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VARIETIES OF ENLIGHTENMENT CRIMINOLOGY

Beccaria, Godwin, de Sade

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THIS article aims at a fundamental reassessment of the nature and complexity of Classical criminology, and of the radical pioneering role usually assigned to Cesare Beccaria (1738–94). It will here be proposed that Beccaria was a deeply conservative figure who sought to create a criminological system which evaded the dangerously revolutionary and materialist implications of Enlightenment thought. Whatever his original intentions, the result of his work was the creation of a bureaucratic tool. That a thoroughly revolutionary criminology was possible at this time is shown by the extensive writing of the anarchist William Godwin (1756–1836) and the libertine atheist the Marquis de Sade (1740–1814).

The importance of Beccaria's Classical school is beyond question. It was the first naturalistic explanation of crime—one that did not base itself on concepts of sin and demonology. Histories of criminology customarily begin with the publication in 1764 of Beccaria's *Dei Delitti e pene* (*Of Crimes and Punishments*), the immensely influential work which largely inspired the transition from reliance on capital and corporal punishment to dependence on incarceration (see for example Radzinowicz 1966, pp.1–20; Vold, 1979, pp.18–34). Beccaria also emphasised the necessity to control administrative discretion in order to defend individual rights, and argued that fixed and predictable sentences were the best way to ensure an element of certainty for promoting deterrence. After a century of Positivism and the rehabilitative ideal, such ideas have once again come into vogue, so that there was talk in the 1970s of a "Neo-Classical" revival in penology. Classicism is a central issue both for the history of criminology, and for its contemporary development.

Modern accounts of Classical criminology are often descriptions of Beccaria's life and work (Phillipson, 1970). Professor Elio Monachesi wrote in 1955 that "It is not an exaggeration to regard Beccaria's work as being of primary importance in paving the way for penal reform for approximately the last two centuries" (Monachesi, 1972, p.49. Compare Maestro, 1942 and 1973; Heath, 1963; Radzinowicz and King, 1977, pp.1–9; Newman, 1978; Vold, 1979, pp.18–34; Cullen and Gilbert, 1982, pp.28–32, 52–53). Beccaria's influence is undoubted: *Of Crimes and Punishments* achieved instant popularity, and it played a central role in developing concepts of law and crime in both the American and French Revolutions (Wills, 1978, pp.152–153; Hufton, 1980, p.91).

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But opinions differ as to the profundity of Beccaria's thought, and criticisms have been made by the radical criminological school which has emerged in the last two decades. It was *The New Criminology*—one of the foundation texts of the new school—which pointed out how many issues had been neglected by Beccaria, so it is appropriate to summarise here the argument of this work. First, the radicals point out that the Classical school erred in defining crime only in terms of acts which characterise the poorer classes, so that little attention is paid to the "crimes of the powerful". More important, Classicism assumed a consensus within society about the rationality of property and inequality; it assumed free will on the part of people influenced by their environment; and it failed to understand that the Classical scheme could only be applied justly where there was social and economic equality. *The New Criminology* suggests that Beccaria partially perceived these contradictions, but failed to press them to their logical conclusions. It was then left to nineteenth-century science to understand human behaviour as a function of social environment, and to replace Beccaria's views with a more materialistic and deterministic theory in a "Positivist Revolution" (Taylor *et al.*, 1973, pp.1–10). The modern radical view therefore implies that Beccaria suggested policies extremely advanced and humane for his own day, but lacked the scientific framework to embrace a truly "rational" view of behaviour.

But it is possible to propose a very different etiology for "Classical" theories. It will be argued that the intellectual tendencies of the mid-eighteenth century were apparently moving towards something very like the "Positivist Revolution" in criminology. By about 1760, there were many advanced thinkers who already saw behaviour from a standpoint at once atheist, materialist and determinist. Beccaria's importance was not as a progressive or a revolutionary writer, it was that he succeeded in diverting contemporary thought on crime and punishment in a deliberately conservative direction. His sudden fame can be attributed to the relief of educated society that it was possible to hold rational, "enlightened" views on human behaviour without having to accept radical materialism. Obviously, it is not suggested here that Beccaria was in some sense a conscious "tool of the state", a mouthpiece for a cynical ruling class. His aim was not simply to curry favour with the powerful, still less to make his book a best-seller. He was motivated by an obvious humanitarian concern for current injustices. It just happened that his modest, limited and conservative tract was widely seized upon because it filled an urgent social need.

By the 1750s, Enlightenment thought had advanced to the point at which scholars almost despaired of finding a firm and rational basis on which to justify virtue or obedience to law. Religion had failed—both traditional and liberal—and purely secular solutions also seemed ineffectual. It was at this point that Beccaria published a new synthesis of well-established ideas of contract theory and mutual self-interest, but without the materialist doctrines with which such ideas were often presented. Religion said that crime was inevitable. Enlightened philosophy

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said it could be cured, but at the cost of accepting thoroughgoing scientific determinism. Now, Beccaria presented ways of removing crime without invoking either extreme. His work achieved great popularity precisely because of its extreme caution on dangerous issues. He had succeeded in providing Enlightenment ideas with an acceptably non-subversive face. This conservative scholarship appealed to absolutist states, to whom it provided an ideological tool of great strength, and modern radical scholarship has also suggested its compatibility to the emerging commercial and industrial order (Humphries and Greenberg, 1981; Rustigan, 1981; Takagi, 1981; Hogg, 1981).

Beccaria's work was only one of the systems that could be erected on Enlightenment foundations, and it will be shown that conservatives of the period were wise to fear the possible consequences of pursuing such ideas to their logical conclusions. Two other criminological systems will be examined, both equally based on the mainstream of Enlightenment thought, yet both far more radical and dangerous to the established order than what we know as mainstream "Classicism". These other systems are the very sophisticated radical theories of Godwin and de Sade.

"Classicism"—the system pioneered by Beccaria and developed by Bentham—was not therefore the only significant Enlightenment view of criminology. Enlightenment criminology was almost as broad a spectrum as that of the twentieth century. To see Classical views alone as representing the side of reform would be like seeing the Californian treatment model of the 1950s as the sole trend in twentieth-century penology. Beccaria's views were only one part of a spectrum that stretched from "mediaeval" savagery and repression on one extreme, to anarchist views like those of current radicalism on the other. The problem is to explain why Beccarian opinions survived as the major representation of eighteenth-century thought on crime: it certainly was not the most faithful heir of the Enlightenment.

Morality and the Enlightenment

Beccaria was working at a time when the mainstream of European philosophy was making it more and more difficult to find rational bases for good conduct. During the eighteenth century, religious dogma and supernatural interpretations had become increasingly unpopular, so that God had become a very distant figure. Before 1740, there had been an optimistic phase when it was believed that there was a benevolent master plan for mankind, guided ultimately by God and manifested through Nature. Religion and self-interest both tended to the same ends, of virtue, pleasure and human happiness. However, this had been a very difficult attitude to sustain, particularly considering the seemingly random bloodshed of the 1750s—the wars in Europe and America, the great Lisbon earthquake of 1755 (Gay, 1966–69). By the mid-century, there was a widespread belief that there was no plan or purpose for humanity, no guiding hand of God or Providence (Wickwar, 1935). Nature might simply be a neutral machine, not caring whether humanity prospered or vanished

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into extinction, and certainly exhibiting no concern for any individual. This was the despairing message of d'Holbach's *Système de la Nature* of 1770,. but such attitudes had been familiar at least from the mid-1740s (Hampson, 1968; Smith, 1965).

The study of man also tended to suggest a purely materialistic view, in which neither sin nor the supernatural could play a part. At the start of the century, Locke had shown how ideas and values were the result of sense-impressions, with the corollary that improving the social or educational environment could create a better humanity. In the materialistic 1750s, this idea was extended by Condillac to suggest that the mind itself was "merely an agglomeration of ideas which were themselves sense-impressions". Morality and reason were products of environment, a view which strongly tended to lead to moral relativism (Hampson, 1968, pp.26–27, 110–118).

By the 1760s, Enlightenment science and philosophy had reached something like despair. As Professor Hampson summarised their views: "Chance, or the blind determinism of matter in regular but aimless motion, appeared to regulate the operation of the universe and the destiny of man" (Hampson, 1968, p.186). In 1748, Montesquieu's conservative *Spirit of Laws* stressed how behaviour was conditioned by social development, which in turn resulted from economic, geographical and political factors (Montesquieu, 1966). Laws were "the necessary relationships which are determined by the nature of things". In the same year, Hume made a very strong case against the possibility of free will—and therefore (perhaps) against the existence of moral evil. The philosophy of these years was both materialistic and determinist, and it achieved its most adventurous expression in the *De L'Esprit* published by Helvetius in 1758 (Hampson, 1968, pp.119–127; Smith, 1965, pp.13–14).

Beccaria's contemporaries were therefore aware of the range of theories which would influence the development of criminology in the mid-nineteenth centui y. In particular, they were well used to the idea that behaviour (good or evil) arose from predetermined conditions in the social environment. This tended to destroy any concept of moral responsibility, and it would be this dilemma which in the next century would lead to the theories of Positivism and rehabilitation (Jenkins, 1983a). It would prompt others to suggest that, if crime arose from social conditions, then social revolution might eliminate crime and misery. Might different economic environments also give rise to different moralities for different classes? Clearly, these theories were approaching the Marxist concept of class ideologies; and Marx and Engels drew heavily on the Enlightenment materialist tradition (Taylor *et al.*, 1973, pp.11–23; McDonald, 1976; Engels, 1961).

The Enlightenment philosophers were on very dangerous ground. If there were no higher standards, why should people not seek pleasure, regardless of whether acts are labelled "good" or "evil"? Already in 1750, La Mettrie the materialist had noted that criminals might be just as happy as the virtuous. Again, Nature could not justify virtue; but might

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it justify evil? Goethe wrote that Nature was "an eternally devouring, eternally regurgitating monster". Might not the criminal or murderer therefore be acting in accordance with its desires (Hampson, 1968, pp.123, 190)?

Moreover, if reason was the only criterion to be applied to society, how could one justify property, authority, government, inequality? New justifications had to be invented for such things, as revealed religion could no longer be invoked with any confidence (Jenkins, 1983b, pp.211–212). The commonest theory found to meet this need was that of the social contract, whereby people had initiated society for self-defence, and to put an end to the "war of all against all". But yet again, there was a serious difficulty. By the 1760s, the most sophisticated version of this theory was that of Helvetius, whose view had the advantage of being rational and secular. It explained obedience to the law in terms of mutual self-interest, and judged actions by the rational standards of utilitarianism. But this theory had grave problems, in that it was intimately bound up with Helvetius's radical views of materialism and determinism. Was there really a simple choice between religious dogma, and a deterministic rationalism which made man the servant of his senses? It was for many an undesirable choice (Hampson, 1968, pp.125–127; Philippson, 1970, pp.44–47).

Crime, Punishment and Beccaria

The views of the Enlightenment had a very wide appeal to educated opinion, even among those who were not prepared to go all the way to atheism and determinism. The newer and more humane views also had social and political appeal. They provided a propaganda weapon for the intelligentsia and the bourgeoisie to attack the Church and aristocracy, classes whose power derived wholly from traditionally "irrational" and religious foundations. This attack was also supported by "Enlightened" monarchs, who stood to gain from the weakening of clerics and lords. Furthermore, by supporting legal or penal reform, absolutist rulers also proved that their power did not rest solely on tradition and heredity: their regimes had social utility, and won the support of influential writers like Voltaire or Montesquieu (we are already in the age when international public relations were an important consideration of policy). Finally, as Professor Rustigan has shown, the humanisation of punishments suited the interests of middle-class groups, and their need for the more efficient protection of property (Rudé, 1972, pp.195–217; Hay et al., 1975, pp.57–58; Foucault, 1977, pp.75–78; Rustigan, 1981).

From the 1740s, Enlightenment theories about punishment began to be put into practice. Elizabeth of Russia abolished capital punishment; Frederick of Prussia banned torture. In France, Voltaire led assaults against a series of acts of judicial barbarity—the Calas affair of 1762, in which a Protestant was falsely accused of murder; the de la Barre case of 1766, when an aristocrat was savagely punished for irreverent and blasphemous acts. As yet, there was little systematic theory about how penal policies should be amended by the new ideas, though Montesquieu's

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Spirit of Laws had made some suggestions. It was this gap that Beccaria's book filled in 1764 (Beccaria, 1963; Maestro, 1942, 1973, p.18; Foucault, 1977; Weisser, 1979).

Of Crimes and Punishments did not initiate reforming concern about the justice systems of Europe; and, what is more, it certainly did not put forward the most advanced contemporary thought on the subject of crime and punishment. Quite the contrary: there is something of an effort not to explore the suggestions made by thinkers who had made a profound impact on Beccaria. The reformer emerges as a paradoxical figure, who produced an essentially conservative book in a very radical ambience. For instance, Beccaria's closest friends included Pietro Verri, whose determin-istic theories about the origins of human behaviour would be bitterly criticised by orthodox Catholics (Manzoni, 1964; Maestro, 1973, pp.4–12). When Beccaria listed the authors who had influenced him, he mentioned especially Montesquieu, Rousseau, Helvetius, Hume and Diderot, all of whom had faced severe criticisms for the radicalism of their writings, and who often had trouble finding a printer. In the late 1760s, his friends in Paris would include Diderot and d'Holbach, men who had passed from simple scepticism to outright atheism (Beccaria, 1963, p.6; Philippson, 1970, pp.15–18). Such connections help to explain the remarks of modern scholars that Beccaria indulged in "extremely rationalistic presupposi-tions" or that he wrote with "the iconoclastic fury of youth, all the revolutionary enthusiasm of the enlightened zealot" (Manzoni, 1964, p.xii).

Such claims are implausible, given the place and date at which he was writing. Italy in the 1760s was more liberal than it had been a century earlier, but Beccaria knew well what could happen to radicals who attacked the Church or the established order. The historian Giannone had recently been imprisoned for such a mistake, and Beccaria himself wished "to defend humanity without becoming a martyr". He was even conscious of the more distant shade of Galileo (Maestro, 1973, p.41; Cochrane, 1973, pp.419–483). His sensitivity to charges of radicalism was extreme, and this explains the short preface added to later editions of his work asserting that he was neither an infidel nor a revolutionary. To a modern reader, this is puzzling. Why should he need to assert this obvious fact? (Beccaria, 1963, pp.3–7.)

Beccaria's book was a very innocent piece, but it was handling debates which had led others to much more dangerous conclusions. To understand this, it is first necessary to study the intellectual framework of *Of Crimes and Punishments,* and then see how Beccaria has selected his material. First, his idea of society was based on contract theory: laws were made by compacts of free men, and the guide to be applied in the making of law was utility, "the greatest happiness of the greatest number" (*ibid.,* pp.7–13). Society had originated in an ancient state of war, which had led people to band together for mutual defence. In society, they yielded up portions of their freedom to the sovereign, who used punishment to prevent the tyranny of one individual over another. The means for this

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were "tangible"—that is, implying that conduct was guided by what was felt through the senses (*ibid.*, pp.10–12). It seems at first as though Beccaria were asserting essentially materialist doctrines. A certain social radicalism is also suggested by passages that say laws "have always favoured the few and outraged the many" (*ibid.*, p.42). There would appear to be strong reasons for the vigorous attack on this work by Italian clerics, and by conservative jurists. If it had appeared at any time up to the early eighteenth century, it would have been a revolutionary tract (Venturi, 1971).

But it appeared during the 1760s. At this time, the only line in the book which could have caused surprise was one which stated that the "terrible and perhaps unnecessary right" of property caused poverty, which in turn led to crime. However, there is strong evidence to believe that this was a printer's error, and Beccaria was merely stating that property was a *necessary* and fundamental right (Beccaria, 1963, p.74, n.39). Otherwise, he used a moderately secular framework to explain the foundation of society in an "original contract", but in the most conservative sense of that idea. He must have been aware that in 1762 Rousseau's *Social Contract* had used the same theory to assert that society came before government, and therefore had the right to dissolve governments by the democratic will (Rousseau, 1967). Early in the next century, the American criminologist Edward Livingston would take up Rousseau's suggestion, and use a strongly democratic contract theory to suggest that government could not withdraw inalienable rights. This American "Classicist" was also much more prepared to assert that laws were often abused in the interests of the ruling class, and he denied that absolute sanctity of property had been granted by the "Original Contract" (Mouledoux, 1972, pp.73–74). In Beccaria's work, these ideas remain largely unexplored. By the 1760s, it would be difficult to imagine a less controversial or more cautious version of contract theory.

Again, Beccaria made a statement epitomising utilitarian doctrine, in the phrase that would be made famous by Bentham, "the greatest happiness of the greatest number". But it appears here shorn of the extreme materialist connotations which it would be given by Helvetius or d'Holbach. It was d'Holbach who said that "the only known norm by which reason can judge men and things is their real and lasting utility to our species" (Wickwar, 1935, pp.125–126; Wills, 1979, pp.149–159). In consequence, every attempt must be abandoned to discover God's will about human affairs, nor could a supposed after-life guide human conduct in society. Helvetius too would use social utility as the sole guide of morality, but with an even more controversial implication. His materialism reduced humans to "pleasure-pain calculating machines", who could be mechanically driven by laws or punishments to be good citizens; but, if pleasure was the only goal of the mind, why should this not be achieved through vice or crime? There was no easy answer, and Helvetius's modern biographer comments that this posed the philosophical choice of one or two extremes: by the 1780s, one could choose either de Sade's nihilism or

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extreme authoritarianism. It was an unpleasant dilemma, which Beccaria simply ignored—and did so even while claiming that Helvetius was one of the greatest influences on his work (Smith, 1965, pp.14, 223).

All Beccaria's sources raised very difficult questions, which could remove the basic justifications for the working of criminal justice systems. They suggested that people were not responsible for their acts, they they had been led to crime by social injustice, and perhaps that there was no rational reason to prefer virtue to crime. Beccaria provided an acceptable framework which most could accept. It began by using radical language—the social contract, *sensationalism* (in modern terms, "behaviourism"), utility as the guide of conduct. There were enough suggestions of concern about social inequality to appease radicals; but all are presented in an anodyne form. Time after time, we see Beccaria shying away from far-reaching reforms. For instance, he suggested the abolition of capital punishment, which would mean more use of prisons. In the 1740s, La Mettrie's materialism had stressed how the human organism could be altered by the mechanical discipline of such an institution, and Professor Foucault has shown how such theories influenced the invention of the new prison at the end of the century. There was no reason why Beccaria should not have explored these ideas—except that, if he did, he would have had to acknowledge the materialist sources on which he was drawing (Foucault, 1977).

For Beccaria's contemporaries, as for the Positivists of the next century, crime was determined by external circumstances. Helvetius himself had said that moral laws were just as susceptible to rational inquiry as physical laws, and just as predictable (Wickwar, 1935, p.53). For a scholar of the 1760s to create a criminological system based on belief in free will was reactionary, and showed a remarkable willingness to ignore the findings of current social science and psychology. Equally, it is surprising that Beccaria included so little criticism of social inequality as a cause of crime. It would have been by no means unusual for a writer at this time to attack extreme inequality of property, as had Rousseau. Even the conservative Adam Smith remarked that government—and, by implication, criminal law—was intended "for the defence of the rich against the poor" (quoted in Jesilow, 1982, p.319). At the other extreme, the true Enlightenment radicals had already passed to the stage of attacking the right to property *per se*. Once again, Beccaria's Classicism does not appear to be the most radical system that could have been conceived in a benighted and pre-scientific age. It was exactly the kind of moderate and tentative theory that could have been expected from an aristocratic liberal deeply aware of the limitations imposed by one of the most effective systems of censorship of the time. Beccaria knew the radical alternatives to his theory, and may have wished to explore them—but he could not. It was left to the Positivists of the next century to do so.

Beccaria and his Sources

By 1766, Beccaria's associate Pietro Verri had become extremely jealous of the success of *Of Crimes and Punishments*, and he began to make threats

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to expose Beccaria as a charlatan and plagiarist. Allegedly, Verri himself had inspired the work, while all Beccaria had done was to borrow passages from Montesquieu, Helvetius, Voltaire and Graevius. Verri's claim as it stands is extremely difficult to accept, but a study of the way in which Beccaria used his sources reveals two things: first, he was expressing little that was novel; and second, where he did handle material similar to other writers, he gave it a very conservative slant. It is not suggested that Beccaria was deliberately "sanitising" radical material in order to create a system that would appeal to governments of his day. However, he was forced to be extremely careful in his selection and use of contemporary writers (Philippson, 1970, p.20; Beccaria, 1963, p.xvii).

Naturally, Beccaria found himself covering some well-trodden ground, and some of his observations were so commonplace that it is often difficult to isolate an exact source for them. For instance, when he related the severity of punishments to the repressiveness of a country's legislation and the degree of social injustice, he might have been borrowing the idea either from Montesquieu's *Spirit of Laws* (1748) or Rousseau's *Social Contract* (1762). Repeatedly, we find that ideas associated with Beccaria in Enlightenment debate had originated with Montesquieu, Voltaire, Locke, or else an ancient writer. Montesquieu was an especially influential source for discussions on the separation of powers within a Constitution, on the nature of religious and moral offences, on treason legislation and on torture (such reliance was appropriate given Montesquieu's strong conservative bent). Beccaria had been preceded by Rousseau in his criticism of the frequent use of pardons. Voltaire had attacked existing criminal law systems for their inadequate standards of proof, for secret accusations, the use of torture and excessive recourse to capital punishment—and many other abuses which we find mentioned in Beccaria's work. *Of Crimes and Punishments* was a work of synthesis, not especially one of creativity (Maestro, 1942; Philippson, 1970, pp.51–53).

But Beccaria did not take his ideas intact. For instance, most of the material for his chapter on torture was collected by Pietro Verri, who would later expand this subject into a book. Verri studied historical examples of torture being used to secure confessions to non-existent crimes, and evolved a theory that it was the social and scientific level of a period which determined the extent of the use of torture. He was therefore following the materialists in suggesting that social foundations created legal abuse—and his determinism was severely criticised by nineteenth-century conservatives (Manzoni, 1964). But Beccaria used the material on torture without the theoretical framework. Torture simply illustrated ignorance and inhumanity, not a deterministic theory of society. Again, we can see an effort to avoid serious controversy.

This can be seen most clearly if we compare Beccaria's view of ecclesiastical atrocities with the discussions found in Voltaire or Montesquieu. Beccaria was remarkably restrained here, for he never once mentions the Church overtly. All he can do is attack past persecutions of crimes "wholly imaginary" . . . "impossible crimes, fabricated by timid

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ignorance" (presumably witchcraft). Again, he criticises the punishment of people for "being true to their own principles" (heresy). Indeed, in a gruesome chapter describing the savage punishment of such offenders for "crimes that have covered Europe with human blood" it is only called "a particular kind of crime". We are left to assume that he meant to discuss heresy and witchcraft, but was restricted by the harsh censorship of Italy (Beccaria, 1963, pp.9, 42–43, 86–87). By contrast, Montesquieu used more powerful language to attack the prosecution of such crimes, and he explicitly names the offences he was dealing with. Moreover, his attack on obscurantism is buttressed with familiar anti-clerical stories from the barbarous Middle Ages (Montesquieu, 1966, pp.187–191; Montesquieu, 1973). Voltaire spent many years fighting the clerical persecutions of protestants or free-thinkers, urged the abolition of offences such as sacrilege, heresy and blasphemy, and campaigned for the suppression of ecclesiastical courts. Once again, Beccaria is seen to have been on the reforming side—but definitely as a conservative force for reform (Philippson, 1970, pp.51–53).

Beccaria's Influence

If Beccaria's work was neither original nor adventurous, why did it have such immediate impact? Every history of penal reform stresses its influence throughout Europe, and how Beccaria and Bentham became the founders of what would remain for a century the main Western school of criminology. It may be suggested that the book was a synthesis of progressive calls for reform, in language likely to have very widespread appeal. It allowed the educated to understand the case for reform, untrammelled by the extreme radicalism which might so easily have become associated with such questions. Again, it helped "Enlightened" monarchs by assuring them that they could readily justify their existence as reformers and humanitarians—but without having to accept beliefs which would threaten all morality and property. Beccaria himself averted charges of radicalism by writing that "the great monarchs, the benefactors of humanity who rule us, are pleased to hear truths expounded, even by an unknown thinker . . .". When the Italian clergy attacked Beccaria, he was defended by the conservative and authoritarian Imperial representative, Count Firmian. Perhaps despite himself, he found himself a close ally of the established order (Beccaria, 1963, pp.xi, 4).

Beccaria's views came to epitomise humane reform from above within the justice system. They were first adopted by Enlightened absolutist monarchs, and were later disseminated alongside the ideals of the French Revolution. The first half of the nineteenth century saw the triumph of Classical ideals in penology, until they came under scientific assault from early Positivism. From the 1820s, evidence from various sources began to accumulate to suggest that human behaviour was determined by social, economic or biological factors; if so, ideologies based on free will and rational hedonism were clearly inappropriate (McDonald, 1976).

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But was this new synthesis one which had actually been delayed by the conservative nature of Beccaria's writings? Of course, speculation on "what might have been" is perilous, and the Enlightenment lacked the firm statistical basis on which Positivism was based. On the other hand, there is evidence to support the hypothesis proposed here. It can be shown that other writers on crime and punishment actually did pursue the lines of inquiry suggested by the materialists, and by the radical theorists of the social contract. The conclusions they reached during Beccaria's lifetime were based on the same Enlightenment assumptions as Beccaria's, and yet were far more fundamental in their attack on social conventions.

The criticism can be made that it is unfair to compare Godwin and de Sade with Beccaria. They were writing long after *Of Crimes and Punishments*, in a time of dramatic political upheaval. How can it possibly be claimed that such radical theories could have evolved as early as the tranquil 1760s? However, it can easily be shown that these radicals use no ideas as sources that were not familiar to Beccaria and his contemporaries. But for the censorship of the time, the "radical criminology" of the revolutionary years could have emerged as early as the 1760s.

The Criminology of William Godwin

The Classicism evolved by Beccaria has appropriately been described as "administrative and legal criminology" (Vold, 1979, p.26). Beccaria's contribution was to suggest to governments and ruling élites that there could indeed be an administrative or bureaucratic solution to crime, that laws and penal reforms could actually achieve something positive within the existing social framework. But he merely delayed the day when it would be widely accepted that the solution to crime lay only in fundamental social change. This was the dilemma which would be portrayed effectively in the 1790s by William Godwin.

Godwin achieved fame as a radical not only for his writings, but for his family circle: he was the husband of the pioneer feminist Mary Wollstonecraft, the father of the author of *Frankenstein*, and a close friend of Shelley. In his own right, he was most celebrated for his political treatise of 1793; the *Enquiry Concerning Political Justice*, in which can be found most of the doctrines of the anarchism of the next century. This appeared in the turbulent years following the French Revolution, but it was not just a result of that crisis. Godwin had been forming his ideas from 1781, when he had discovered authors like Helvetius, d'Holbach, Rousseau and Hume—essentially the same influences to which Beccaria had been subject. But while Beccaria was careful to use his material in a moderate way, Godwin actually carried these sources to their logical and revolutionary conclusion (Brown, 1926; Woodcock, 1963, Chap. 3; Godwin, 1976).

Godwin was an unashamed materialist, who believed that human behaviour arose from social conditioning. He believed in determinism, the power of "Necessity", although he followed Hume in allowing some role for human choice within the framework of causality. His version of contract theory was both adventurous and novel. He accepted that there

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had been some such contract, although he denied that humanity was necessarily subject to any precedents, even of an "Original Contract". Also, he suggested that the people who made the contract might have been gravely disappointed by the atrocities which governments had committed since. For Godwin, humanity progressed towards perfectibility, towards the stage where people could manifest their natural disinterestedness and benevolence, until the day when they could live according to the pure laws of Nature. Rousseau had been quite correct to describe the idyllic state of the "noble savage" in the time before civilisation; but Godwin wished to suggest that this was an ideal which could also be reached *after* the extinction of government and property (Godwin, 1976, pp.69, 75–76, 496–497 note).

By this point, Godwin had moved much further than Rousseau, further than the radical politics of the Enlightenment, and had arrived at true anarchism, which he saw as the natural end of society. It was from this perspective that he launched his attack on punishment and the criminal justice system, in terms which mark a very striking contrast with the work of Beccaria. It is a fascinating demonstration of how two such different writers could follow the same sources and stay within one broad tradition, and yet reach such totally different conclusions.

Godwin devoted the whole of Book VII of *Political Justice* to "Of Crimes and Punishments", the title of which almost certainly refers back to Beccaria's work. Book VII represented almost a tenth of the whole work, a substantial proportion justified because of Godwin's view that punishment and criminal justice were at the core of any political debate. They were the state's last line of defence, and its ultimate *raison d'être*. Godwin rejected all the claims that could be made in favour of the state or its justice system, however extensively they might be reformed. Laws would inevitably favour the rich, as was proved by examples like the taxation or game laws in England or France, or the tendency of laws not to punish socially harmful acts by the rich. Crime was by definition composed of "offences which the wealthier part of the community have no temptation to commit" (Godwin, 1976, pp.631–700).

Godwin believed that crime arose from the property system, as inequality caused poverty. Many people were "continually prompted by disappointment and distress to commit violence upon their more fortunate neighbours" (*ibid.*, p.87). Crime rose in proportion to social inequality. "The fruitful source of crimes consists in this circumstance, one man's possessing in abundance that of which another man is destitute" (*ibid.*, p.731). The amount of crime, and the brutality of punishment, were inversely proportionate to the extent to which a country followed the natural law of mutual aid: "The more the institutions of society contradict the genuine sentiments of the human mind, the more severely is it necessary to avenge their violation." (We may recall the views of radical criminologists in the 1970s that crime rates reflect the degree of repression necessary to preserve the inequalities of a given society) (*ibid.*, p.673).

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In a society based on gross inequality, it would become necessary to have very severe punishments; and here Godwin draws near to Beccarian ideas, but he retains his characteristic views. He refers to the "humane and benevolent" Beccaria as a pioneer in the attack on barbarous punishments, and includes several passages on Beccarian lines. He opposes capital and corporal punishment, the excessive use of pardons, and the use of law to enforce religious orthodoxy. But it soon becomes apparent that his conclusions are diametrically opposed to Beccaria's, in that he sees no justification whatever for punishment. First, punishment depended on free will and responsibility, and science showed these to be mythical. Assassins were tools of circumstances, no less than the daggers they used. Both were subject to "necessary causes and irresistible motives" (*ibid.*, pp.631–633, 647–653).

Punishment or coercion involved attempts to affect the lowest part of human nature, instead of appealing to higher social instincts. At best, it could only preserve compliance with the simplest minimum standards of behaviour. Punishment "begins with violently alienating the mind from the truth with which we wish it to be impressed." None of the usual justifications for punishment was justified: retribution looked only to what was past and irrecoverable, hence "must be ranked among the most pernicious exhibitions of an untutored barbarism". Incapacitation implied restraint from committing a possible future crime, "the very argument which has been employed to justify the most execrable tyrannies". Deterrence, or general "example", had led to the most extreme brutalities of judicial torture in an attempt to impress the public mind (*ibid.*, pp.635–674).

In all this, Godwin was not in conflict with much of the penological opinion of his age. In the 1790s, American states would begin to follow the example of Pennsylvania and to replace the widespread use of capital and corporal punishment with the institution of imprisonment; and European prisons would begin to be reformed to suit the new "humane" ideals (Ignatieff, 1978; Platt and Takagi, 1981). But Godwin departed massively from the Classical school by his rejection of reformation or rehabilitation as appropriate ideals for a penal system. Coercion could only alienate the mind of the prisoner, regardless of whether this was done with good intentions. It only conveyed a message of "submit to force, and abjure reason. Be not directed by the convictions of your understanding, but by the basest part of your nature, the fear of personal pain, and a compulsory awe of the injustice of others". "To conceive that compulsion and punishment are the proper means of reformation is the sentiment of a barbarian" (*ibid.*, pp.644–669).

Godwin proceeded to attack aspects of contemporary "Classical" reform, notably the "well-intentioned but misguided philanthropy of Mr. [John] Howard" (*ibid.*, pp.676–681). Solitary confinement was "uncommonly tyrannical and severe", because of man's gregarious nature, and it might well be classed as a brutal torture (*ibid.*, p.676). Prison labour was equally barbarous, especially futile work on the treadmill. Godwin summarises

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contemporary prison reform within his own country by writing that "the institution of personal slavery has, within a few years, made a considerable progress in the island of Great Britain" (*ibid.*, p.678 note). It is important to emphasise the prophetic value of this criticism. The trends Godwin describes—reform through solitary confinement and hard work—continued to be the guiding principles of western prison systems until the middle of the next century, when they began to be subjected to criticism of precisely the type Godwin had put forward in the 1790s. Before the ideas of Beccaria and Howard had been fully applied, Godwin had already identified their fatal flaws and presented an impressive critique of Classical assumptions. In so doing, he also influenced the widespread radical movement in contemporary England (Evans, 1982, pp.189–192).

Godwin understood the fact that Beccaria could not bring himself to face, that crime arose from factors within society, and could only be removed by changing that society. For Godwin, property itself was the greatest criminogenic institution. "If among the inhabitants of any country there existed no desire in one individual to possess himself of the substance of another, or no desire so vehement and restless as to prompt him to acquire it by means inconsistent with order and justice, undoubtedly in that country guilt could scarcely be known but by report" (*ibid.*, p.89). Such a society could be created by abolishing government and property, by reorganising society on a decentralised parish level, and by recognising that each person had a duty to support the less fortunate. If anyone broke the rules of the new society, then punishment existed as a temporary expedient—but only in so far as the criminal could be restrained. Godwin never accepted the view taken by later radicals that rehabilitation would be appropriate for a democratic society: "Restrain the offender as long as the safety of the community prescribes it, for this is just. Restrain him not an instant from a simple view to his own improvement, for this is contrary to reason and morality" (p.675. Compare Jenkins, 1982).

The Criminology of the Marquis de Sade

To a respectable propertied person in the 1790s, Godwin's ideas must have seemed a great threat, the *ne plus ultra* of radicalism. But in the same years, there appeared in France a series of books which contained even more shocking ideas. These were the works written by the Marquis de Sade between about 1782 and 1797, culminating in *La Nouvelle Justine* and *Juliette* of the latter year. At first sight, it may seem strange to extract any coherent philosophy from the work of one widely regarded as a depraved monster. When Beccaria's book was published in 1764, de Sade was serving the first of many terms of imprisonment, this time for "excesses" committed in a brothel. But the popular image of de Sade omits much of relevance (Lely, 1970; de Sade, 1965).

De Sade's reputation has continued to grow during the present century, both as a literary stylist and as a philosopher who links the Enlightenment with Romanticism. Much in his personal life belies the "sadistic" image. How, for example, are we to explain why such a figure wrote a pamphlet

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urging the abolition of "the atrocity of capital punishment, because the law which attempts a man's life is impractical, unjust, inadmissible"? It was a system that had never succeeded in repressing crime (de Sade, 1965, p.310). He appealed to "slaughterers, jailers" and others to "prefer the science of understanding man to that of imprisoning and killing him" (de Sade, 1966, p.47). Still more remarkable, he bitterly attacked the institution of imprisonment, which was gaining in contemporary popularity. In particular, solitary confinement makes a man "come out of prison more sly and more dangerous than ever" (de Sade, 1964, p.46). As with Godwin, this was a prophetic insight in the decade in which the Pennsylvania prison system was established—and it left de Sade with a more humane view than either Beccaria or Howard. He urged the new French republican state to adopt far more liberal and permissive laws than the old regime, and not merely for sexual or moral offences (de Sade, 1965, pp.311–315). Few other propagandists of the age (outside the extreme radicals) so fervently urged a reduction of penalties for offences against property. This curious radical advocated a communist state—yet he resigned his judicial office rather than participate in the brutalities of the "Terror" that sought to achieve such a radical solution. Even the extremely pornographic nature of his writings seems less surprising when we understand the strong tradition in late eighteenth-century France of expressing revolutionary sentiments through scatological underground tracts. "Politico-pornography" was a flourishing genre of the time (Darnton, 1976, 1982, 1984).

So de Sade, like Godwin, can be considered as a reformer on the radical wing of Enlightenment criminology, one who pushed to their logical conclusions the speculations of rationalist philosophers. The main influences that we can trace are Helvetius and d'Holbach—the friends of Beccaria and mentors of Godwin—and de Sade's system of belief was predictably atheist and materialist. His great pornographic work *Juliette* includes many pages of some of the most perceptive Biblical criticism written before the present century, and this leads him to conclude that there was no God, no revealed truth. A person was only a material thing, which perished at death. There was no universal cause, and the cosmos was an "assemblage of unlike entities which act and react mutually and successively with and against each other"—an account heavily based on the mechanistic system of d'Holbach and La Mettrie (de Sade, 1966, pp.40–49; de Sade, 1968, pp.43–45, 375–390, 731, 748–750).

This interpretation also applied to human behaviour, which provided the basis for de Sade's "criminology". "All moral effects are to be related to physical causes, unto which they are linked most absolutely: the drumstick strikes the taut-drawn skin and the sound answers the blow" (de Sade, 1968, p.15). In such a behaviourist system, crime arose from our predispositions, what we ate or inhaled, the chemical composition of food—"this is what moves a person to crime or to virtue, and often, to both within the space of a single day". Humans were therefore "the constant slaves of necessity" (*ibid.*, p.15). They sought pleasure, and were unrestrained by any natural law. Indeed, nature might positively encour-

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age vice and crime, as destruction was clearly part of the natural plan for creation and renewal (de Sade, 1968, pp.170–172, 316–320, 605–606; Aries, 1981, pp.391–392). One might therefore argue that committing destructive acts was merely "natural" behaviour; and if it gave pleasure, there was no reason why such conduct should not be performed. De Sade justified crime—but to do so, he used no idea that was not a philosophical commonplace from the 1750s, and no idea that was not familiar to Beccaria. When we compare the work of the two men, we are surprised not only at the amorality of de Sade but at the restraint and conservatism of Beccaria.

This is also apparent when we examine what the two men had to say about the "social contract". De Sade imagines a primitive age when the world was divided between the weak and the strong. When the strong had seized a certain amount of material goods by theft and violence, society was created to draw a line against further usurpations. Thereafter, anyone who tried to do what the strong had already done was described as a criminal. The weak man agreed to the contract only to safeguard what little he had left, while the strong (or rich) planned to ignore his own side of the agreement. Society and property were simply judicial theft. Punishing theft meant only punishing the weak for trying to retain what had once belonged to him (de Sade, 1968, pp.114–119). During the revolutionary years, de Sade put forward his communist ideas in a pamphlet which would influence the French Left throughout the next century (*ibid.*, p.118; de Sade, 1965, pp.310–316; Kiernan, 1976, p.363).

Crime could be justified in several ways: perhaps Nature drove men to various actions, and it was mere chance which acts were labelled as crime. De Sade quotes extensively from examples of other societies where offences such as adultery or infanticide were considered legal and normal, and suggests that Nature can have laid down no absolute rules. Alternatively, crime might be an act of class revolt, an anarchist gesture. Thirdly, Enlightenment philosophy had been attempting for a hundred years to base virtue on the pleasures of the senses, and the conditioning of the nervous system. But what if one believed that vice and crime contributed an unparalleled nervous stimulus? No rational reasons were left to declare this wrong (de Sade, 1968, pp.33–37, 120–123).

By contrast, punishment had few justifications. Murder might be incited by the determinism of external circumstances, but capital punishment required a cold and impassive act of brutal premeditation. This explains why de Sade urged such moderate penal policies, and why during his period as a Grand Juror he actually refused to convict the majority of those brought before him, even personal enemies who had persecuted him for years (*ibid.*, p.418; de Sade, 1965, pp.27–31). When de Sade portrays enforcers or defenders of the law, they are at least as brutal as his "villains", and indeed the worst characters in his novels are often government officials or ministers (de Sade, 1968, pp.732–740).

De Sade began his career with ideas very far removed from the sober optimism of Godwin, but the two had come to have much in common by

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the 1790s. Both had come to believe that laws were a worse form of oppression than anarchy, and that property was in itself a fundamental crime against society. Both agreed that "men are pure only in their natural condition" (Foucault, 1965, pp.282–285; de Sade, 1968, p.733). When they reached such conclusions, they were merely carrying on the work of Helvetius, d'Holbach and Rousseau, and applying such ideas to crime and punishment. In their very different ways, they were doing what Beccaria refused to do. The contrast is apparent when we study the moral basis they found for society's right to punish. Beccaria found such a basis in the essential justice and fairness of the social contract and of the states built upon it. Godwin and de Sade anticipated contemporary radicals in denying the existence of this justice, and countered with a conflict model of society. In this view, punishment could only be legitimate once social injustice was abolished. Clearly, it was Beccaria who was most likely to achieve acceptance with the governments of the day, monarchic or democratic.

Not until the 1840s would there once more emerge criminological systems which emphasised determinism and the role of crime as a form of social revolt. Had it not been for Beccaria's success, this might have been achieved decades earlier.

Conclusion

Beccaria had gone as far as he could in urging penal reform, for the next logical steps involved assaults on matters held sacred by the society of his day. One more step towards determinism, and individual responsibility was weakened, as actually occurred with the Positivist movement. One step more towards environmental theories of crime, and appreciation of the role of poverty, and the question arose whether crime was a reasonable response to injustice. Religion forbade accepting the first solution, propertied society rejected the second. But the fact that Beccaria did not pose these questions by no means implied that they were inconceivable without nineteenth-century social science. De Sade shows that they were posed, and Godwin suggests how they could have been incorporated into a serious political programme. By contrast, Beccaria's work stands as a conservative monument, the first great effort to cure crime without curing the society which produced it.

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