

Torture, Death Penalty, Imprisonment: Beccaria and His Legacies

International conference

(originally scheduled at Columbia University, New York; [now moved to Zoom](#))

15-16 October 2021 (EDT/NYC time)

Organizers:

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Prof. Bernard E. Harcourt (beh2139@columbia.edu) – Law /Political Science



“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 unfringeable 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 un-documented 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)

Adriaan Lanni (Law, Harvard University – author of *Law and Justice in the Courts of Classical Athens*, Cambridge UP 2006, and *Law and Order in Ancient Athens*, Cambridge UP 2016; co-editor of *A Global History of Crime: Antiquity* (Bloomsbury, in progress))

On Ancient Crimes and Punishments

Marcus Folch (Classics, Columbia University – author of *The City and the Stage: Performance, Genre, and Gender in Plato's "Laws"*, Oxford UP 2015, and of a book manuscript on *Bondage, Incarceration, and the Prison in Ancient Greece and Rome: A Cultural and Literary History* (in progress))

Disfiguring the Prisoner's Body:

Shame, Violence, and the Prison in Beccaria and Classical Athens

Elizabeth Papp Kamali (Law, Harvard University – author of *Felony and the Guilty Mind in Medieval England*, Cambridge UP 2019)

Doubt and Proof in Medieval English Law

Adriano Prospero (History, Scuola Normale Superiore, Pisa – author of *The Tribunals of Conscience. Inquisitors, Confessors, and Missionaries*, 1996 (in Italian), *The Council of Trent and the Counter-Reformation*, 1999 (in Italian), *The Roman Inquisition. Readings and Enquiries*, 2003 (in Italian), *Justice Blindfolded. The Historical Course of an Image*, Brill 2018, and *Crime and Forgiveness. Christianizing Execution in Medieval Europe*, Harvard UP 2019; co-editor of *Historical Dictionary of the Inquisition*, 2010, and *Torture*, 2017 (both in Italian))

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)

Philippe Audegean (Philosophy, Sorbonne Université – author of *La philosophie de Beccaria. Savoir punir, savoir écrire, savoir produire*, Vrin 2010, and coeditor of *Scénographies de la punition dans la culture italienne moderne et contemporaine*, Press Sorbonne Nouvelle 2014, and *Le Moment Beccaria: Naissance Du Droit Pénal Moderne (1764-1810)*, Liverpool UP 2018; editor and translator of the French edition of Beccaria's *On Crimes and Punishments*, ENS Éditions 2009)

The Innocent and the Guilty. Beccaria's Arguments against Torture

Sophus Reinert (History of Economic Thought, Harvard Business School – author of *Translating Empire: Emulation and the Origins of Political Economy*, Harvard UP 2011, *The Academy of Fisticuffs. Political Economy and Commercial Society in Enlightenment Italy*, Harvard UP 2018; co-editor of *Markets, Morals, Politics: Jealousy of Trade and the History of Political Thought*, Harvard UP 2018, and *The Economic Turn: Recasting Political Economy in Enlightenment Europe*, Anthem Press 2019)

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*

Dan Edelstein (French and History, Stanford University – author of *The Terror of Natural Right: Republicanism, the Cult of Nature, and the French Revolution*, Chicago UP 2009, and *The Spirit of Rights*, Chicago UP 2018)

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)

Mary Gibson (History, John Jay College and the Graduate Center, City University of New York – co-translator of Cesare Lombroso, *Criminal Man*, Duke UP 2006, and of Lombroso, *Criminal Woman, the Prostitute, and the Normal Woman*, Duke UP 2004; author of *Born to Crime: Cesare Lombroso and the Origins of Biological Criminology*, Praeger 2002, and, most recently, of *Italian Prisons in the Age of Positivism, 1861-1914*, Bloomsbury 2019)

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

John D. Bessler (Law, University of Baltimore – author of *Death in the Dark: Midnight Executions in America*, Northeastern UP 1997, *Kiss of Death: America's Love Affair with the Death Penalty*, NUP 2003, *Cruel and Unusual: The American Death Penalty and the Founders' Eighth Amendment*, NUP 2012, *The Birth of American Law: An Italian Philosopher and the American Revolution*, Carolina Academic Press 2014, *The Death Penalty as Torture: From the Dark Ages to Abolition*, CAP 2017, *The Celebrated Marquis: An Italian Noble and the Making of the Modern World*, CAP 2018, and *The Baron and the Marquis: Liberty, Tyranny, and the Enlightenment Maxim that Can Remake American Criminal Justice*, CAP 2019)

*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)

William Fitzhugh Brundage (History, University of North Carolina at Chapel Hill – author, most recently, of *Civilizing Torture. An American Tradition*, Harvard UP 2018)

Democratizing Torture: An American History

Matthew Kramer (Political and Legal Philosophy, University of Cambridge – author of *Where Law and Morality Meet*, Oxford UP 2004, *Objectivity and the Rule of Law*, Cambridge UP 2007, *The Ethics of Capital Punishment*, Oxford UP 2011, *Torture and Moral Integrity: A Philosophical Enquiry*, Oxford UP 2014, and *Freedom of Expression as Self-Restraint*, Oxford UP 2021; co-author of *A Debate Over Rights: Philosophical Enquiries*, Oxford UP 1998; editor of *Rights, Wrongs, and Responsibilities*, Palgrave 2001, and *Crime, Punishment, and Responsibility*, Oxford UP 2011)

On the Primacy of a Perpetrator-Focused Perspective

Karen Greenberg (History, Fordham University – author of *The Least Worst Place: Guantanamo's First 100 Days*, Oxford UP 2009; co-editor of *The Torture Papers: The Road to Abu Ghraib*, Cambridge UP 2005, and *The Torture Debate in America*, Cambridge UP 2006)

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

11.30 am-1 pm

V

Death Penalty

Chair and discussant: **Bernard E. Harcourt** (Law and Political Science, Columbia University / École des Hautes Études en Sciences Sociales, Paris – author of “Beccaria’s *On Crimes and Punishments*,” *The Illusion of Free Markets: Punishment and the Myth of Natural Order*, Harvard UP 2011 and, most recently, *Critique & Praxis: A Critical Philosophy of Illusions, Values, and Actions*, Columbia UP 2020)

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

Bernard E. Harcourt (Law and Political Science, Columbia University / École des Hautes Études en Sciences Sociales, Paris – author of “Beccaria’s *On Crimes and Punishments*”)

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

Didier Fassin (Anthropology and Sociology, Institute for Advanced Study, Princeton / École des Hautes Études en Sciences Sociales, Paris – author of *Enforcing Order: An Ethnography of Urban Policing*, Polity 2013, *Prison Worlds. An Ethnography of the Carceral Condition*, Polity 2016, and *The Will to Punish*, Oxford UP 2018; co-author of *At The Heart of the State: The Moral World of Institutions*, Pluto Press 2015; editor of *Writing the World of Policing. The Difference Ethnography Makes*, Chicago UP 2017; co-editor, most recently, of *Words and Worlds: A Lexicon for Dark Times*, Duke UP 2021 and, with Bernard Harcourt, of *A Time for Critique*, Columbia UP 2019)
and Roundtable with Speakers