“The frontispiece to the third edition of Dei Delitti e delle pene, published in 1765, illustrated one of the most important objectives of Beccaria’s treatise: to replace executions with incarceration and hard labor. A copperplate engraving based on a sketch Beccaria provided, the frontispiece depicts an idealized figure, Justice, shunning an executioner who is carrying a sword and axe in his right hand and who is trying to hand Justice a cluster of several [chopped human] heads with his outstretched left hand. Justice’s gaze is instead transfixed on a pile of prisoner’s shackles and worker’s tools – the instruments symbolizing imprisonment and prison labor.” (from John D. Bessler, The Birth of American Law. An Italian Philosopher and the American Revolution, 2014, p. 39)
Rationale, Scope, Purposes, Structure, and Outcomes of the Conference

Why Beccaria?

Cesare Beccaria (1738-1794) – philosopher, economist, and jurist and one of the most prominent representatives of the intellectual milieu of the Enlightenment – started writing Dei Delitti e delle Pene (On Crimes and Punishments) in 1763. He published it anonymously in Livorno, Italy, in 1764 at the age of twenty-six. A pamphlet of roughly a hundred pages, it soon turned into a bestseller, with translations and commentary instantly blossoming in various languages and mesmerizing intellectuals and practitioners on both sides of the Atlantic. It was translated in French in 1766 by André Morellet and in English (with a commentary attributed to Voltaire) in 1767.

The arguments that Beccaria, and the other young, Milanese aristocrats known as “Academy of Fists,” outlined in what was largely a common intellectual enterprise, resonated widely. If John Pocock has famously written about “the Machiavellian moment” to describe the reverberation of Machiavelli in later Atlantic republicanism, Michel Porret has recently coined the phrase “the Beccaria moment” to capture the impact that his treatise had on the theory and practice of modern jurisprudence.

Beccaria’s ideas led to the abolition of death penalty in Peter Leopold’s Great Dutch of Tuscany in 1786. They were incorporated in the French Code of 1791, which drastically reduced the number of capital crimes (from 119 to 32) and classified penalties through the criterion of proportionality, in turn paving the ground for the promulgation of the Napoleonic Code Pénal in 1810. They fascinated English jurists and lawyers, like Sir William Blackstone and Jeremy Bentham, with the latter calling Beccaria “the father of Censorial Jurisprudence” (as opposed to a merely expository account of the law). They influenced the 1767 reform of Russia’s penal system by Catherine the Great: 108 of its 526 articles were adapted from Beccaria’s pamphlet.

Outside Europe, they had a significant impact on the thought and action of the American Founders. Thomas Jefferson, the principal drafter of the Declaration of Independence, hand-copied twenty-six pages of Beccaria’s treatise in his notebook and cited it several times as he prepared the reform of the penal legislation of the State of Virginia throughout the 1770s. Together with Montesquieu’s Spirit of Laws, Beccaria’s On Crimes and Punishments was the only writing explicitly mentioned by “Brutus” in his address to the people of New York on October 18, 1787 as an example of “the opinion of the greatest and wisest men who ever thought or wrote on the science of government.” The circulation of Beccaria’s ideas was facilitated by the intense transatlantic book trade that flourished in the second half of the 18th century. Although Beccaria never visited the United States, he ranked seventh among the thirty-six most cited authors in North American pamphlets, newspapers, and books published between 1760 and 1805, together with Blackstone, Locke, and Hume.

Contributing to the international success of On Crimes and Punishments were also its style and linguistic choices and the philosophy besetting both. As Philippe Audegean has explained, Beccaria believed that enlightened consent to laws was a precondition of true liberty. Accordingly, he rejected the use of Latin, conveyed his thoughts clearly and concisely (he was soon nicknamed “Newtoncino”/Little Newton for his attempt to theorize punishments more geometrico), and turned
criminal law into a public form of knowledge rather than the impenetrable expertise of a few individuals.

Beccaria’s fight against torture, capital punishment, the arbitrariness of the judiciary, the undifferentiation between crime and sin, the secrecy of trials, the intricacy of their procedures – in a word, against any violation of the physical integrity of human beings – was part of a broader and more ambitious project. Once the mark of the absolute authority of the sovereign over his subjects, criminal law was, on Beccaria’s reconceptualization, the tool to protect citizens’ rights from any form of violence (public or private), while also guaranteeing the stability of the social order. The arguments he outlined and developed in some of the key chapters of the essay – Of Torture (chapter XVI), Of the Punishment of Death (chapter XXVIII), Of Imprisonment (chapter XXIX) – exemplified his vibrant defense of the uninfringeable dignity of human life, an intrinsic good which no form of punishment should ever violate. This radically new vision of the relationship between law and politics, articulated in a language at the crossroads of utilitarianism and contractarianism, constituted a Copernican revolution in the history of Western legal thought and jurisprudence. It laid the secular foundations of the modern constitutional state and represents Beccaria’s most enduring legacy.

Beccaria today: the debate on torture, death penalty, and mass incarceration

However, in the early 21st century, this legacy is increasingly in doubt. Beccaria’s legal Enlightenment resonates powerfully in the constitutions of many democracies around the globe, and yet its very same principles are often disregarded in practice. The persistence of death penalty, democracies’ resort to torture, and the degrading conditions of most prison systems across the world are testament to the urgency to go back to Beccaria’s On Crimes and Punishments to revisit its ideas and implications. “Much quoted and little read”¹, in the words of its editor for the “Cambridge Texts in the History of Political Thought” series, it is a book that remains as relevant today as it was

¹ Despite being often referenced as a foundational text in the history of modern criminal law, On Crimes and Punishments has traditionally received sporadic attention by Anglo-American scholars. Most of the times, they have simply paid lip service to Beccaria’s name, without thoroughly engaging with his work or thought. Modern English translation of this seminal text first appeared in the 1960s (by Henry Paolucci in 1963 and Jane Grigson in 1964) but it was only in 1995 that Richard Bellamy published it in the prestigious Cambridge “Texts in the History of Political Thought” series. Apart from Hart’s essay on “Bentham and Beccaria” (1964), three intellectual biographies of Beccaria were published in English throughout the 20th century: Coleman Phillipson’s Three Criminal Law Reformers: Beccaria, Bentham, Romilly (1923); Marcello Maestro’s Voltaire and Beccaria as Reformers of Criminal Law (1942); and Maestro’s Cesare Beccaria and the Origins of Penal Reform (1973). Over the past few decades, legal historians have also explored the influence of Beccaria on the American Founders: two important examples are Adolph Caso’s America’s Italian Founding Fathers (1975) and, more recently, John Bessler’s The Birth of American Law. An Italian Philosopher and the American Revolution (2014). In his essay “Beccaria’s ‘On Crimes and Punishments’: A Mirror on the History of the Foundations of Modern Criminal Law (2013), Bernard Harcourt has outlined the history of the praises, critiques, and influences generated by the treatise between the XVIII and the XX century. In his own words: “A source of inspiration for Bentham and Blackstone, an object of admiration for Voltaire and the Philosophes, a target of pointed critiques by Kant and Hegel, the subject of a genealogy by Foucault, the object of derision by the Physiocrats, rehabilitated and appropriated by the Chicago School of law and economics, […] On Crimes and Punishments may be used as a mirror on the key projects over the past two centuries and a half in the domain of penal law and punishment theory”.
in 1764. Revisiting its arguments, legacy, and contribution is vital to make its defense of human
dignity more than a broken promise of modernity.

In the Western world, where the abolition of capital punishment has become a legal axiom,
dozens of American states continue to resort to death penalty, under conditions that disfigure the
basic commitment to human value and fall short of the purported goal of effective crime control.
The prolonged, sometimes endless delays; the uncertainty of when the execution will be carried out;
the racial discrimination; overall, the unevenness of its application: all these factors make the
experience of death row prisoners even more barbaric.

Torture – a practice that modernity had supposedly eradicated once and for all from the
landscape of judicial practices – has found new apologists over the past twenty years. The challenge
of balancing security and liberty – two basic values at the core of modern-day democracies – has
made “clean tortures” great again, resuscitating them as an interrogation methods and truth-
extraction techniques within the war on terror. More recently, Donald Trump’s statements as a
presidential candidate in 2016 that “torture works” and that “even if waterboarding doesn’t work,
they deserve it,” has put the topic back on the map of public debate. Two centuries and a half after
Beccaria’s refutation of torture through his famous dilemma (i.e., either proof of guilty already
exists, which makes torture unnecessary, or it does not exist, which makes torture unjustified),
torture, and its relationship with democracy, remains one of the most controversial topics.

Finally, mass incarceration has increasingly proved a form of punishment that betrays the
core mission Beccaria had given it: to rehabilitate the citizen who offends. Understaffing,
overcrowding, repeated sexual abuses, physical and psychological violence, mistreatment based on
race and/or gender punctuate the everyday life of convicted men and women, making their return to
prison or jail even more likely. As recently revealed by the Justice Department’s Civil Rights
Division in a report on Alabama’s prison system, the experiences of many inmates are brutal,
sometimes even horrific, with individuals lying dead for days, others being tied up and tortured, and
rapes consistently being dismissed as “consensual homosexual activity.” Beside cruel treatment and
revolting conditions, there is a more fundamental point. As legal scholars and commentators have
increasingly emphasized, a just system should not simply protect the rights of the innocent; it
should also respect the humanity of the guilty.

All in all, the phenomenology of punishment in our punitive democracies reveals how
immensely relevant and dramatically important the ideas of Beccaria are today.

**Scope and Purposes of the Conference**

The ambition of our conference – *Torture, Death Penalty, Imprisonment: Beccaria and His
Legacies* – is to promote a conversation among leading scholars, with different but complementary
expertise, on the place of Beccaria in the development of modern criminal law and how his ideas
have (or have not) travelled into our present.

It will be the first major conference on Beccaria’s *On Crimes and Punishments* and its
contributions to modern and contemporary debates that has ever been organized in Anglo-American
academia. It will bring together political and legal historians, historians of political thought and
ideas, political and legal theorists, philosophers, legal scholars and practitioners to dissect
Beccaria’s arguments and their echo (or lack thereof) in the practice of contemporary criminal law through the prism of three main forms of punishment: torture; death penalty; incarceration.

By doing so, the conference will pursue a threefold goal.

On the one hand, it will contextualize Beccaria’s treatise, to better capture its disruptive originality vis-à-vis previous theories and practices of punishment and re-examine some of the debates it fueled over the following two centuries.

On the other, it will explore the history, purposes, modalities, and conundrums of the three forms of punishment in the 20th and early 21st centuries. Understanding their place within the broader scaffolding of constitutional democracies and dissecting the arguments of both their partisans and their opponents will allow to envision reforms, discuss alternatives, and understand whether, and how, we can live up to the legal humanism and enlightenment championed by Beccaria.

Finally, it will draw attention to an array of contemporary challenges that the author of On Crimes and Punishments could not possibly anticipate and that have emerged over the past few decades and years. Special emphasis will be given to penal populism; the escalation of violence and racism in increasingly polarized democracies; state policies to address and prevent crime and control borders in diverse societies; the global phenomenon of undocumented migrants, asylum-seekers, and refugees, and the regime of impunity in the case of migrants’ deaths; the use of digital technologies in law enforcement and criminal justice, and the way they erode citizens’ autonomy; the implications of all the above for debates on race, gender, personhood, human rights, and democratic agency.

Structure of the Conference and Possible Outcomes

The conference will last two days and will be divided in three major sections: “Punishment before Beccaria”; “The Penal Humanism of Beccaria”; and “The Legacies of Beccaria. Each section will in turn consist of sub-sections: “Judging and Punishing in the Ancient and Early Modern World” (I) in the first section; “Beccaria’s On Crimes and Punishments: Text and Context” (II) and “Beccaria’s On Crimes and Punishments: Readers, Disciples, Critics” (III) in the second section; “Torture” (IV), “Death Penalty” (V) and “Incarceration” (VI) in the third section.

The conference will begin with a keynote by Prof. Judith Resnik (Yale Law School), on The Impermissible in Punishment (based on her ongoing book manuscript) and will end with a conversation between Prof. Bernard E. Harcourt (Columbia/EHESS) and Prof. Didier Fassin (IAS at Princeton/EHESS).

Given the importance and relevance of the topic, the contribution of some of the most distinguished scholars in contemporary academia, the interdisciplinary nature of the conference, and the absence of a project of this sort in the existing literature, the two organizers – Prof. Bernard E. Harcourt (Columbia University Law School/Political Science) and Dr. David Ragazzoni (Columbia University, Political Science) – hope to collect the revised papers in an edited volume for a leading university press.

Program of the Conference

The schedule of each panel refers to the NYC time zone
Friday, 15 October 2021

Morning
10.30 am-12 pm

Introductory remarks

Bernard Harcourt and David Ragazzoni
(co-organizers, Columbia University)

David Freedberg and Barbara Faedda
(Director and Executive Director of the Italian Academy, Columbia University)

Keynote

Judith Resnik (Law, Yale University)

The Impermissible in Punishment: "... if whipping were to be authorized..."
(based on her ongoing book manuscript)

With questions, comments, and discussion to follow.

Afternoon
1-2.30 pm

PUNISHMENT BEFORE BECCARIA

I
Judging and Punishing in the Ancient and Early Modern World

Chair and discussant: Kathleen Coleman (Classics, Harvard University)


On Ancient Crimes and Punishments


Disfiguring the Prisoner's Body:
Shame, Violence, and the Prison in Beccaria and Classical Athens


Doubt and Proof in Medieval English Law

*Death Penalty in Early Modern Europe*

3-4.30 pm

**THE PENAL HUMANISM OF BECCARIA**

II

Beccaria’s *On Crimes and Punishments*: Text and Context

Chair and discussant: David Ragazzoni (Political Science, Columbia University)


*The Innocent and the Guilty. Beccaria’s Arguments against Torture*


*Capital (and) Punishment in Beccaria (TBC)*

Gabriella Silvestrini (History of Political Thought, University of Eastern Piedmont, Italy – author of *Natural Right and General Will. The Republican Contractualism of Jean-Jacques Rousseau*, 2010 (in Italian) and co-editor of *The New Justifications of Torture in the Age of Rights*, 2017 (in Italian))

*Beccaria against Death Penalty and Torture: Between Social Contract Theory and Natural Rights*


*On the Mysterious Case of Natural Rights in Beccaria’s On Crimes and Punishments*
5-6.30 pm

III
Beccaria’s *On Crimes and Punishments*:
Readers, Disciples, Critics

Chair and discussant: David Ragazzoni (Political Science, Columbia University)


*Cesare Beccaria (1764) and Cesare Lombroso (1876): Competing Paradigms of Criminal Justice*


*The Reception of On Crimes and Punishments:*
Beccaria’s Philosophy, the Parsimony Principle, and the Criminal Law’s Transformation in the English-Speaking World

Pascal Beauvais (Criminal Law, Sorbonne – Université Paris 1 Panthéon-Sorbonne— coeditor of *The Transformations of the Penal Proof*, 2018 (in French))

*Between Historical Influence and Contemporary Erasure:*
The Legacy of Beccaria on the Construction of European Criminal Law

Saturday, 16 October 2021

Morning
9.30-11 am

THE LEGACIES OF BECCARIA

IV
Torture
Chair and discussant: **Charleyne Biondi** (Political Science, Columbia University/Sciences Po, Paris)


*Democratizing Torture: An American History*


*On the Primacy of a Perpetrator-Focused Perspective*


*Salvaging Democracy from Torture: The Destructive Role of Secrecy in the US Torture Program*

11.30 am-1 pm

V

**Death Penalty**


*Beccaria and Abolition Democracy*

**Alexis J. Hoag** (Brooklyn Law School—author of “Valuing Black Lives: A Case for Ending the Death Penalty”)

*Unpacking Racism from Strickland's Strategy*

**Carol S. Steiker** (Law, Harvard University – co-author, most recently, of *Courting Death. The Supreme Court and Capital Punishment*, Harvard UP 2016 and co-editor of *Comparative Capital Punishment*, Elgar 2019)

*The Juridical Regulation of Capital Punishment in the US: Promises and Pitfalls of a Failed Experiment*
Jeffrey Fagan (Law, Columbia University—co-author of A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It)

Beccaria, Class, & Race

Afternoon
2-3.30 pm

VI
Incarceration

Chair and Discussant: Ayten Gündoğdu (Political Science, Barnard College, Columbia University)

Elizabeth Hinton (Law, Yale University—author of From the War on Poverty to the War on Crime. The Making of Mass Incarceration in America, Harvard UP 2017, American on Fire, Liveright 2021)

From “The Land of the Free” to the World’s Largest Prison System:
The Origins of America’s Mass Incarceration

Erin Kelly (Philosophy, Tufts University—author of The Limits of Blame: Rethinking Punishment and Responsibility, Harvard UP 2018)

Incarceration as a Problem of Historical Injustice


Beccaria and the New Abolitionists

4-5 pm

Final Conversation and Roundtable

Bernard E. Harcourt (Law and Political Science, Columbia University / École des Hautes Études en Sciences Sociales, Paris)

in conversation with


and Roundtable with Speakers