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Introduction



In 1968–69, the Archivio di Stato di Firenze acquired from the archives of the Pelli-Fabbroni family two large collections of documents composed by the last Pelli, Giuseppe Bencivenni Pelli (1729–1808). Around two decades later, at the end of the 1980s, the draft of an unfinished dissertation *Against the Death Penalty* came to light among the documents.¹ The manuscript was introduced to the world of scholarship (in 1990) by Renato Pasta, who had unearthed and identified it, and by Philippe Audegean, who produced the first edition, complete with a substantial introduction to the text and its contents, in Italian (2014) and then in French (2016).²

Pelli was a minor aristocrat from Florence who pursued a career within the Austrian Habsburg administration in the Grand Duchy of Tuscany. His most prominent post, and the one that gave him the greatest satisfaction, was that of director of the Uffizi Gallery (1775–93). According to his own testimony, he wrote *Against the Death Penalty* between 24 November 1760 and 6 January 1761.³ It was published more than 250 years later. He never completed it. It remains in the form of an advanced draft, tapering off toward the end, and finishing with a number of fragments, some of them substantial. It is an extended treatment of a subject which had not previously been discussed from a critical standpoint and in a comprehensive way. As far as we know, it is the first systematic attack on the death penalty in history.

It is known precisely when he began to write and stopped writing, because he tells us in his *Efemeridi*, the enormous diary that he compiled, day-in, day-out, over almost half a century, from 1759. A question that I set out to answer, with the aid of the *Efemeridi*, is how he came to write the dissertation in the first place, and why he gave up the project.

Against the Death Penalty was composed approximately three years before the publication, in July 1764, of *On Crimes and Punishments*, by an anonymous

author, who was later revealed to be Cesare Beccaria Bonesana (1738–94). Beccaria was also a member of the minor nobility, but of Milan, who worked for the Austrian administration in Lombardy. Before the discovery of Pelli's work, it was assumed that Beccaria's work contained the first serious attack on the death penalty.

Previously, abolition had had its advocates, such as the English radical Gerrard Winstanley in 1649, writing from a religious perspective, and the Quaker John Bellers, in 1699, who employed arguments from utility.⁴ The list lengthens somewhat if we include thinkers such as Thomas More and Blaise Pascal, who were critical of the death penalty without being outright abolitionists.⁵ In this category one might also place two anonymous English pamphleteers, Solon Secundus (1695) and A Student in Politics (1754). Both protested against the plethora of public executions and pressed for an alternative punishment, which they called imprisonment and hard labour, or slavery, but they contemplated reduction of the use of the death penalty rather than total abolition.⁶ Another potential 'candidate', a Sicilian, Tommaso Natale (1733–1819), whose treatise on penalties has much in common with that of Beccaria, also fails the test, on two counts: first, his work was published in 1772—his claim to have completed an early version in 1759 is not accepted by scholars—and second, he wished to retain the death penalty for particularly serious crimes.⁷

Pelli targeted the death penalty exclusively, whereas Beccaria's work was an attack on the whole system of criminal law operating in his time. The latter's critique of the death penalty occupies only one chapter (28) out of his forty-seven. It is by far the longest, however: it can be assumed to have contained all that he wanted to say on the subject, and his arguments are significant and weighty. The abolition of the death penalty is also the most radical of his proposals for reform, and it attracted the most attention and controversy. There is every reason to attempt a comparison between the two treatments of the subject.

The treatments are strikingly different. This is in itself remarkable. Here we have two men, living in neighbouring regions of the Austrian Habsburg empire, writing at more or less the same time, each ignorant of the existence of the other, each under the impression that he was the first to venture into these dangerous waters, and approaching the same subject in contrasting ways. Pelli's work reads rather like a juristic treatise, though his humanity shows through, and he knows how to appeal to the emotions. Beccaria's treatise is a

manifesto: it is passionate, highly rhetorical, and it pulls no punches. In sum, what we have before us is a rare opportunity to study and compare two works on the same highly controversial subject in a highly critical vein, written entirely independently of each other and more or less contemporaneously.

I offer translations of the relevant texts—in the case of Pelli's manuscript, the first English translation. Next, I explore the historical and intellectual contexts in which Pelli and Beccaria lived and wrote, and I attempt to understand their personalities and mentalities. This is an especially rewarding pursuit in the case of Pelli, thanks largely to the existence and nature of his diaries (*Efemeridi*). They are a goldmine, full of fascinating detail about his character, beliefs and interests, and the social and cultural life of Florence in the middle and second half of the eighteenth century.⁸ I then set out to assess the two writers' arguments against the death penalty, pointing to significant differences and similarities, and attempting to identify the sources that inspired or influenced them.

In terms of argumentation, in summary, Pelli lines up in the main with the Dutch and German natural law philosophers and jurists of the past, joining the debate which had been in progress since the early seventeenth century on the State of Nature, the transition into civil society via the Social Contract, and the ends and justification of punishment. He made a move, however, that none of these thinkers had contemplated or dared to make, in denying the necessity, utility and justice of the death penalty.

Whereas Pelli's outlook is firmly Catholic, as shown among other things by the dominance in his discourse of the notion of original sin, which in his view underlies both criminal behaviour and the penal law that has been enacted to suppress it, Beccaria follows the secularist tendencies of the French Enlightenment philosophers in making a clean break between sin and crime, divine and human justice. His trademark doctrine, which stemmed from a utilitarian interpretation of the Social Contract, is that the penal system must essentially be directed at avoiding public harm and promoting private good, or as he famously stated, 'the greatest happiness shared among the greatest number.' Pelli arrives, nevertheless, though by a different route, at something very similar to this utilitarian and minimalist view of the criminal justice system.

My final chapter is necessarily centred on Beccaria, in as much as it is an essay on the impact of his work on selected later thinkers and politicians, with special reference to his alternative, or surrogate, penalty, namely forced

labour. It is a crucial element of Beccaria's argument that the death penalty is less efficacious than forced labour as a deterrent (and the essential end of punishment, in his account, is deterrence). I am especially interested in the way Beccaria conceptualised his substitute penalty as slavery, and the way this was received in Britain and America, where his work was especially closely read and was extremely influential. The key figures in my enquiry are Jeremy Bentham and Thomas Jefferson.

Pelli left an incomplete draft of a thoughtful and searching critique of the death penalty;⁹ Beccaria published a finished product which many regard as the most significant tract of modern (and early modern) times on the reform of the criminal law,¹⁰ and which contained a highly effective attack on the death penalty. The former work was buried without trace for two and half centuries; the latter launched a movement of reform which has not yet run its course. A comparison between Pelli and Beccaria can only go so far, and is of limited utility. The same applies to the hypothetical question of what would have happened, what difference it would have made, if Pelli had published a full, polished treatise before Beccaria; and of how Beccaria would have reacted in such a circumstance. A more profitable line of enquiry might be to assess each of the two treatises as products of their times—rather than as definitive statements on the issue in question, which they are not¹¹—and, in the case of Beccaria's work, in terms of the impact that it had in the short term and the long. Modern penal law was born with Beccaria: there was a 'Beccaria moment'.¹²

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