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Abstract: This article focuses on the contributions of author Cesare Beccaria to the first amendment to the U.S. Constitution. The First Amendment of the Bill of Rights is perhaps the most far-reaching in that it prohibits Congress from passing laws that might respect the establishment of religion, or prohibiting the free exercise thereof. What turns out to be separation of church and state, and, in any event, the freedom of the people to practice whatever civilized form of religion they wish--both on an individual or collective level, is an extension of Beccaria's desire as expressed in the chapter on a particular kind of crime.

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BECCARIA AND THE FIRST AMENDMENT

The rights of the people are further strengthened in the first ten amendments to the Constitution known as the Bill of Rights.

In his book, *A History of Italian Literature*, Ernest Hatch Wilkins, one of the first American scholars to point out the importance of Beccaria to early American thought, speaks about Beccaria's book:

The treatise was immediately and very widely influential. It was translated into a score of languages, and led to the revisions of several penal codes. The first English translation appeared in 1767; a reprint of that translation issued in New York in 1773 is, with a single unimportant exception, the first translation on an Italian work to be published in this country. The influence of Beccaria's thought is manifest in the American Bill of Rights.

ESTABLISHMENT OF RELIGION:

The First Amendment of the Bill of Rights is perhaps the most far-reaching in that it prohibits Congress from passing laws that might respect the "establishment of religion, or prohibiting the free exercise thereof."

What turns out to be separation of church and state, and, in any event, the freedom of the people to practice whatever civilized form of religion they wish--both on an individual or collective level, is an extension of Beccaria's desire as expressed in the chapter on a "particular kind of crime".

Without mentioning the crimes committed under the name of religion, Beccaria nevertheless makes us understand what the early Americans understood all too well to put

into practice: that while all other nations have had religious strife, with the exception of local incidents as the hanging of Mary Dyer in the Boston Commons, or the witch-hunting in Salem, Massachusetts, the United States of America has not undergone the frightening crimes related to religious activities. Without a doubt, this is due to the farsightedness of those who wrote the First Amendment.

Modern Americans who consider the perfunctory recital of empty prayer words in public schools may well consider Beccaria's worries:

Reasonable men will see that the place, the century, and the subject matter do not permit me to examine the nature of such crimes. It would take me too long and far wide from my subject matter in order to prove how...opinions which differ from each other only by some very subtle and obscure variances, altogether beyond human capability to understand, how they can still upset the public welfare when one opinion is not authorized in preference over the others.

Yet, no where does Beccaria make any statement against the practice of religion either by individuals or groups. On the other hand, he upholds the right of freedom of religion, which freedom ceases to exist as soon as, by act of law, any part of any religion becomes the official representative of any arm of government.

Prayer in school, of whatever form or non-form, can only be accomplished through the enactment and execution of some sort of law. Attempts on implementing school prayers have failed. That failure is not a reflection of a Godless society or of insensitive lawmakers. Certainly Americans actively follow many religions. As certain, the Founding Fathers, without exception, were very religious. But they saw the harm done to individuals and societies as a result of religious misapplication. They sought to avoid those situations for their own and future generations, and thanks to them, they succeed for own good. Therefore, there cannot be laws which are clear but not executable, nor unclear laws that are executable. Legislating on religion only creates paradox. Legislating on the clergy presents similar difficulties.

"The principle of Beccaria is sound", says Jefferson in contemplating the laws that gave the clergy special privileges. Yet there is no need to have any type of pardons specified by either the legislature or by the executive, for, "when laws are made as mild as they should be...pardons are absurd. The principle of Beccaria is sound. Let the legislators be merciful, but the executors of the law inexorable."

The clergy have to be as responsible to the laws as are other citizens; and, as no one can receive special privileges through legislation, religion--no matter how neutral (neutrality would nullify religion)--must not be officially recognized by any part of a constituted government.

The belief that a little bit of religion cannot do harm especially among the young, and in the morning before classes, is a view held by many well-intentioned people. They do not realize, however, that habit, as observed by Beccaria, is often the worst of tyrants. The fact is that, in twentieth century America, prayer continues to be an issue with its potential for strife ever present.

We should reiterate Beccaria's observation on what happens when one opinion is authorized over another; how, as a result, this preference can upset the public welfare, and even bring about revolts and wars. In any event, receptivity of religious forms or practices cannot be enforced except when done by despotic means.

FREEDOM OF SPEECH:

One's opinion has to be respected; as important, its expression must be allowed, especially in politics. In Beccaria's words, "opinion, which is the best, or perhaps, the only cement of society, may curb the authority of the powerful."

Freedom of speech allows us to state our opinions; freedom of the press allows us the means to transmit them if we wish, and there cannot be legislation to prevent it from taking place. In addition, no public official should be allowed to force receptivity of their opinions onto the private citizens. To the contrary, the people must insure that their public officials be receptive of their opinions and feelings, and that they should never allow their officials to avoid, thwart, limit, or eliminate that receptivity; otherwise, the citizens would not be able to hold their officials accountable. If opinion, then, is the "cement of society", society must see to it that proper binding take place at every level of society. But how?

When laws are written in a way that they cannot be easily interpreted, it causes the citizens to seek the services of lawyers. When this happens, the laws, "instead of being public and general, are thus rendered private and particular." But through well written laws, power is "vested in the whole, and not in any part of the society." And there is no better way to achieve it than through freedom of speech or of the press. As an adjunct, freedom of the press or "the use of printing, which alone makes the public, and not a few individuals, the guardians and defenders of the laws"--by allowing the people to exchange their opinions without impunity--guarantees healthy exchanges, enlightenment, regeneration, and growth both of individuals and their societies.

In Beccaria and in the First Amendment, freedom of the press emphasizes the free and unincumbered transmission of opinion through "the use of printing" aimed at dissipating "the gloomy spirit of cabal and of intrigue, and, not the re-creation or repetition of past cabal and intrigue. The question for the people to ask is if the press--the media--has advanced freedom of speech or set it back; whether the press is the vehicle through which people can enlighten themselves or once again the vehicle for "secret treasons", "public massacres", or of "ministers of the gospel of Christ, bathing their hands in blood, in the name of the God of all mercy."

Freedom of speech or of the press, in the First Amendment and as clarified by Beccaria, is the means to an end for the people, and not for the few who administer the press, or of those in official positions. The latter should use the press only to inform the people of their official enactments and not to use it for personal gains be it of power or of wealth.

Precisely because opinions have the same basis as religious beliefs, Congress shall make no law to establish state religions or abridge the freedom of speech or of the press. The abridgement of either or of both has to be left to customs, to common sense, to public gatherings and assemblies, or whatever, in order to achieve a degree of balance derived from popular consensus and not from enacted laws or regulations.

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By Adolph Caso

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