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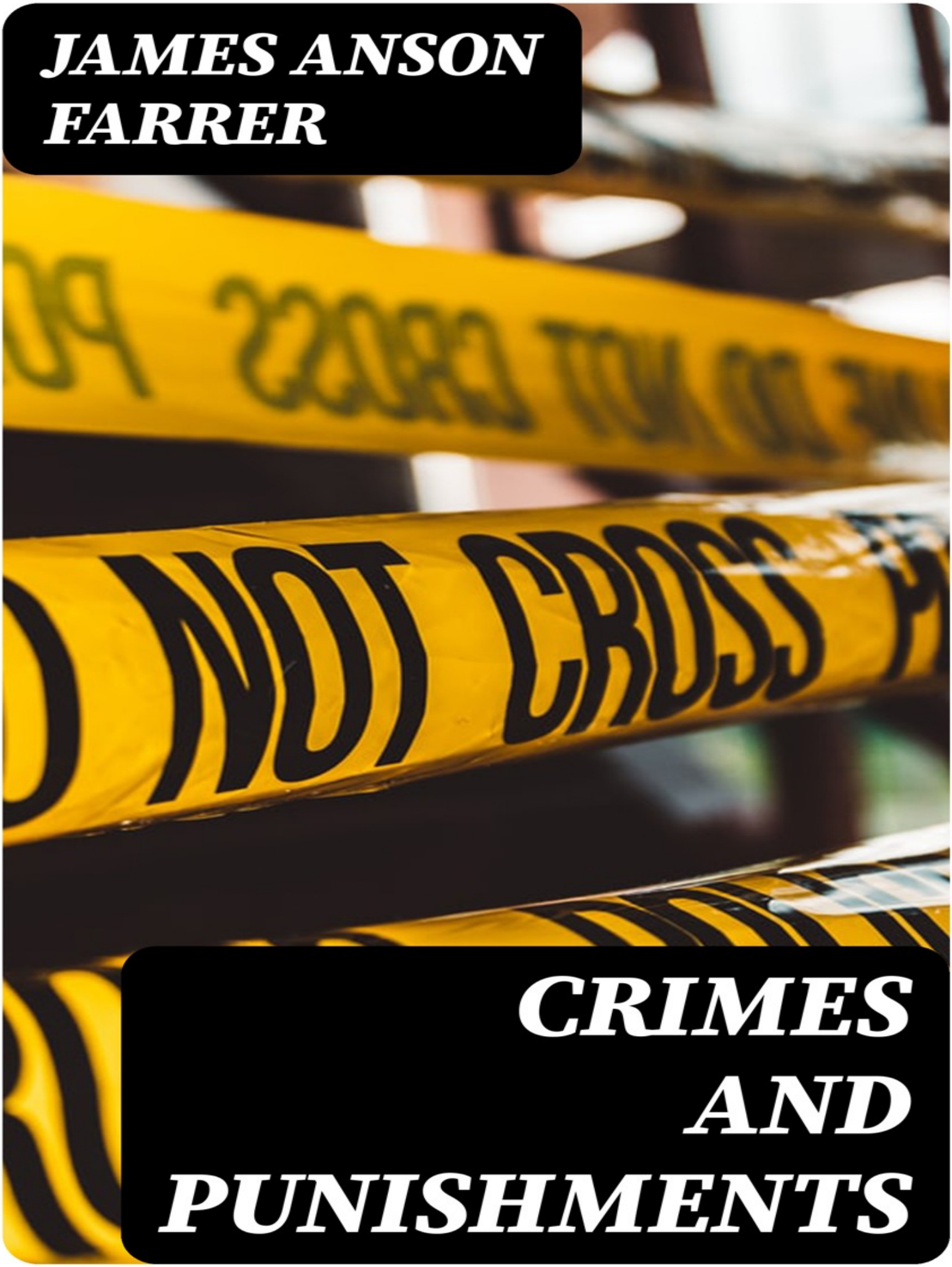

CRIMES AND PUNISHMENTS

James Anson Farrer

Crimes and Punishments

Including a New Translation of Beccaria's 'Dei Delitti e delle Pene'

EAN 8596547177456

DigiCat, 2022
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PREFACE.

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The reason for translating afresh Beccaria's 'Dei Delitti e delle Pene' ('Crimes and Punishments') is, that it is a classical work of its kind, and that the interest which belongs to it is still far from being merely historical.

It was translated into English long ago; but the change in the order of the several chapters and paragraphs, which the work underwent before it was clothed in its final dress, is so great, that the new translation and the old one really constitute quite different books.

The object of the preliminary chapters is to place the historical importance of the original in its just light, and to increase the interest of the subjects it discusses.

The Translator has abstained from all criticism or comment of the original, less from complete agreement with all its ideas than from the conviction that annotations are more often vexatious than profitable, and are best left to the reader to make for himself. There is scarcely a sentence in the book on which a commentator might not be prolix.

To combine the maximum of perspicuity with the maximum of fidelity to the original has been the cardinal principle observed in the translation. But it would, of course, have been no less impossible than contrary to the spirit of the original to have attempted to render perfectly comprehensible what the author purposely wrapped in obscurity. A translation can but follow the lights and shades of the surface it reflects, rendering clear what is clear in the original, and opaque what is opaque.

‘All men, whether singly or collectively, naturally do wrong, nor is there any law which will prevent it. For every kind of punishment has been successively tried by mankind, if haply they might suffer less injury from malefactors. And it is probable that in their origin punishments for even the gravest crimes are comparatively mild, but that, as they are disregarded, most of them come in course of time to be punishments of death; yet this in its turn is also disregarded. Either, therefore, some greater terror than death must be invented, or death at least serves not as a deterrent, men being led to risk it, sometimes by poverty, which emboldens them through necessity, sometimes by power, which makes them overreaching and insolent; or sometimes by some other circumstance which subordinates all a man’s passions to some one passion that is insuperable and dominant.... And it is simply impossible, and a very foolish idea, to think that, when human nature is firmly bent on doing anything, it can be deterred from it either by force of law or by any other terror.’—THUCYDIDES.

‘How many condemnations have I seen more criminal than the crimes themselves!’—MONTAIGNE.

CRIMES AND PUNISHMENTS.

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CHAPTER I.
BECCARIA'S LIFE AND CHARACTER.

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The 'Dei Delitti e delle Pene' was published for the first time in 1764. It quickly ran through several editions, and was first translated into French in 1766 by the Abbé Morellet, since which time it has been translated into most of the languages of Europe, not excluding Greek and Russian.

The author of the book was a native of Milan, then part of the Austrian dominions, and under the governorship of Count Firmian, a worthy representative of the liberal despotism of Maria Theresa and her chief minister, Kaunitz. Under Firmian's administration a period of beneficial reforms began for Lombardy. Agriculture was encouraged, museums and libraries extended, great works of public utility carried on. Even the Church was shorn of her privileges, and before Firmian had been ten years in Lombardy all traces of ecclesiastical immunity had been destroyed; the jurisdiction of the Church, and her power to hold lands in mortmain were restricted, the right of asylum was abolished, and, above all, the Holy Office of the Inquisition. Let these few facts suffice to indicate the spirit of the immediate political surroundings in the midst of which Beccaria's work appeared.

But, in spite of the liberalism of the Count, the penal laws and customs of Lombardy remained the same; and the cruel legal procedure by torture existed still, untouched by the salutary reforms effected in other departments of the Government. There was the preparatory torture, to extort confession from criminals not yet condemned; there was

torture for the discovery of a criminal's accomplices; and there was the extraordinary or greater torture, which preceded the execution of a sentence of death. It is true that torture could only be applied to crimes of a capital nature, but there was scarcely an act in the possible category of crimes that was not then punishable with death. Proofs of guilt were sought almost entirely from torture and secret accusations, whilst penalties depended less on the text of any known law than on the discretion—that is, on the caprice—of the magistrate.

It was this system that Beccaria's little work destroyed, and had that been its only result, it would still deserve to live in men's memories for its historical interest alone. For upon the legislation of that time, and especially upon that of Italy, this pamphlet on criminal law broke like a ray of sunlight on a dungeon floor, making even blacker that which was black before by the very brilliancy which it shed upon it. To Beccaria primarily, though not of course solely, belongs the glory of having expelled the use of torture from every legal tribunal throughout Christendom.

Frederick the Great had already abolished it in Prussia;[1] it had been discontinued in Sweden; it was not recognised in the military codes of Europe, and Beccaria said it was not in use in England. This was true generally, although the *peine forte et dure*, by which a prisoner who would not plead was subjected to be squeezed nearly to death by an iron weight, was not abolished till the year 1771.[2]

It is remarkable that a book which has done more for law reform than any other before or since should have been written by a man who was not a lawyer by profession, who was totally unversed in legal practice, and who was only twenty-six when he attacked a system of law which had on its side all authority, living and dead. Hume was not twenty-seven when he published his 'Treatise on Human Nature,'

nor was Berkeley more than twenty-six when he published his ‘Principles of Human Knowledge.’ The similar precocity displayed by Beccaria is suggestive, therefore, of the inquiry, how far the greatest revolutions in the thoughts or customs of the world have been due to writers under thirty years of age.

The following letter by Beccaria to the Abbé Morellet in acknowledgment of the latter’s translation of his treatise is perhaps the best introduction to the life and character of the author. The letter in question has been quoted by Villemain in proof of the debt owed by the Italian literature of the last century to that of France, but from the allusions therein contained to Hume and the ‘Spectator’ it is evident that something also was due to our own. Beccaria had spent eight years of his youth in the college of the Jesuits at Parma, with what sense of gratitude this letter will show. The following is a translation of the greater part of it:—

> Your letter has raised in me sentiments of the deepest esteem, of the greatest gratitude, and the most tender friendship; nor can I confess to you how honoured I feel at seeing my work translated into the language of a nation which is the mistress and illuminator of Europe. I owe everything to French books. They first raised in my mind feelings of humanity which had been suffocated by eight years of a fanatical education. I cannot express to you the pleasure with which I have read your translation; you have embellished the original, and your arrangement seems more natural than, and preferable to, my own. You had no need to fear offending the author’s vanity: in the first place, because a book that treats of the cause of humanity belongs, when once published, to the world and all nations equally; and as to myself in particular, I should have made little progress in the

philosophy of the heart, which I place above that of the intellect, had I not acquired the courage to see and love the truth. I hope that the fifth edition, which will appear shortly, will be soon exhausted, and I assure you that in the sixth I will follow entirely, or nearly so, the arrangement of your translation, which places the truth in a better light than I have sought to place it in.

As to the obscurity you find in the work, I heard, as I wrote, the clash of chains that superstition still shakes, and the cries of fanaticism that drown the voice of truth; and the perception of this frightful spectacle induced me sometimes to veil the truth in clouds. I wished to defend truth, without making myself her martyr. This idea of the necessity of obscurity has made me obscure sometimes without necessity. Add to this my inexperience and my want of practice in writing, pardonable in an author of twenty-eight,[3] who only five years ago first set foot in the career of letters.

D’Alembert, Diderot, Helvetius, Buffon, Hume, illustrious names, which no one can hear without emotion! Your immortal works are my continual study, the object of my occupation by day, of my meditation in the silence of night. Full of the truth which you teach, how could I ever have burned incense to worshipped error, or debased myself to lie to posterity? I find myself rewarded beyond my hopes in the signs of esteem I have received from these celebrated persons, my masters. Convey to each of these, I pray you, my most humble thanks, and assure them that I feel for them that profound and true respect which a feeling soul entertains for truth and virtue.

My occupation is to cultivate philosophy in peace, and so to satisfy my three strongest passions, the love, that is, of literary fame, the love of liberty, and pity for the ills of mankind, slaves of so many errors. My conversion to philosophy only dates back five years, and I owe it to my perusal of the ‘Lettres Persanes.’ The second work that completed my mental revolution was that of Helvetius. The latter forced me irresistibly into the way of truth, and aroused my attention for the first time to the blindness and miseries of humanity.

… I lead a tranquil and solitary life, if a select company of friends in which the heart and mind are in continual movement can be called solitude. This is my consolation, and prevents me feeling in my own country as if I were in exile.

My country is quite immersed in prejudices, left in it by its ancient masters. The Milanese have no pardon for those who would have them live in the eighteenth century. In a capital which counts 120,000 inhabitants, you will scarcely find twenty who love to instruct themselves, and who sacrifice to truth and virtue. My friends and I, persuaded that periodical works are among the best means for tempting to some sort of reading minds incapable of more serious application, are publishing in papers, after the manner of the English ‘Spectator,’ a work which in England has contributed so much to increase mental culture and the progress of good sense. The French philosophers have a colony in this America, and we are their disciples because we are the disciples of reason, &c.

Thus, the two writers to whom Beccaria owed most were Montesquieu and Helvetius. The ‘Lettres Persanes’ of the

former, which satirised so many things then in custom, contained but little about penal laws; but the idea is there started for the first time that crimes depend but little on the mildness or severity of the punishments attached to them. ‘The imagination,’ says the writer, ‘bends of itself to the customs of the country; and eight days of prison or a slight fine have as much terror for a European brought up in a country of mild manners as the loss of an arm would have for an Asiatic.’[4] The ‘Esprit des Lois,’ by the same author, probably contributed more to the formation of Beccaria’s thoughts than the ‘Lettres Persanes,’ for it is impossible to read the twelfth book of that work without being struck by the resemblance of ideas. The ‘De L’Esprit’ of Helvetius was condemned by the Sorbonne as ‘a combination of all the various kinds of poison scattered through modern books.’ Yet it was one of the most influential books of the time. We find Hume recommending it to Adam Smith for its agreeable composition father than for its philosophy; and a writer who had much in common with Beccaria drew from it the same inspiration that he did. That writer was Bentham, who tells us that when he was about twenty, and on a visit to his father and stepmother in the country, he would often walk behind them reading a book, and that his favourite author was Helvetius.

The influence of the predominant French philosophy appears throughout Beccaria’s treatise. Human justice is based on the idea of public utility, and the object of legislation is to conduct men to the greatest possible happiness or to the least possible misery. The vein of dissatisfaction with life and of disbelief in human virtue is a marked feature of Beccaria’s philosophy. To him life is a desert, in which a few physical pleasures lie scattered here and there;[5] his own country is only a place of exile, save for the presence of a few friends engaged like himself in a war with ignorance. Human ideas of morality and virtue

have only been produced in the course of many centuries and after much bloodshed, but slow and difficult as their growth has been, they are ever ready to disappear at the slightest breeze that blows against them.

Beccaria entertains a similar despair of truth. The history of mankind represents a vast sea of errors, in which at rare intervals a few truths only float uppermost; and the durability of great truths is as that of a flash of lightning when compared with the long and dark night which envelops humanity. For this reason he is ready to be the servant of truth, not her martyr; and he recommends in the search for truth, as in the other affairs of life, a little of that ‘philosophical indolence’ which cares not too much about results, and which a writer like Montaigne is best fitted to inspire.[6]

The few select friends who made life at Milan just supportable were Pietro and Alessandro Verri, Frisi, and some others. Pietro Verri was ten years older than Beccaria, and it was at his instance that the latter wrote his first treatise on a subject which then demanded some attention, namely, ‘The Disorders and Remedies of the Coinage.’ This work was published two years before the ‘Crimes and Punishments,’ but though it provoked much discussion at the time, it has long since ceased to have any interest.

Count Pietro Verri was the son of Gabriel, who was distinguished alike for his legal knowledge and high position in Milan. At the house of Pietro, Beccaria and the other friends used to meet for the discussion and study of political and social questions. Alessandro, the younger brother of Pietro, held the office of ‘Protector of Prisoners,’ an office which consisted in visiting the prisons, listening to the grievances of the inmates, and discovering, if possible, reasons for their defence or for mercy. The distressing sights he was witness of in this capacity are said to have had the

most marked effect upon him; and there is no doubt that this fact caused the attention of the friends to be so much directed to the state of the penal laws. It is believed to have been at the instigation of the two brothers that Beccaria undertook the work which was destined to make his name so famous.

Why then did Pietro Verri not write it himself? The answer would seem to be, out of deference for the position and opinions of his father. It was some time later that Gabriel defended the use of torture in the Milanese Senate, and Pietro wrote a work on torture which he did not publish in his father's lifetime. It was probably due also to the father's position that Alessandro held his office of Protector of the Prisoners, so that there were obvious reasons which prevented either brother from undertaking the work in question.

It was at one time said that the work really was Pietro Verri's and not Beccaria's, for it was published anonymously, and away from Milan. The domestic circumstances of Pietro lent some countenance to this story, as did also the fact that he charged himself with the trouble of making a correct copy of the manuscript, so that a copy of the treatise does actually exist in Pietro's handwriting. The story, however, has long since been disproved; yet to show the great interest which Pietro took in the work, and the ready assistance he gave to his friend, a letter to him from Beccaria, with respect to the second edition, deserves mention, in which Beccaria begs him not only to revise the spelling correctly, but generally to erase, add, and correct, as he pleases. It would appear that he was already tired of literary success, for he tells his friend, that but for the motive of preserving his esteem and of affording fresh aliment to their friendship, he should from indolence prefer obscurity to glory itself.

There is no doubt that Beccaria always had a strong preference for the contemplative as opposed to the practical and active life, and that but for his friend Pietro Verri he would probably never have distinguished himself at all. He would have said with Plato that a wise man should regard life as a storm, and hide himself behind a wall till it be overpast. He almost does say this in his essay on the ‘Pleasures of the Imagination,’ published soon after the ‘Crimes and Punishments.’ He advises his reader to stand aside and look on at the rest of mankind as they run about in their blind confusion; to make his relations with them as few as possible; and if he will do them any good, to do it at that distance which will prevent them from upsetting him or drawing him away in their own vortex. Let him in happy contemplation enjoy in silence the few moments that separate his birth from his disappearance. Let him leave men to fight, to hope, and to die; and with a smile both at himself and at them, let him repose softly on that enlightened indifference with regard to human things which will not deprive him of the pleasure of being just and beneficent, but which will spare him from those useless troubles and changes from evil to good that vex the greater part of mankind.

This essay on the ‘Imagination’ was published soon after the ‘Crimes and Punishments’ in the periodical to which Beccaria alludes in his letter to Morellet. ‘The Caffé’ was the name of the periodical which, from June 1764, he and his friends published every tenth day for a period of two years. The model of the paper was the English ‘Spectator,’ and its object to propagate useful knowledge pleasantly among the Milanese, whilst its name rested on the supposition that the friends who composed it executed their labours during meetings in a coffee-house. The most interesting contributions to it by Beccaria are his ‘Fragment on Style,’

his article on ‘Periodical Newspapers,’ and his essay on the ‘Pleasures of the Imagination.’

The publication of the ‘Delitti e delle Pene’ interrupted its author’s dreams of philosophical calm, by fulfilling his hopes of literary fame. The French encyclopædists were the first to recognise its merits, and D’Alembert, the mathematician, at once predicted for the writer the reward of an immortal reputation. Morellet’s translation, in which the arrangement, though not the matter of the text, was entirely altered, ran through seven editions in six months, and Beccaria, as has been seen, was only too delighted with the honour thus conferred on him to complain in any way of the liberties taken by the translator with the original.

A still greater honour was the commentary written by Voltaire. The fact that only within a few miles of his own residence a girl of eighteen had been hung for the exposure of a bastard child led Voltaire to welcome Beccaria’s work as a sign that a period of softer manners and more humane laws was about to dawn upon the world’s history. Should not a people, he argues, who like the French pique themselves on their politeness also pride themselves on their humanity? Should they retain the use of torture, merely because it was an ancient custom, when the experience of England and other countries showed that crimes were not more numerous in countries where it was not in use, and when reason indicated the absurdity of inflicting on a man, before his condemnation, a punishment more horrible than would await his proved guilt? What could be more cruel, too, than the maxim of law that a man who forfeited his life forfeited his estates? What more inhuman than thus to punish a whole family for the crime of an individual, perhaps condemning a wife and children to beg their bread because the head of the family had harboured a Protestant preacher or listened to his sermon in a cavern or a desert? Amid the contrariety of laws that governed France, the object of the

criminal procedure to bring an accused man to destruction might be said to be the only law which was uniform throughout the country.

So signal a success in France was a sufficient guarantee of success elsewhere. A knowledge of the book must have speedily crossed the Channel, for Blackstone quoted it the very year after its publication. It was first translated into English in 1768, together with Voltaire's commentary; but just as Morellet's translation professed to have been published at Philadelphia, so the English translator kept his name a secret. The Economical Society of Berne, which was accustomed to bestow a gold medal on the writer of the best treatise on any given subject, violated its own rules in favour of the anonymous writer of the 'Delitti,' inviting him to disclose his name, and to accept the gold medal 'as a sign of esteem due to a citizen who had dared to raise his voice in favour of humanity against the most deeply engrained prejudices.'

But there was another side to the brightness of this success. In literature as in war no position of honour can be won or held without danger, and of this Beccaria seems to have been conscious when he pleaded against the charge of obscurity, that in writing he had had before his eyes the fear of ecclesiastical persecution. His love for truth, he confessed, stopped short at the risk of martyrdom. He had, indeed, three very clear warnings to justify his fears. Muratori, the historian, had suffered much from accusations of heresy and atheism, and had owed his immunity from worse consequences chiefly to the liberal protection of Pope Benedict XIV. The Marquis Scipio Maffei had also incurred similar charges for his historical handling of the subject of Free-will. But there was even a stronger warning than these, and one not likely to be lost on a man with youth and life before him; that was the fate of the unfortunate Giannone, who, only sixteen years before Beccaria wrote, had ended

with his life in the citadel of Turin an imprisonment that had lasted twenty years, for certain observations on the Church of Rome which he had been rash enough to insert in his ‘History of Naples.’

Of all the attacks which the publication of the ‘Dei Delitti’ provoked, the bitterest came naturally from a theological pen. At the very time that Beccaria’s work appeared, the Republic of Venice was occupied in a violent contest touching the Inquisitorial Council of Ten; and imagining that Beccaria’s remarks about secret accusations had been directed against the procedure of their famous tribunal, whilst they attributed the work to a Venetian nobleman called Quirini, they forbade its circulation under pain of death. It was on their behalf and with this belief that the Dominican Padre, Facchinei, took up his pen and wrote a book, entitled, ‘Notes and Observations on the “Dei Delitti,”’ in which he argued, among other things, not only that secret accusations were the best, cheapest, and most effective method of carrying out justice, but that torture was a kind of mercy to a criminal, purging him in his death from the sin of falsehood.

In these ‘Notes and Observations’ Beccaria and his work were assailed with that vigour and lucidity for which the Dominican school of writing has always been so conspicuous. The author was described as ‘a man of narrow mind,’ ‘a madman,’ ‘a stupid impostor,’ ‘full of poisonous bitterness and calumnious mordacity.’ He was accused of writing ‘with sacrilegious imposture against the Inquisition,’ of believing that ‘religion was incompatible with the good government of a state;’ nay, he was condemned ‘by all the reasonable world as the enemy of Christianity, a bad philosopher, and a bad man.’ His book was stigmatised as ‘sprung from the deepest abyss of darkness, horrible, monstrous, full of poison,’ containing ‘miserable arguments,’ ‘insolent blasphemies,’ and so forth.