/File:Beccaria_-_Opere,_Milano,_1821_(page_6_crop).jpg. Copyright in the Public Domain.

He made two friends early in life, and these two friends, the brothers Pietro Verri and Alessandro Verri, would exert powerful influences on him and his work. Pietro was ten years older than Cesare Beccaria, and Beccaria always looked up to him, especially because Pietro had a literary career followed by a stint in the Austrian army, attaining the rank of captain. Returning to Milan in 1760, Pietro and Alessandro began advocating for political, social, and literary reforms. As part of their reform efforts, they formed a society—later called the "academy of fists"—which waged war against what they saw as disorder in the economy of Milan, the tyranny of bureaucrats, the narrow-mindedness of religious institutions, and intellectual pedantry.

Beccaria became a member of this forward-looking and revolutionary group, attending meetings of the "academy of fists," which were usually held in the Verri home and featured lively discussions. Reportedly, Beccaria listened carefully to the discussions and debates, and began, under the guidance of Pietro, to avidly read the Enlightenment authors of France and England, including Montesquieu, Helvetius, Diderot, Buffon, and Hume (Paolucci, 1963). During the often animated discussions in the

Verri home, Beccaria remained quiet—listening, rather than taking part in conversations—and only wrote when assigned a topic by his friends.

Not only did Beccaria rely on his friends to assign him topics for writing, but often his friends helped him elaborate on certain subjects and sometimes even pieced together his fragmented ideas and thoughts. That was true for his first publication, titled *On Remedies for the Monetary Disorder of Milan in the Year 1762*. That monograph, according to Monachesi (1973), while original and thought provoking and showing he had the ability to write clearly and perhaps forcibly, was not a significant work. However, his next—and literally last—work was his *Dei delitte e delle pene*, *On Crimes and Punishments*, published anonymously in 1764.

As with his first written work, *On Crimes and Punishments* was completed only because of the help and prodding of Pietro Verri. Later, Beccaria would acknowledge that Pietro "gave me the strength to write" (Paolucci, 1963, p. xiii). Given his emotional state, which may have been overly stimulated by the discussions during the day at the academy of fists meetings that often left him drained and without energy, Beccaria tried to write in the evenings. However, writing was such a laborious task that he couldn't put much time into it, and much of his efforts resulted in scattered notes or ideas scribbled on scraps of paper. That's where Pietro, perhaps his closest friend, would provide invaluable assistance. Sometime after publication of *On Crimes and Punishments*, Pietro Verri described his role: "I suggested the topic to him and most of the ideas came out of daily conversation between Beccaria, Alessandro, Lambertenghi, and myself" (Paolucci, 1963, p. xiii). Beyond this help, though, Pietro would eventually collect the assorted random ideas on pieces of paper, write them out, arrange them in a logical order, and ultimately make a book of them.

Alessandro played an important role in Beccaria's *On Crimes and Punishments*, too, since Beccaria had no firsthand knowledge of the criminal justice system of his time. Alessandro, however, had the job of "protector of prisoners" in Milan and had direct experience with then current penal practices. Also, Pietro had an interest in torture and was able to supply Beccaria with details about how torture was used in the European justice system.

On Crimes and Punishments was published anonymously because Beccaria was fearful that he was being too bold in his recommended reforms; he didn't want to get into trouble with the authorities in Milan. However, Beccaria would be surprised that not only was his book well received in other parts of Europe, but the political authorities in Milan welcomed the book. Thus, when it was reprinted, Beccaria's name appeared as author.

In *On Crimes and Punishments*, Beccaria touched a nerve wherever it was published: it seemed to be the right book at the right time. So, despite his fears that it would be too controversial, his treatise on the reforms needed in the criminal justice system found wide acceptance. Receptive audiences all over Europe and even in the American colonies recognized that it was time for long and harsh punishments, torture, and even the death penalty to be abandoned.

As a result of the critical acclaim for his book, Beccaria was invited to go to Paris. Given his retiring personality, he was reluctant to travel to Paris, but with Alessandro Verri at his side (Pietro was unavailable to go with him), he went. As might be expected, he found being in the spotlight arduous and quite uncomfortable. Not only was he extremely anxious in social situations, but he came across as nervous and somber. He soon left France and returned home, leaving Alessandro to attend salons and talk about needed justice reforms. Paolucci, the man who translated a 1963 English edition of his book, wrote in an introduction to that translation that Beccaria realized that on a personal level he was not able to live up to the reputation of his book.

Once he returned home to Milan, he never ventured away again. But the success of his work led the government to appoint him to various offices and positions. From 1768 until his death in 1794, he did not publish any writings that garnered public attention.

ON CRIMES AND PUNISHMENTS

What were the contents of the book that found so many champions and caused such a stir in many parts of the world? It is important to examine more closely the ideas and proposals Beccaria put forward in his book.

On Crimes and Punishments is a short book of forty-two chapters, each of which ranges from a paragraph to a few pages. In his introduction, Beccaria pays tribute to some of his inspirations, such as "the immortal Montesquieu" and others, and then goes on to write that he plans to "examine and distinguish the various kinds of crimes and modes of punishment" (Beccaria, 1963, p. 9). Then, in his introduction, he raises questions he plans to address in this work; questions related to appropriate punishments, torture, and the death penalty.

In Chapter II, "The Origins of Punishments, and the Right to Punish," Beccaria lays out a philosophical justification for laws and for punishment of crimes. His philosophical underpinning is the social contract theory of the state. He writes that "Laws are the conditions whereby free and independent men unite to form society" (Beccaria, 1963, p. 11). He explains that the basis of punishment is the necessity to restrain men from encroaching upon the freedom of one another. An orderly social existence, he argues, is dependent on laws and on punishment of violations of laws.

In subsequent chapters, Beccaria continues to build upon arguments to construct a foundation for the legitimacy of punishment. He declares that only laws can decree punishments and only legislators can decide which punishments are consequences for particular crimes. Furthermore, judges in criminal cases do not have the authority to interpret laws. They must follow the dictates of the law, which means that they cannot decide the length or type of punishment for a particular offender. Punishments, he states, should not be arbitrary, but fixed by law. This, he says, provides a sense of security for citizens because then each person can "calculate accurately the inconveniences of a misdeed" (Beccaria, 1963, p. 17). Finally, he concludes that making the laws and the punishments for violations of laws available in writing to more citizens will decrease crime because ignorance and uncertainty of punishments lead to more—not less—crime.

By Chapter VI, Beccaria has moved on from punishment to imprisonment. First, he rails at judges who imprison people at their own pleasure and for frivolous matters. And, he writes, men should be convicted only on the basis of evidence, and this evidence must be determined by law—not by judges. Next, he asserts that men ought to be judged innocent or guilty

by their peers. But in so judging the guilt of an accused man, the credibility of witnesses and the proofs of a crime need to be considered. He states that the credibility of a witness must be deduced through his or her association and closeness to the accused. But Chapter IX is a sort of aside in which Beccaria declares that accusations of wrongdoing should never be secret. Beccaria refers to Montesquieu and writes that "Montesquieu has said that public accusations are more suited to a republic, in which the principal passion of citizens ought to be for the public good, than to a monarchy, where that feeling is extremely weak owing to the very nature of the government …" (Beccaria, 1963, p. 27). He ends Chapter IX by suggesting that governments ought to punish people who bring false accusations against others with the very punishment that the accused would have received if found guilty.

Beginning in Chapter X, Beccaria takes on the issue of torture, suggesting in this chapter that torture is likely to bring about a false confession. In succeeding chapters, he questions the helpfulness of witnesses, especially the accused, swearing an oath to tell the truth, and provides arguments against the various justifications for the use of torture in criminal procedures. Then, Beccaria discusses the importance of swift punishment but at the same time stating that there should be sufficient time allowed both for the prosecution and the defense to prepare their cases prior to trial. In Chapter IX, he argues for immunity for accomplices in order to learn about other crimes that have been committed or are in the planning stages.

In another chapter (XV), Beccaria goes back to punishment to take up another issue: the intensity of punishment. In effect, in this chapter, he wants to answer the question: How severe does punishment need to be in order to accomplish its purpose? And soon enough, he answers the question with this statement: "For a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime" (Beccaria, 1963, p. 43). Anything beyond this, he goes on to write, is superfluous and unlikely to achieve its purpose. He continues, though, to state that when punishment becomes severe and resembles torture, it actually makes people immune to its effects and may lead them to commit the wrongs the punishment is supposed to be preventing.

Having written that excessive punishment is unproductive, Beccaria begins to reflect on the ultimate punishment and torture: the death penalty. He addresses various arguments that had been advanced for the death penalty, but his main argument against capital punishment emerges as this: It is absurd that the laws of the state punish the taking of a life, yet when executing a criminal, the state itself is committing murder. He would prefer that criminals who take the life of others be banished, rather than killed by the government. Although he is generally opposed to capital punishment, he is in favor of punishments. For punishments to be effective, he contends, they must be promptly applied after the commission of a criminal act. The reason for this, Beccaria writes, is because the crime and the punishment must be linked in the minds of citizens. Long delays between the act and the consequence weaken that association. In addition, the punishment should be certain. If men who do wrong believe they might escape punishment, then that punishment is useless. Furthermore, he states that punishment should be suitable to the criminal event.

Continuing to discuss the suitability of punishment, Beccaria argues that if two unequal crimes result in the same punishment, then men may reason that they might as well commit the more serious crime. To argue this, he reiterates a primary philosophical belief: that men are motivated by obtaining pleasure and avoiding pain. People strive to maximize their pleasure and to minimize their pain. If the fear of pain is minimal, then there is little or no deterrence to violate the law.

Starting in Chapter XXIV, Beccaria spends several chapters discussing measuring and classifying crimes. While he takes the position that every crime injures society, he also believes that crimes against people should always result in corporal punishment. This seemingly is an inconsistency in Beccaria's philosophy, as he appears to say that the state shouldn't take the lives of criminals except in some instances. On the other hand, he believes that crimes that dishonor people should result in infamy for the offender, and thefts should result in a fine. Smuggling should result in the loss of the goods smuggled and whatever else the offender possesses at the time. Suicide and expatriation also enter into Beccaria's discussion of classifications of crime. He sees suicide as harming society less than

expatriation. The person who takes his wealth to live in another country certainly deprives his own country; however, he states that to discourage expatriation, a state should strive to improve the well-being of all citizens.

After spending some time discussing the crimes of adultery, pederasty (male homosexuality), infanticide, witchcraft, and heresy, Beccaria turns his attention at the end of his book to the prevention of crime. He offers several proposals for preventing crimes after asserting that it is better to prevent criminal acts than to punish them. His first proposal is to make sure that laws are clear and simple. Second, see to it that men fear the laws and nothing else in society. Third, ensure that enlightenment accompanies liberty; "… For no enlightened person can fail to approve of the clear and useful public compacts of mutual security …" (Beccaria, 1963, p. 95). Fourth, make sure that judges observe the laws rather than corrupt the laws. Fifth, reward virtue. Sixth, perfect education. While he doesn't explain this final proposed idea, it is apparent that he believes that educated youth and adults are more easily directed away from evil and toward the virtuous in life.



Cesare Beccaria

Copyright © 1823 (CC by 4.0) at https://commons.wikimedia.org/wiki/File:Portrait_of_Marchese_Cesare_Beccaria_Bonesana,_1738-1794_Wellcome_L0015131.jpg#/media/File:Portrait_of_Marchese_Cesare_Beccaria_Bonesana,_1738-1794_Wellcome_L0015131.jpg

Finally, in his conclusion, a one-paragraph ending chapter, Beccaria provides this summing up of his philosophy concerning crimes and punishment: "In order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws" (Beccaria, 1963, p. 99).

THE INTERPRETATION OF *ON CRIMES AND PUNISHMENTS*

Beccaria is credited with being a classicist. In criminological theory, the classical position is that people have free will and are rational. Criminals commit crimes, classical criminologists say, because they make rational decisions based on the potential risks and rewards. In other words, offenders—like nonoffenders—exercise their free will. However, a careful reading of *On Crimes and Punishments* suggests that Beccaria was not proposing a theory of carte-blanche volition. Instead, his is a determined will rather than a free will. Thus, his proposals for punishment were predicated on a rational and calculating human being (Beirne, 1993). This calculating man will weigh the pros and cons of committing a criminal act and, if the punishment is swift enough and severe enough, he will desist from offending. If the benefits, however, outweigh the potential risks, he will violate the law.

It can be said that Beccaria's theories were based on three tenets: 1.) Free will leads to people making choices; 2.) Laws exist to preserve the social contract, but people's self-interest often conflicts with what's best for society; people sometimes commit criminal acts out of self-interest; and 3.) Manipulability—people act in predictable ways out of rational self-interest. But if punishment poses a considerable risk for them, they will be dissuaded from violating the law; at that point—when people are reacting to their calculations of risks and rewards—they are no longer operating based on free will.

THE RESPONSE TO *ON CRIMES AND PUNISHMENTS*

The response to *On Crimes and Punishments* was uniformly positive. And, as Newman and Marongiu (1990) point out, the ideas expressed in Beccaria's book quickly found advocates in Europe and became important in debates about criminal law, penology, and criminology. But Newman and Marongiu contend that this was mostly due to the strong support of Beccaria's recommendations by Voltaire (Newman & Marongiu, 1990).

While Monachesi (1973) also notes the role of Voltaire in promoting the book, he indicates that in order to properly understand why *On Crimes and Punishments* created such excitement and enthusiasm in Europe, it is important to understand the state of criminal law in Europe at that time. Monachesi describes the criminal justice system in eighteenth-century Europe as repressive, uncertain, and barbaric (Monachesi, 1973). There was a great deal of arbitrariness in how the process of accusing and trying a defendant was carried out, and this process often included many abusive practices (Monachesi, 1973). Prosecutors and judges were given wide latitude in dealing with people accused of crimes. The concept of due process, as we know it today, literally did not exist, and torture was frequently used to elicit confessions. And a great many types of crimes were punished by the death penalty.

Newman and Marongiu (1990) and others have stated that Beccaria's ideas were important because they laid out some basic principles of judicial policy. The criticism, however, was that several of the reforms that Beccaria proposed were already included in the reforms and the writings of others from his day, including Voltaire and Montesquieu.

Further criticism was made of his lack of consistency and even his contradictions. For instance, in one place he indicates that he is in favor of mild punishments, but in other places, he says that the penalties for some crimes (such as those acts of aggression against others) should always be corporal punishment. Similarly, he says that torture should be banned, but at other times, he says that a person who refuses to answer questions during interrogation should receive punishment of the severest kind.

Despite these criticisms, there is no doubt that *On Crimes and Punishments* had an influence on other reformers. Perhaps, though, the reformers—much like the sovereigns who were so enthusiastic about his work, such as Empress Catherine II of Russia, the Grand Duke Leopold of Tuscany, and Frederick II of Prussia—were already inclined toward judicial reform (Newman & Marongiu, 1990).

However, there can be little doubt that the ideas of the Enlightenment philosophers, of whom Beccaria was one, brought about change in many aspects of social and political life, including penal punishment (Newman & Marongiu, 1990).

THE WIDESPREAD INFLUENCE OF *ON CRIMES AND PUNISHMENTS*

The influence of Beccaria's major work after being published in many languages all over the world was felt from Russia, where Catherine the Great praised the work, to the American colonies, where Thomas Jefferson and John Adams quoted from him. It led to the creation and reform of penal systems in many countries. The success of the treatise is explained by the author Maestro (1942) who stated, "Moreover, the great merit of Beccaria's book—and this explains its great success and the practical impact that it would soon have in many countries lies in the fact that for the first time the principles of a penal reform were expressed in a systematic and concise way, and the rights of humanity were defended in the clearest terms, with the most logical arguments" (Maestro, 1942, p. 34).

The popularity of the book may well have centered around the fact that Beccaria discussed issues that were being widely expressed at that time. In addition, more than one country or, in the case of America, group of colonies, were moving toward overthrowing monarchies and instituting a republican form of government. In fact, it was just after *On Crimes and Punishments* was published that the American Revolution occurred. Many of the American founding fathers were well read, and several were greatly influenced by Beccaria, Jeremy Bentham, and other contemporary philosophers. As a result, the Constitution and Bill of Rights, which include many of the rights that United States citizens accept as fundamental, come from the works of these classical criminologists.

As Maestro (1942) suggests, the principles of penal reform were articulated in Beccaria's work, and that influenced many advocates of prison reform. That was particularly true in Europe, where both William Eden, who wrote *Principles of Penal Law* in 1771 and John Howard, who was an English prison reformer, could be counted among the followers of Beccaria (Bessler, 2009). By 1777, John Howard had written *The State of the Prisons in England and Wales*, describing in this book the terrible conditions of British prisons. He was appalled by the filthy conditions in prisons and the fact that prisoners were charged fees, which fed into both the greed of

jailers and their neglect of inmates. Based on his observations, Howard made various recommendations for improving prisons (Bessler, 2009).

Also in England, the philosopher Jeremy Bentham read *On Crimes and Punishments* and was so impressed by the book that he wrote glowing praise of Beccaria's work but also commented that the Italian had made a major contribution to his own development while referring to Beccaria as "my master" (Bessler, 2009, p. 205). Another Englishman who had high praise for Beccaria was William Blackstone, the jurist who wrote *Commentaries on the Laws of England*. Blackstone referred to Beccaria as an ingenious writer who understood human nature; he wrote that Beccaria was right in stating that crimes are more likely prevented by the certainty, rather than by the harshness, of punishment (Bessler, 2009).

Blackstone disagreed with Beccaria in terms of the types and ranges of punishments. It was Blackstone's opinion that, in diverging from Beccaria in regard to deciding which punishments ought to be imposed, it is difficult to decide on punishments, and decisions about appropriate punishments should be left up to legislators. In his *Commentaries*, Blackstone laid out some foundational principles, some of which seemed to be inspired by Beccaria's book. Echoing Beccaria, Blackstone wrote that punishment should be rationally imposed and that it should not be arbitrary or overly harsh. And, like Beccaria, Blackstone took the position that punishment should take into account the many complexities of aggravating and extenuating circumstances, and that the effectiveness of a particular punishment should be considered when trying to prevent future crimes (Bessler, 2009).

THE INFLUENCE ON EARLY AMERICANS

William Blackstone and Cesare Beccaria were both authors read by many of America's founding fathers. Since they shared similar views on the law and criminal justice, it is certain that both men played a role in the shaping of the Constitution and the Bill of Rights. Some historians have gone so far as to cite *On Crimes and Punishments* as the most influential book in America around the time of the Revolution (Bessler, 2009). Historical

writings by America's founders strongly suggest that the men who helped to form a new government often turned to Beccaria's treatise for guidance (Bessler, 2009).

Schwartz and Wishingrad, writing in the *Buffalo Law Review* (1975), found that there were three American translations of Beccaria which were published in America before the drafting of the Bill of Rights. There is considerable evidence that those three translations were popular at both bookstores and lending libraries in the eighteenth century. It is known that Thomas Jefferson and James Madison were familiar with the writings of Beccaria. Madison, who read many European authors, was a student of Beccaria's work, and he included Beccaria's *On Crimes and Punishments* in the list of recommended books he offered to the Continental Congress (Bessler, 2009).

In 1770, following the Boston Massacre, John Adams, a Boston lawyer and future president of the United States, agreed to defend the British soldiers accused of murdering five colonists. During the subsequent trials, Adams showed that he was familiar with Beccaria's ideas. In fact, in taking on this unpopular cause, Adams eloquently referred to Beccaria in his opening statement on behalf of his British clients (McCullough, 2001).

Dr. Benjamin Rush was a friend of John Adams who lived and practiced in Philadelphia. Like Adams, he was an admirer of Beccaria's work (Bessler, 2014). However, unlike Adams, Rush was against the death penalty. In March 1787, he gave a reading at the home of Benjamin Franklin and during this reading cited Beccaria as an authority in denouncing capital punishment, which Rush saw as an improper punishment (Bessler, 2012).

There were other leaders in colonial America who were reading Beccaria's writings. Among these leading citizens were John Hancock, one of the signers of the Declaration of Independence, as well as William Bradford and Thomas Paine. Bradford, a former Pennsylvania attorney general, wrote in 1793 *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania*. This short book reflected many of Beccaria's arguments, in that Bradford not only questioned the necessity of capital punishment but argued that it should never be used—except for offenses such as high treason and murder (Bessler, 2009). Paine, like Benjamin Rush,

was an ardent abolitionist, opposing the death penalty for any reason. Beccaria, though, conceded that the death penalty might be useful if it prevented other crimes.

Thomas Jefferson was also fascinated by Beccaria's ideas, often quoting from Beccaria in his *Commonplace Book*. When Jefferson was writing drafts of Virginia's constitution, he proposed banning capital punishment. When Jefferson penned the Declaration of Independence and used the phrase about an "inalienable" right to life, it is clear that Beccaria served as an inspiration for the famous document. When Jefferson served on a committee to expand the death penalty's use during wartime, he also was a member of the Virginia Committee of Revisors for legal reform. In this capacity, he helped draft a bill for Virginia's legislature calling for proportionate punishments, or, in his words, punishments "suited to reason" (Peterson, 1987, p. 125). It was Beccaria who first called for proportionate punishment.

In a draft of his autobiography, written in the later years of his life, Thomas Jefferson reflected on that bill's narrow defeat. He wrote that he rejected the doctrine of *lex talionis*, and he paid homage to *On Crimes and Punishments* for informing his anti–death penalty position. As Jefferson wrote, it was Beccaria, among others, who had convinced him and others of the "unrightfulness and inefficacy of the punishment of crimes by death" (Padover, 1967, p. 42). Jefferson went on to state in his autobiography that the Virginia Committee of Revisors had considered labor on roads, canals, and other public works as appropriate substitutions for capital punishment. But Jefferson opined that the general mood of the country "had not yet advanced" to the point of banning the death penalty (Padover, 1967, p. 42).

In 1816, Jefferson sent a letter to William Wirt, the author of a biography of Patrick Henry. In that letter, Jefferson said, with obvious satisfaction, that Virginia "justly prides itself on having gone thro' the revolution without a single example of capital punishment connected with that" (National Archives, n.d., p. 1).

Thomas Jefferson also revealed his admiration for Beccaria's book in another piece of correspondence. While serving as our third president,

Jefferson, an avid book collector and one of the most well-read men of his time, would write a telling letter in 1807 recommending that the recipient of his letter, one John Norvell, should read Beccaria's work on crimes and punishments. In making this recommendation, Jefferson said he did so "because of the demonstrative manner" in which Beccaria "has treated that branch of the subject" (American History, 2012, p. 1). By singling out *On Crimes and Punishments*, Jefferson made it apparent that he had a certain reverence for Beccaria's work and its condemnation of both torture and state-sanctioned executions.

In Merrill D. Peterson's biography of Thomas Jefferson, it is revealed that Jefferson read Beccaria's book in the original Italian soon after it was published (Peterson, 1987). As indicated, furthermore, he also copied lengthy passages from *On Crimes and Punishments* into his commonplace book, a notebook of his literary and philosophical readings. As an attorney practicing before the General Court in Virginia, he had an opportunity to see some of the problems with the criminal justice system in Virginia. Although as a member of the Committee of Revisors he attempted to revise the criminal law in his home state and have capital punishment abolished for all crimes (except treason and willful murder), he couldn't accomplish this.

But Jefferson did set forth proposals for more humanitarian treatment of offenders. Like Beccaria, he proposed a new classification of crimes for Virginia and then that the punishments be suited to each of the three categories of crime. Beccaria's influence was clear when Jefferson articulated three cardinal principles. First was that punishment is an evil in itself and is justified only insofar as it rehabilitates criminals and prevents future crimes; also, that the death penalty should be the last resort. Second was that punishments more severe than necessary defeat their purpose. Third, crimes are more effectively prevented by the certainty of punishment—not by the severity of punishment (Peterson, 1987). Jefferson's proposed bill, the "Bill on Crimes and Punishments," for a more humanitarian approach to criminal justice in Virginia was defeated twice by the House in the mid-1780s. However, a decade later, some of the features of Jefferson's bill were finally enacted into law.

ARE BECCARIA'S IDEAS STILL RELEVANT TODAY?

The classical view of criminology has never disappeared either in America or in some other countries. Rational choice theory takes many of the classical ideas and makes them perhaps even more relative to today's issues. Rational choice theory is no different from the principles espoused by Beccaria: individuals have free will, and using this free will, they make rational choices to either commit—or refrain from committing—crimes. Rational choice is governed by attempts to increase pleasure and avoid pain. The government has the right and duty to preserve what is in the best interest of most people in a society. And swift, severe, and certain punishment will give the government control over the people's choices and behavior. By threatening and using incarceration and punishment, crimes can be prevented because people will fear getting caught and punished.

Contemporary proponents of rational choice theory follow in Beccaria's footsteps by agreeing that the threat of punishment leads both to specific deterrence and general deterrence. The philosophy of specific deterrence is that by punishing offenders, often with imprisonment, they are less likely to commit new offenses. In general deterrence, the idea is that when some offenders are punished, perhaps severely, it will deter others from committing a similar offense. Although Beccaria did not write in depth about general and specific deterrence, he did write in a general manner about the use of laws and punishment. He stated that if punishment is certain and prompt, the general public and specific criminals will be deterred from committing crimes. In other words, we can see that Beccaria has had a large and lasting impact on the field of criminal justice.

WHY BECCARIA AND *ON CRIMES AND PUNISHMENTS* IS REMEMBERED TODAY

The acclaim that Beccaria received for *On Crimes and Punishments* was not necessarily because what he wrote was new or original. But what it did do was submit in a clear and fairly well-reasoned manner a cry for reform

in the administration of justice (Monachesi, 1973). The book advocated changes in the criminal justice system that were generally desired by and supported by public opinion at the time.

And Beccaria's treatise appeared at the very time that countries in Europe—and the colonies in what would become America—were revolting against despotism and absolutism (Monachesi, 1973). Europe, particularly, was ready for this book.

But after it was published in 1764, Cesare Beccaria's literary output abruptly ended. Romantic rumors, perhaps mostly fueled by Beccaria's social awkwardness and his retiring nature, led to speculation, especially in countries other than Italy, that his sparse output of books and writings were somehow due to political suppression. The real reason why there were no subsequent books, of course, was that he lacked the emotional strength and resources to write more treatises.

After his death in 1794, Pietro Verri petitioned the city of Milan to erect a "Monument to the immortal Beccaria" (Paolucci, 1963, p. xvi). That didn't happen. Today, however, he is remembered as a literary champion of the cause of humanity and, for many, as the Father of Criminology.

QUESTIONS FOR DISCUSSION

1. In addition to the examples given in this biography, in what other ways might Beccaria's influence be seen today?
2. Although Beccaria was advocating for prison reform, what are lasting prison reforms for which he could be responsible?
3. Thinking of well-known politicians and legislators, who might be said to be a follower of Beccaria and his ideas?
4. Which arguments that Beccaria makes against the death penalty seem the most effective?

IMPORTANT TERMS

Academy of fists: Pietro Verri and Alessandro Verri, Beccaria's friends, formed a society that was called the "academy of fists," which was a forum for their advocacy for political, social, and literary reforms.

Enlightenment philosophers: The Enlightenment was the period in the history of Western thought and culture that stretched from about the mid-seventeenth century through the eighteenth century. The Enlightenment philosophers, which included both French and English authors such as Montesquieu, Helvetius, Diderot, Buffon, and Hume, called for revolutions in science, philosophy, society, and politics. Enlightenment ideals included freedom and equality for all based on principles of human reason.

Deterrence: Deterrence is the threat of punishment to influence people to avoid criminal acts.

Classical theory: Classical theory comes from the classical school of thought in criminology, which emphasizes that people have free will and are able to calculate whether they should or shouldn't commit a crime.

Rational choice theory: While fundamentally based on the classical theory of criminology, rational choice theory assumes that the criminal offender's behavior is purposeful and is intended to benefit the offender in some way.

REVIEW QUESTIONS

True or False

1. Cesare Beccaria may well be considered the Father of Criminology.
2. Cesare Beccaria was a member of a revolutionary group called the "academy of fists," which advocated overthrowing the Italian government.
3. Beccaria published his book *On Crimes and Punishments* anonymously because Beccaria was fearful that he was too bold in his recommended reforms and he might get into trouble.
4. Cesare Beccaria is credited with being a classicist, which means, in criminological theory, that he believed people have free will and make rational decisions.

Multiple Choice

5. Beccaria's proposals for punishment were predicated on the idea that people are rational and weigh the pros and cons of committing a criminal act. Therefore, Beccaria believed that if punishment is both swift and severe enough, then
    a. He will commit a criminal behavior.
    b. He will desist from offending.
    c. He will spend a considerable amount of time calculating the benefits and risks.
    d. He will use the insanity defense.
6. *On Crimes and Punishments* created a great deal of both interest and controversy in Europe when it was published because
    a. The concept of due process, as we know it today, literally did not exist.
    b. Torture was never used to elicit confessions.
    c. Punishment was severe, and the death penalty was frequently used as a punishment.
    d. The criminal justice system in Beccaria's time was modern and fair.
7. There is good evidence that many of America's founding fathers carefully read Beccaria's *On Crimes and Punishments* writings and that his work
    a. Had little influence on the founding fathers.
    b. Resulted in America abolishing severe punishment.
    c. Led James Madison to reject Beccaria's ideas on punishment for criminals.
    d. Helped in shaping America's early history and the creation of the Bill of Rights.
8. In writing his autobiography, Thomas Jefferson gave credit to Cesare Beccaria's book for being the inspiration for
    a. Jefferson's antislavery position.
    b. Why Jefferson favored capital punishment.
    c. How Jefferson was opposed to the death penalty.
    d. Jefferson's beliefs about economic matters.

FOR FURTHER READING

Beccaria, C. (1963). *On crimes and punishments*. Englewood Cliffs, NJ: Prentice Hall.

Bessler, J. D. (2014). *The birth of American law: An Italian philosopher and the American Revolution*. Durham, NC: Carolina Academic Press.

REFERENCES

American History. (2012). Thomas Jefferson to John Norvell Washington, June 14, 1807. Available: http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl179.php

Beccaria, C. (1963). *On crimes and punishments*. Englewood Cliffs, NJ: Prentice Hall.

Beirne, P. (1993). *Inventing criminology: Essays on the rise of "Homo Criminalis."* Albany, NY: State University of New York Press.

Bessler, J. D. (2014). *The birth of American law: An Italian philosopher and the American Revolution*. Durham, NC: Carolina Academic Press.

Bessler, J. D. (2012). *Cruel & unusual: The American death penalty and the founders' Eighth Amendment*. Boston, MA: Northeastern University Press.

Bessler, J. D. (2009). Revisiting Beccaria's vision: The Enlightenment, America's death penalty, and the abolition movement. *Northwestern Journal of Law and Social Policy, 4*(2), 195–328.

Maestro, M. T. (1942). *Voltaire and Beccaria as reformers of criminal law*. New York, NY: Columbia University Press.

McCullough, D. (2001). *John Adams*. New York, NY: Simon & Schuster.

Monachesi, E. (1973). Cesare Beccaria. In H. Mannheim (Ed.), *Pioneers in criminology* (2nd ed., pp. 36–50). Montclair, NJ: Patterson Smith.

National Archives. (n.d.). *Thomas Jefferson*. Founders Online. Available: http://founders.archives.gov/documents/Jefferson/03-10-02-0311

Newman, G., & Marongiu, P. (1990). Penological reform and the myth of Beccaria. *Criminology, 28*(2), 325–346.

Padover, S. K. (1967). *The writings of Thomas Jefferson*. Hartford, CT: Easton Press.

Paolucci, H. (1963). In C. Beccaria, *On crimes and punishments* (pp. ix–xxiii). Englewood Cliffs, NJ: Prentice Hall.

Peterson, M. D. (1987). *Thomas Jefferson and the new nation*. Norwalk, CT: Easton Press.

Schwartz, D. A., & Wishingrad, J. (1975). The Eighth Amendment, Beccaria, and Enlightenment: An historical justification for the Weems v. U.S. excessive punishment doctrine. *Buffalo Law Review, 24,* 784–835.