



外国法学名著

ON CRIMES AND PUNISHMENTS

论犯罪与 刑罚

[意]贝卡里亚/著
黄 风/译

中国法制出版社

图书在版编目 (CIP) 数据

论犯罪与刑罚 / (意) 贝卡里亚著; 黄风译. —北京: 中国方正出版社, 2003

(西律英华)

ISBN 7-80107-727-X

I. 论 ... II. ①贝 ... ②黄 ... III. 刑法—研究 IV. D914.04

中国版本图书馆 CIP 数据核字 (2003) 第 092410 号

西律英华

论犯罪与刑罚

黄风/译

责任编辑: 陈学军

责任校对: 丁新丽

出版发行: 中国方正出版社

(北京市西城区平安里西大街 41 号 邮编: 100813)

发行部: (010) 66124758 门市部: (010) 63094573

编辑部: (010) 66158711 出版部: (010) 66510958

网址: www.FZPress.com

责编 E-mail: ch-X-J@vip.sina.com

经 销: 新华书店

印 刷: 北京华联印刷有限公司

开 本: 880 毫米 × 1230 毫米 1/32

印 张: 7

字 数: 174 千字

版 次: 2004 年 1 月第 1 版 2004 年 1 月北京第 1 次印刷

(版权所有 侵权必究)

ISBN 7-80107-727-X

定价: 20.00 元

(本书如有印装质量问题, 请与本社出版部联系退换)



*The Marchese di Beccaria. (New York Public
Library, Picture Collection)*

对于一切事物，尤其是最艰难的事物，人们不应期望播种与收获同时进行，为了使它们逐渐成熟，必须有一个培育的过程。*

培 根

* 贝卡里亚将此格言作为卷首引语。

1763/15

说 明

贝卡里亚的《论犯罪与刑罚》问世于1764年4月。原著分为47章和一个“引言”；随后，作者针对来自宗教人士的攻击，又增加了一篇辩白性的文字——“致读者”（这个原著版本以下称为“47章版本”）。1765年，法国“百科全书派”学者达兰贝尔将此书翻译成法文，并且重新编排了章节，将正文划分为42章；这个版本（以下称为“42章版本”）曾经得到贝卡里亚本人认可和称赞。

“47章版本”与“42章版本”内容基本上是一致的。最大的差别在于体系编排和论述次序的不同，“42章版本”把原来分散在不同章节中的、关于相同议题的论述加以相对集中，对某些章的论述顺序做了调整，并且把关于某些重要议题（例如刑讯和死刑）的论述予以前移。根据我的比较，“42章版本”比“47章版本”多1句起承上启下作用的话；而“47章版本”则比“42章版本”多7句话，并且存在个别用词上的差异（关于这些不同之处，译者均在“47章版本”的中译文里一一加以注明）。

10年前由中国大百科全书出版社出版的《论犯罪与刑罚》中译本是我以“42章版本”为蓝本完成的，这个版本于2002年由中国法制出版社重新出版。

现在中国方正出版社决定出版《论犯罪与刑罚》“47章版本”的中文本，这在学术上是一件很有意义的事情。这将特别有助于读者了解贝卡里亚在写作此书时的原本构思以及此书的原始构架。实际上，这部名著的许多外文译本都是根据“47章版本”逐译的，因而，此版本中译本的出版将有助于读者在阅读时进行对比，从而深入理解和

分析浓缩在这部小书中的精髓。

正是出于这后一个考虑，我们将《论犯罪与刑罚》一书 1819 年的英译本附于中译文之后。这个英译本实际上是根据法文译本转译的（缺“致读者”），它的文字通俗、流畅，对原著观点表现出较为深刻的理解和把握。从另一方面品论，这个英译本比较自由，译者不拘泥或者不注意一些具体词句的翻译；省略了原著中的一些表述（尤其是一些华丽辞藻的表述），有些章节中还有大段的漏译（这不能不说是遗憾之处）。关于这些情况，读者可以在对照阅读时自行分析和评判。

为出版“47 章版本”，译者再次对原来的译文进行了校订，作出了一些修正。除原来的注释外，在此次校订过程中，译者新增了一些注释，尤其是为了对“47 章版本”作出某些必要的说明。

黄 风

2003 年 7 月 31 日

于维也纳

目 录

致读者	(1)
引 言	(5)
一、刑罚的起源	(7)
二、惩罚权	(8)
三、结论	(10)
四、对法律的解释	(12)
五、法律的含混性	(15)
六、刑罚与犯罪相对称	(17)
七、在犯罪标尺问题上的错误	(19)
八、犯罪的分类	(21)
九、关于名誉	(23)
十、决斗	(25)
十一、关于公共秩序	(26)
十二、刑罚的目的	(28)
十三、证人	(29)
十四、犯罪嫌疑和审判形式	(31)
十五、秘密控告	(33)
十六、刑讯	(35)
十七、关于国库	(41)
十八、宣誓	(43)
十九、刑罚的及时性	(44)
二十、暴侵	(46)

二十一、对贵族的刑罚·····	(47)
二十二、盗窃·····	(49)
二十三、耻辱·····	(50)
二十四、懒惰者·····	(52)
二十五、驱逐和没收财产·····	(53)
二十六、关于家庭精神·····	(54)
二十七、刑罚的宽和·····	(57)
二十八、关于死刑·····	(59)
二十九、关于逮捕·····	(66)
三十、程序和时效·····	(69)
三十一、难以证明的犯罪·····	(71)
三十二、自杀·····	(74)
三十三、走私·····	(77)
三十四、关于债务人·····	(79)
三十五、庇护·····	(81)
三十六、悬赏·····	(82)
三十七、犯意、共犯、不予处罚·····	(83)
三十八、提示性讯问 口供·····	(85)
三十九、一类特殊的犯罪·····	(87)
四十、虚伪的功利观念·····	(89)
四十一、如何预防犯罪·····	(91)
四十二、科学·····	(93)
四十三、司法官员·····	(96)
四十四、奖励·····	(97)
四十五、教育·····	(98)
四十六、恩赦·····	(99)
四十七、总结·····	(100)

附英文本：

Introduction.	(102)
Chapter 01 Of the Origin of Punishments.	(104)
Chapter 02 Of the right to punish.	(105)
Chapter 03 Consequences of the foregoing Principles.	(107)
Chapter 04 Of the Interpretation of Laws.	(109)
Chapter 05 Of the Obscurity of Laws.	(112)
Chapter 06 Of the Proportion between Crimes and Punishments.	(114)
Chapter 07 Of estimating the Degree of Crimes.	(117)
Chapter 08 Of the Division of Crimes.	(119)
Chapter 09 Of Honour.	(121)
Chapter 10 Of Duelling.	(123)
Chapter 11 Of crimes which disturb the Public Tranquillity.	(124)
Chapter 12 Of the Intent of Punishments.	(126)
Chapter 13 Of the Credibility of Witnesses.	(127)
Chapter 14 Of Evidence and the Proofs of a Crime, and of the Form of Judgment.	(130)
Chapter 15 Of secret Accusations.	(133)
Chapter 16 Of Torture.	(135)
Chapter 17 Of pecuniary Punishments.	(141)
Chapter 18 Of Oaths.	(143)
Chapter 19 Of the Advantage of immediate Punishment.	(144)
Chapter 20 Of Acts of violence.	(147)
Chapter 21 Of the Punishment of the Nobles.	(148)
Chapter 22 Of Robbery.	(150)
Chapter 23 Of Infamy considered as a Punishment.	(151)
Chapter 24 Of Idleness.	(153)
Chapter 25 Of Banishment and Confiscation.	(154)

Chapter 26 Of the Spirit of Family in States.	(156)
Chapter 27 Of the Mildness of Punishments.	(159)
Chapter 28 Of the Punishment of Death.	(162)
Chapter 29 Of imprisonment.	(169)
Chapter 30 Of Prosecution and Prescription.	(171)
Chapter 31 Of Crimes of difficult Proof.	(174)
Chapter 32 Of Suicide.	(178)
Chapter 33 Of Smuggling.	(182)
Chapter 34 Of bankrupts.	(184)
Chapter 35 Of Sanctuaries.	(187)
Chapter 36 Of Rewards for apprehending or killing Criminals.	(189)
Chapter 37 Of Attempts, Accomplices, and Pardon.	(191)
Chapter 38 Of suggestive Interrogations.	(193)
Chapter 39 Of a particular Kind of Crimes.	(194)
Chapter 40 Of false Ideas of Utility.	(195)
Chapter 41 Of the Means of preventing Crimes.	(197)
Chapter 42 Of the Sciences.	(199)
Chapter 43 Of Magistrates.	(202)
Chapter 44 Of rewards.	(203)
Chapter 45 Of Education.	(204)
Chapter 46 Of Pardons.	(205)
Chapter 47 Conclusion.	(207)

致 读 者

一位在 1200 年前曾统治君士坦丁堡的君主，授命编纂了古代一个征服者民族的法律，^①而后，这些法律同伦巴第人^②的习俗混杂在一起，并包容在充满私人所作的含混解释的典籍之中。这些法律残余形成了至今仍被欧洲大部分地区称之为法律的传统见解。卡尔布索沃^③的见解、克拉洛^④所提到的古代习惯以及法里纳奇^⑤抱着狂暴的得意建议实行的折磨，成为那些本来应当诚惶诚恐地主宰人们生活 and 命运的人所深信不疑的法律，这在今天同样是一种不幸。

本书将从刑事制度方面，研究这些保留着最野蛮世纪痕迹的法律，并以那些愚昧而鲁莽的俗人所不具有的风度，向公共幸福的领导者勇敢地揭露这些法律的弊端。本书作者在写作中能如此坦率地探索真理，并如此独立于世俗之见，完全因为他所处国家的政府温和而开

① 罗马皇帝查士丁尼 (Justinianus 又译优士丁尼, 482—565) 曾授命编纂《民法大全》，它由四部分组成：汇集了罗马法学家论断的《学说汇纂》，用作教科书的《法学总论》(又译《法学阶梯》)，《查士丁尼法典》和《新律》。——译者注

② 伦巴第人是日耳曼人的一支。568 年，伦巴第人入侵意大利北部，建立了伦巴德王国。——译者注

③ 卡尔布索沃 (Benedikt Carpzov 1595—1666)，17 世纪德国有影响的法学家之一。他在莱比锡担任过助理地方长官 (scabino)，曾炫耀自己在任职期间判处过大量的死刑。——译者注

④ 克拉洛 (Giulio Claro 1525—1575)，意大利犯罪学家，其代表作为《判决汇编》。在这部五卷本的著作 (最后一卷涉及刑法和刑事诉讼法) 中，介绍了许多意大利当时盛行的习惯。——译者注

⑤ 法里纳奇 (Prospero Farinacci 1544—1618)，意大利刑法学家和律师，其代表作《刑事理论与实践》为当时的刑法学教学提供了框架。——译者注

Ignorance may indeed be less fatal than a small degree of knowledge, because this adds to the evils of ignorance, the inevitable errors of a confined view of things on this side the bounds of truth; but a man of enlightened understanding, appointed guardian of the laws, is the greatest blessing that a sovereign can bestow on a nation. Such a man is accustomed to behold truth, and not to fear it; unacquainted with the greatest part of those imaginary and insatiable necessities which so often put virtue to the proof, and accustomed to contemplate mankind from the most elevated point of view, he considers the nation as his family, and his fellow—citizens as brothers; the distance between the great and the vulgar appears to him the less as the number of mankind he has in view is greater.

The philosopher has necessities and interests unknown to the vulgar, and the chief of these is not to belie in public the principles he taught in obscurity, and the habit of loving virtue for its own sake. A few such philosophers would constitute the happiness of a nation; which however would be but of short duration, unless by good laws the number were so increased as to lessen the probability of an improper choice.

Of Magistrates.

Another method of preventing crimes is, to make the observance of the laws, and not their violation, the interest of the magistrate.

The greater the number of those who constitute the tribunal, the less is the danger of corruption; because the attempt will be more difficult, and the power and temptation of each individual will be proportionably less. If the sovereign, by pomp and the austerity of edicts, and by refusing to hear the complaints of the oppressed, accustom his subjects to respect the magistrates more than the laws, the magistrates will gain indeed, but it will be at the expense of public and private security.

Of rewards .

Yet another method of preventing crimes is, to reward virtue. Upon this subject the laws of all nations are silent. If the rewards proposed by academies for the discovery of useful truths have increased our knowledge, and multiplied good books, is it not probable that rewards, distributed by the beneficent hand of a sovereign, would also multiply virtuous actions. The coin of honour is inexhaustible, and is abundantly fruitful in the hands of a prince who distributes it wisely.

Of Education.

Finally, the most certain method of preventing crimes is, to perfect the system of education. But this is an object too vast, and exceeds my plan; an object, if I may venture to declare it, which is so intimately connected with the nature of government, that it will always remain a barren spot, cultivated only by a few wise men.

A great man, who is persecuted by that world he hath enlightened, and to whom we are indebted for many important truths, hath most amply detailed the principal maxims of useful education. This chiefly consists in presenting to the mind a small number of select objects, in substituting the originals for the copies both of physical and moral phenomena, in leading the pupil to virtue by the easy road of sentiment, and in withholding him from evil by the infallible power of necessary inconveniences, rather than by command, which only obtains a counterfeit and momentary obedience.

Of Pardons.

As punishments become more mild, clemency and pardon are less necessary. Happy the nation in which they will be considered as dangerous. Clemency, which has often been deemed a sufficient substitute for every other virtue in sovereigns, should be excluded in a perfect legislation, where punishments are mild, and the proceedings in criminal cases regular and expeditious. This truth will seem cruel to those who live in countries where, from the absurdity of the laws and the severity of punishments, pardons and the clemency of the prince are necessary. It is indeed one of the noblest prerogatives of the throne, but, at the same time, a tacit disapprobation of the laws. Clemency is a virtue which belongs to the legislator, and not to the executor of the laws; a virtue which ought to shine in the code, and not in private judgment. To shew mankind that crimes are sometimes pardoned, and that punishment is not the necessary consequence, is to nourish the flattering hope of impunity, and is the cause of their considering every punishment inflicted as an act of injustice and oppression. The prince in pardoning gives up the public security in favour of an individual, and, by his ill—judged benevolence, proclaims a public act of impunity. Let, then, the executors of the laws be inexorable, but let the legislator be tender, indulgent, and humane. He is a wise architect who erects his edifice on the foundation of self—love, and contrives that the interest of the public shall be the interest of each individual, who is not obliged, by particular laws and irregular proceedings, to separate the public good from that of individuals, and erect the image of public felicity on the basis of fear and distrust; but, like a wise philosopher, he will permit his brethren to enjoy in quiet that small portion of happiness, which the immense system, established by the first cause, permits

them to taste on this earth, which is but a point in the universe.

A small crime is sometimes pardoned if the person offended chooses to forgive the offender. This may be an act of good nature and humanity, but it is contrary to the good of the public: for although a private citizen may dispense with satisfaction for the injury he has received, he cannot remove the necessity of example. The right of punishing belongs not to any individual in particular, but to society in general, or the sovereign. He may renounce his own portion of this right, but cannot give up that of others.

Conclusion.

I conclude with this reflection, that the severity of punishments ought to be in proportion to the state of the nation. Among a people hardly yet emerged from barbarity, they should be most severe, as strong impressions are required; but, in proportion as the minds of men become softened by their intercourse in society, the severity of punishments should be diminished, if it be intended that the necessary relation between the object and the sensation should be maintained.

From what I have written results the following general theorem, of considerable utility, though not conformable to custom, the common legislator of nations:

That a punishment may not be an act of violence, of one, or of many, against a private member of society, it should be public, immediate, and necessary, the least possible in the case given, proportioned to the crime, and determined by the laws.

[G e n e r a l I n f o r m a t i o n]

书名 = 论犯罪与刑罚

作者 = [意] 贝卡里亚著 黄风译

页数 = 207

S T