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BEYOND BECCARIA: DIVERSE CRITICISM OF THE DEATH PENALTY IN THE
SIXTEENTH, SEVENTEENTH AND EIGHTEENTH CENTURIES

By
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A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the
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ABSTRACT

Most scholarly work on the history of criticism of the death penalty focuses on Cesare Beccaria's famous treatise, *On Crimes and Punishments*, and its impact on future thinkers and abolition movements. This thesis examines other trends, thinkers, and movements involved in the criticism or abolition of capital punishment in sixteenth-, seventeenth-, and eighteenth-century Europe. First, it argues that in the sixteenth and seventeenth centuries governments carefully orchestrated executions in order to foster acceptance of capital punishment. These attempts, however, were not entirely successful: early writings and trends reveal dissatisfaction with governments' use of capital punishment. Second, it shows that during the early and middle eighteenth century, several thinkers developed sustained and reasoned criticisms of capital punishment that predated and diverged from those of Beccaria. Third, it demonstrates that late eighteenth-century laws abolishing or restricting the death penalty relied not only on the influential work of Beccaria but also on the innovations of still more historical actors and the circumstances of each reforming state. Thus, although this thesis certainly does not intend to undermine the groundbreaking work of Beccaria, it argues that the history of criticism of the death penalty is far richer and more complex than previously recognized.

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INTRODUCTION

Most scholarly work on the early history of criticism of the death penalty focuses on Cesare Beccaria's famous 1764 treatise, *On Crimes and Punishments*, and its impact on future thinkers and abolition movements. However, Beccaria's status in scholarship as the starting point of criticism of the death penalty, the first thinker to call for abolition, and the singular influence on early abolition laws needs to be complicated. A comprehensive analysis of the history of criticism of the death penalty should begin long before Beccaria, in the early sixteenth century. During this time, governments carefully orchestrated executions in order to foster public acceptance of capital punishment. These attempts, however, were not entirely successful; early writings and trends reveal dissatisfaction with governments' use of capital punishment. As early as 1516, Thomas More decried the death penalty as unjust for lesser crimes and by 1699, John Bellers presented a sustained argument for complete abolition. By the mid-eighteenth century, several thinkers had criticized capital punishment using a variety of arguments. Thus, it is inaccurate to credit Beccaria with the accomplishment of being the first thinker to argue for the abolition of the death penalty. It is far more clear that Beccaria's treatise was highly influential throughout Europe, and that reformers in many different countries relied on his treatise for inspiration and rhetoric. However, despite this clear influence, the thought of Beccaria did not have a consistent impact on early abolition movements across Europe. Rather, in each country, his thought was routinely modified, complicated, qualified, or even misappropriated. Overall, although Beccaria deserves immense credit for his groundbreaking treatise and his impact on the movement to abolish the death penalty, his treatise is best understood in the complete context of its genesis and influence.

CHAPTER I: REEXAMINING CAPITAL PUNISHMENT IN EARLY MODERN EUROPE

Given contemporary debates and national controversy over the use of the death penalty, it is quite important to understand the history of capital punishment and attitudes toward it. While the death penalty has been practiced throughout history, the early modern period was an especially relevant period for its study for two reasons. First, the death penalty was widely and increasingly used throughout Europe during this time. Second, states developed institutions and rituals to justify their use of the death penalty during the early modern period, but at the same time, some people criticised the state's use of the death penalty. Thus the study of the period between the sixteenth century and the mid-eighteenth century, before the impact of Cesare Beccaria's landmark criticism of the death penalty in his 1764 book, *On Crimes and Punishments*, is key for understanding both the history of the use of capital punishment and the origins of its criticism.

The consensus of scholars is that in the early modern period, governments widely used the death penalty as a tool to establish and display their authority, a conclusion supported by a large body of evidence.¹ However, scholars also largely reject the idea that the death penalty was controversial before the philosophical movement to condemn it, spearheaded by Cesare Beccaria in the mid-eighteenth century. David Garland, in his history of the death penalty in the early modern period, includes a section entitled "A Punishment Beyond Question," in which he cites four different scholars, all of whom agree that the death penalty was not seriously analyzed, nor was its legitimacy contested, in the early modern period.² Yet, some evidence exists that is not in

¹David Garland, "Modes of Capital Punishment: The Death Penalty in Historical Perspective," in *Peculiar Institution: America's Death Penalty in an Age of Abolition*, (Cambridge, Mass: Harvard University Press, 2010), 37.

²Garland, "Modes of Capital Punishment," 47.

accordance with this hypothesis. While not as explicit as in later treatises, evidence proves that the death penalty was not used profusely and uncritically by the state as a display of power and blindly accepted by the people. Instead, the state was highly concerned with legitimizing the use of the death penalty and with depicting capital punishment as a valid means of enacting justice. While executions were meant to symbolize the power of the state, they were highly controlled and ritualized, offset with acts of mercy, and tailored to foster a view of executions as legitimate rather than despotic. Further evidence shows that the state's fear of people questioning the use of the death penalty was not ungrounded. At least some writers and playwrights in the early modern period were criticizing the state's use of capital punishment, and records of executions suggest that the death penalty was not always enforced by those who may have disagreed with its use. While this social criticism of capital punishment is certainly not identical to later philosophically grounded calls for complete abolition of capital punishment, it represents a stage in the history of criticism of the death penalty before the influence of Enlightenment thought.

Overall, the use of the death penalty in early modern Europe before the influence of Enlightenment thinkers such as Beccaria was not uniform or uncritically enacted. While the weak and unstable governments of the early modern period did indeed use capital punishment as a means of displaying absolute power, they were also heavily conscious of the image of their executions, carefully cultivating the rituals of death, the actions of the condemned, and the people's perceptions of justice. This analysis argues that these actions were efforts to prevent public rejection of capital punishment as a mode of terror and that these efforts were undertaken as a result of a certain unease regarding the death penalty among at least some members of society. Thus, the early modern period was not one in which, as some scholars have suggested, the death penalty was completely uncontroversial; rather, it was one of extreme tension in which

states consistently, but only somewhat successfully, worked to suppress criticism of the death penalty.

The State's Attempts to Legitimize Its Use of the Death Penalty

Many scholars have recognized the theatricality and symbolic importance of the early modern death penalty. Unlike modern executions, conducted in somewhat private settings and at least ostensibly with limited pain, executions of the early modern period were public spectacles, intended to be seen. Thus, executions were vital to the early modern government's communication of its own power within the social system, but only if perceived correctly by their audiences. Karen Cunningham describes the ideal perception of the theatrically styled Tudor execution, writing that it relied on a "quasi-dramatic structure in which the accused was transformed into a figure of evil, the monarch and justices into representations of good, and the condemned's body into a posttrial symbol of the triumph of right."³ Yet, while this goal has been widely discussed and correctly cited as evidence of the states' use of capital punishment to assert authority, the implicit negation of this goal — that the populace might view the accused as a victim, the monarch as a representation of wrong, and the trial as a manifestation of injustice — has not been widely analyzed. The states' vigorous preoccupation with ensuring a specific image of itself as an agent of justice in its implementation of capital punishment suggests a very real fear of public rejection of the death penalty as unjust. Thus, to prevent this outcome, early modern states relied on various practices and institutions to manipulate public perceptions of capital punishment.

In early modern England, the state attempted to manipulate public perceptions of the death penalty on the level of both the judicial system as a whole and of individual trials. On the

³Karen Cunningham, "Renaissance Execution and Marlovian Elocution: The Drama of Death," *PMLA* 105, no. 2 (1990), 210. doi:10.2307/462557

system level, the English government employed a system of pardons to legitimize its use of capital punishment. In her book, *Mercy and Authority in the Tudor State*, K. J. Kesselring analyzes the relationship between capital punishment and instances of royal mercy in England in the mid-sixteenth century. The book discusses the strong system of pardons employed by the Tudor monarchs, which Kesselring argues served to offset instances of harsh punishment; thus, there existed a “reciprocal relationship between mercy and terror.”⁴ While Kesselring’s thesis broadly connects the system of pardons to the function of the Tudor state, her points about the state’s use of mercy to balance and legitimize terrorizing actions can also be more specifically applied to capital punishment. Indeed, Kesselring herself writes, “Of all the public uses of clemency, the most intensely dramatic was the last-minute pardon at the gallows or the stake.... [S]uch pardons transformed the spectacle of punishment by linking it with the spectacle of mercy.”⁵ By balancing executions with complementary pardons, monarchs created an image of themselves as judges of cosmic proportions, justly deciding who would live and die and sparing the innocent from execution. Thus, the pardon system offered an alternative message of the state as merciful as well as just in that it “saved” people by preventing their execution.

While this system of pardons did not apply to all executions, great pains were also taken to display the justice of executions at the level of individual trials. For example, in the elaborate trial of fourteen men executed for a plot to kill the queen in 1586, the queen’s council opened the trial of each man by repeating the statement:

Albeit there were nothing now further to be done, but to proceed to Judgement upon his own confession; yet forasmuch as they *desired that the hearers should be satisfied, and all the world know, how justly he was to be condemned*, they crave license to give such evidence as would sufficiently and fully prove the indictment [emphasis added].⁶

⁴K. J. Kesselring, *Mercy and Authority in the Tudor State*, (Cambridge: Cambridge University Press, 2003), 2.

⁵Kesselring, *Mercy and Authority in the Tudor State*, 143.

⁶Thomas Howell, ed. *Cobbett’s Complete Collection of State Trials*, 33 vols, (London: Bagshaw, 1809-26), vol 1, 1130.

This statement shows that the orchestrators of public trials were quite concerned with the viewers' perceptions of the enactment of justice. While the Tudor state was indeed attempting to express its ultimate power by executing these persons, it was also quite concerned with public approval of the executions. Thus, the authorities in charge insisted on the integrity of the trials, reassuring the listening spectators that the death penalty would not be administered unfairly. If the state were not at all concerned about the spectators disapproving of the executions, then this emphasis would not have been necessary.

In addition to courts affirming motives of justice in prosecuting supposed criminals, the English government also sought to coerce criminals into offering testimonials of their own guilt and acknowledging the justice of their own executions. These pre-execution speeches served a variety of functions, offering the condemned a spiritual opportunity to repent while also stressing the gravity of the crime in an effort to deter others from committing it. Yet in a state as large and powerful as England, they surely also illustrated the power of the government. Kesselring writes the following of these condemned orators: "Their words demonstrated the state's power.... [O]ffering a symbolic restoration of the social relations of power that disobedience had disrupted, such apologetic orations displayed common features: the offenders acknowledged the legality of their execution. . . and implored the forgiveness of both God and the sovereign."⁷ While Kesselring does not explicitly address this practice's implications, it seems to offer yet more evidence that states were concerned with public perceptions of the justice of the death penalty. Although it is certainly true that governments wanted to enact the death penalty to discourage crime by example and to display their governing power, this interest in perception of correctly executed death penalties does not necessarily fit those motives. Instead, it sought to reassure potentially doubtful spectators of the state's correct use of capital punishment.

⁷Kesselring, *Mercy and Authority in the Tudor State*, 148.

This practice of allowing prisoners to speak before their executions, while usually useful for promoting an image of justice, occasionally subverted the motives of the state because not all prisoners were willing to declare their own guilt or recognize the legitimacy of their trials. Molly Smith writes of the opportunity for prisoners to deliver a speech immediately before execution: “intended to reinforce the power of justice, it frequently questioned rather than emphasized legal efficacy.”⁸ While most political leaders must have considered the opportunity for prisoners to declare their own guilt as necessary for religious reasons and worth the occasional rebellious criminal who subverted the message, others worried that these speeches were not safe. Smith offers the example of John Chamberlain, an upper-class letter writer with connections to the political elite, who responded to an incident of a priest protesting his execution by writing, “the matter is not well handled in mine opinion, to suffer them [condemned prisoners] to brave and talk so liberally at their execution.”⁹ Thus, the English system of convicts’ self-indictment, while usually functioning to further the state’s goals of legitimizing executions, was not entirely failsafe.

In Italy, a different and even more institutionalized practice flourished to serve the same purpose of shaping public perceptions of the justice of executions: the lay conforteria. This was an association of laymen who would accompany condemned people through the entire process leading up to their execution, attempting to reconcile them to their fate and provide spiritual assistance. While the conforteria began as an independently organized Christian charitable institution, it had become closely associated with state power by the early sixteenth century. Nicholas Terpstra, a scholar of this institution, writes about the bureaucratization of the conforteria:

⁸Molly Smith, *Breaking Boundaries: Politics and Play in the Drama of Shakespeare and his Contemporaries*, (Aldershot: Ashgate Publishing Limited, 1998), 32.

⁹Thomas Birch, *The Court and Times of James I* in Molly Smith, *Breaking Boundaries*, 215.

In the changed Italy of the sixteenth century, comforting became the work of elite groups, not only in Bologna, but in Florence, Rome, Naples, Milan, Ferrara, and elsewhere. This process of ennobling radically altered the composition and aims of all confraternities dedicated to social charity, turning them from independent institutions into quasi-governmental agencies.¹⁰

By the end of the sixteenth century, the conforteria had private rooms in prisons, a monopoly on all comforting, and had been given administration over all prisoners by order of a papal bull.¹¹

While certainly serving a largely spiritual purpose, by providing religious consolation and help in attaining divine forgiveness, the conforteria also served to consolidate local power. Although the confraternities were not directly acting as the state, they were composed of the elite class and sought to further the legitimacy of the existing state power structure.

Information about exactly how the conforteria served the goal of legitimizing executions to the public can be found in a manual written to instruct and train members of the conforteria in Bologna. This book was meant to guide the behavior of disciples — temporary or apprentice comforters — during the difficult process of preparing a prisoner for his execution. While the intentions of these comforters were unquestionably largely spiritual, the manual instructed prospective comforters in at least three ways which furthered the state goal of legitimizing the execution: to convince the convict of the religious correctness of the punishment, to control others' perceptions of the execution, and to believe in the justice of the system themselves. Thus, the institution served to minimize the likelihood of prisoners offering subversive speeches from the scaffold, as occasionally happened in England.

The manual certainly focused on the need of the comforter to convince the condemned of the religious necessity of peacefully accepting their execution. The very first chapter of the book instructed the comforter to tell the convict, "This happens to you because it pleases the will of

¹⁰Nicholas Terpstra, "Piety and Punishment: The Lay Conforteria and Civic Justice in Sixteenth-Century Bologna," *The Sixteenth Century Journal* 22, no. 4 (1991): 690-691. doi:10.2307/2542371.

¹¹Terpstra, "Piety and Punishment," 691.

God... and if the punishment of the body is not borne willingly, know for certain that it will not be worthy and God will not accept the soul to greater glory nor to the greater crown.”¹² Thus, comforters were to tell the prisoners that if they did not peacefully accept their execution but rather protested its injustice, they were liable to be barred from heaven for resisting the will of God. While this entire religious argument was certainly not constructed for the purpose of tricking convicts into publically accepting their own death for the political purpose of legitimizing the death penalty, this religious language conformed to the goals of the state. Comforters likely made this theologically powerful argument out of genuine spiritual concern for the condemned persons, but its political expediency for convincing prisoners to accept publicly their fate likely contributed to its inclusion in the official manual.

Additionally, the manual also instructed comforters to carefully monitor the convict’s interactions with other people in order to prevent him from speaking against his punishment and potentially riling up others against the injustice of the death penalty. The manual instructed on monitoring the prisoners’ dialogue with visiting family members: “But if you see them talking to him about something inappropriate, for example if they complain about what he will be facing and so forth, then throw yourself in between them and, with a slightly troubled expression, break up the discussion.”¹³ Rather than allowing the convict to foster anger among the family against a perceived unjust exercise of the death penalty, comforters were supposed to keep their charges focused on the afterlife and the spiritual joy to come if they repented and acted correctly. Even more important than controlling interactions with family members, however, was preventing the prisoner from publically decrying the wrongness of his execution to the mass of spectators. To prevent this, the manual instructed the comforter: “Always make him say some prayer so that he

¹²*The Bologna Comforter’s Manual, Book 1*, trans. Shelia Das, in *The Art of Executing Well: Rituals of Execution in Renaissance Italy*, ed. Nicholas Terpstra (Kirksville, Missouri: Truman State University Press, 2008), 195.

¹³*The Bologna Comforter’s Manual*, 249.

does not think, and that he does not listen to what is being read. And this is because if he were to hear some crime that he did not commit, he would get very agitated. And there are times some of them may say to the notary who is reading, ‘you are lying through your teeth,’ and this is very bad.”¹⁴ In this way, prisoners were to be consciously prevented from openly protesting potentially wrongful convictions. While this was ostensibly to create a more peaceful and spiritual execution experience for all, it also served to prevent convicts from rousing others to suspect or take issue with the death penalty.

Finally, the manual addressed the possibility of the comforters themselves developing doubts about the legitimacy of the executions. Despite the fact that comforters came from the noble classes and had an interest in preserving the institutions of power, the political elite may have worried that disciple comforters might develop a sympathy for the prisoners or a belief that they had indeed been condemned unjustly. To prevent this, the manual prescribed “that you should feel more sorry about the vices and sins that were committed and perpetrated by those people than by their bodily death.”¹⁵ This sought to remind comforters that these convicts were sinners, and their executions, while seemingly sad, were justly enacted.

Certainly, then, the administration of the conforteria was largely — or even primarily — concerned with promoting peaceful executions in which the death penalty appeared to both the convict and the spectators as a divinely willed enactment of justice. Yet, it also instituted a system in which large numbers of the Italian political elite were routinely faced with the realities of the execution system; the majority of comforters were “disciples” who participated in only a few executions over the course of a year or two before moving into other lines of work.¹⁶ Terpstra

¹⁴*The Bologna Comforter’s Manual*, 271.

¹⁵*The Bologna Comforter’s Manual*, 193.

¹⁶Nicholas Terpstra, *The Art of Executing Well: Rituals of Execution in Renaissance Italy*, (Kirksville Missouri: Truman State University Press, 2008), 9.

speculates that while these men were unquestionably agents of state power who sought to legitimize the death penalty, their proximity to the horrific reality of executions may have ultimately created an audience receptive to Beccaria's call for the abolition of the death penalty in his *Essay on Crimes and Punishment* in 1764.¹⁷ He suggests that the "rapid turnover of disciples suggests that at least some of those who left the work would have agreed, on the basis of direct personal experience, with Beccaria's argument that capital punishment was inconsistent with humane values."¹⁸ While this is merely speculative, it does suggest an ironic possibility: that the very institution whose goal it was to ensure the death penalty was perceived as just produced an audience receptive to calls for its abolition.

Overall, the above institutions and practices, both in England and in Italy, betray the state's anxious preoccupation with portraying the death penalty as just, divinely sanctioned, and correctly enacted. These findings do not dovetail nicely with claims such as the following put forward by David Garland, that the death penalty was not controversial in early modern Europe:

there was no deep controversy about the state's right to kill lawbreakers... nor was capital punishment cause for anxiety or embarrassment on the part of the authorities. . . . [I]n contrast to late modern western society, where death penalties are controversial and executions take place in semi-secret, laden with anxiety, the absolutist execution was highly integrated into the social fabric of early modern societies.¹⁹

This interpretation, while containing elements of truth, needs to be revised. Although capital punishment may not have been a cause of embarrassment for the state, as it was far more normalized in society than it is today, executions were certainly a cause for anxiety. States would not have gone to such great lengths to portray their use of capital punishment as just if they were not extremely concerned that society was liable to reject it as tyrannical. Neither was this fear

¹⁷Terpstra, *Art of Executing Well*, 9.

¹⁸Terpstra, *Art of Executing Well*, 9.

¹⁹Garland, "Modes of Capital Punishment: The Death Penalty in Historical Perspective," 47-48.

completely unfounded; there were some instances of popular rejection of the death penalty well before the influence of Enlightenment thinkers such as Beccaria.

Popular Criticism of the Death Penalty Before the Enlightenment

While the major wave of death penalty criticism began during the Enlightenment with the philosophical criticisms of Beccaria and Voltaire, people interacted with capital punishment in a critically conscious way well before the influence of these philosophical thinkers. Thus, the state's interest in legitimizing its own use of the death penalty was not arbitrary but rather based on the real threat of its rejection by the people as tyrannical or unjust. Some of the clearest criticism of the death penalty from the early modern period can be found in Thomas More's 1516 book *Utopia*. While not calling for the complete abolition of capital punishment, More argued that the English government was using the death penalty unjustly against thieves. He writes:

To my mind, no amount of property is equivalent to a human life. If it's argued that the punishment is not for taking the money, but for breaking the law and violating justice, isn't this conception of absolute justice absolutely unjust? One really can't approve of a regime so dictatorial that the slightest disobedience is punishable by death, nor of a legal code based off the Stoic paradox that all offenses are equal — so that there's no distinction in law between theft and murder, though in equity the two things are so completely different.²⁰

Although not all of More's arguments in *Utopia* are intended to be understood literally, this argument against the use of the death penalty for petty thieves was quite particular in its condemnation of a specific English legal practice and was entirely in earnest. While More did not call for a complete abolition of the death penalty — his issue was its use against crimes that did not warrant such harshness — his condemnation of punishing a crime with an unduly harsh penalty has influenced death penalty criticism for centuries. His clear and poignant question, “isn't this conception of absolute justice absolutely unjust?” epitomized the future of death penalty criticism long before the treatise of Beccaria.

²⁰Thomas More, *Utopia*, trans. Paul Turner (London: Penguin Books, 2003), 28.

On a more popular level, early modern individuals engaged with the death penalty through the medium of theater. In some ways, the connection between theater and capital punishment reinforced and normalized executions; the similarity in the structure and framework of these two public experiences worked to integrate the spectacle of public execution into society by making it similar to popular entertainment, while popular entertainment often imitated the violence of public punishment and execution. Molly Smith writes of this connection, “I do not intend to collapse these modes of spectacle completely, but to suggest that the close connection between these forms of popular public entertainment may be worth exploring in detail. The theater and the scaffold provided occasions for communal festivities whose format and ends emerge as remarkably similar.”²¹ Both of these modes invited spectators to view a shocking and potentially violent spectacle, one which reinforced the idea of punishment. In fact, it is possible that the state emphasized the theatrical, ritualized nature of executions in order to make them relatable to actual performances of theater, with clear messages of justice and the punishment of wrongdoing. Yet, while theatrics might have lent a kind of drama to executions and a shared festival-like atmosphere, theater also provided a medium through which playwrights could subtly parody, and occasionally critique, the state’s use of execution, a message that would reach mass audiences.

In her article “Theatre and Punishment: Spectacles of Death and Dying on the Stage,” Smith examines the relationship between theatrical modes and capital punishment in early modern England. She first examines a theatrical story written by Thomas Nashe, a contemporary of Shakespeare.²² In this fiction, the main character witnesses the execution of an infamous murderer, Cutwolf. Nashe describes the execution and the torture visited on the criminal in

²¹Smith, *Breaking Boundaries*, 25.

²²Smith, *Breaking Boundaries*, 18.

explicit, theatrical, and horrific terms: “venomous stinging worms [the executioner] thrust into his ears to keep his ravaged head occupied. With cankers scruzed to pieces he rubbed his mouth and gums. No limb of his but was lingeringly splinter’d in shivers.”²³ Yet, this description of brutal torture was not meant to entertain; instead, it provided a subtle criticism of the death penalty. Smith analyzes this language and its exaggerated tragic imagery as a subtle indictment of the monarchy’s application of capital punishment; the story, “despite its claim about illustrating divine authority, emphasizes instead its precarious similarity to mortal vengeance.”²⁴ Disgusted by the violence of the execution and the crowd’s enjoyment of the spectacle of torture, Nashe’s narrator condemns the populace’s fascination with execution and, more subtly, the monarch’s enactment of such a brutal punishment, one similar or worse than the crimes for which the murderer is being punished.²⁵

Scholars have also interpreted the work of more famous playwrights as critical of the death penalty. In his plays, Christopher Marlowe involved images and themes of capital punishment, lending them a commentary which leans towards criticism. Karen Cunningham examines how Marlowe, who constantly included depictions of execution and mutilation in his work, “does not naively repeat the scenes of public mutilation but introduces radical ambiguities” and “presents simulated violence to expose artificiality.”²⁶ By depicting mutilated bodies, featuring heroic criminals who refuse categorization as good and evil, offering criminals opportunity to make subversive pre-execution speeches, and depicting sham deaths which defy state impositions of punishment, Marlowe frequently subverted the state’s portrayal of executions as one-dimensional enactments of perfect justice.²⁷ While Marlowe did not directly

²³Thomas Nashe, *The Unfortunate Traveller*, in Smith, *Breaking Boundaries*, 23.

²⁴Smith, *Breaking Boundaries*, 20.

²⁵Smith, *Breaking Boundaries*, 23.

²⁶Cunningham, “Renaissance Execution and Marlovian Elocution,” 213-214.

²⁷Cunningham, “Renaissance Execution and Marlovian Elocution,” 214-218.

write against capital punishment, his characters interact with it in a way which calls into question the message of dominance and justice which real executions were intended to carry.

Scholars have also discovered themes in Shakespeare which allude to a critical attitude towards capital punishment. While his plays are certainly ambiguous and offer no clear interpretation of the death penalty, Shakespeare often appears aware and critical of the state's dependence on capital punishment for legitimacy. Referring to *Macbeth*, Smith writes,

the blurring of boundaries that separate state authority from treacherous acts of violence is vividly enacted in the scene on the heath as the witches present Macbeth with visions of crowned and bloody heads. These images, symbols of Macbeth's imminent defeat at the hands of Macduff, mimic the state's reliance on severed heads for reiteration of its authority.²⁸

Shakespeare depicted a scenario in which the government employed execution as a method of terror and legitimacy rather than of perfect justice. At least some major figures in the early modern period were thus aware of the political ways in which the death penalty was being used and potentially found fault with, if not precisely the death penalty itself, at least the way in which the state was using it.

Overall, the interaction of playwrights of the sixteenth and seventeenth centuries with capital punishment was complex and multifaceted. While they certainly offered no comprehensive moral condemnation of the death penalty, their treatment of the victims of capital punishment shows a meaningful and critical attitude towards the death penalty, one not usually credited to people of the early modern period. Stereotypically, the early modern spectators of executions were involved in a brutal and carnivalesque ritual of punishment, thinking of executions on no other level than entertainment. Yet, these same spectators also consumed theatrical spectacles which called into question the harsh and orchestrated realities executions were meant to convey. Thus, early modern theater, and its consumption by its contemporary

²⁸Smith, *Breaking Boundaries*, 22.

audience, show that people of this time period were engaging with the death penalty on an analytical, critical level.

Famous thinkers and writers were not the only people potentially made uncomfortable by the widespread use of capital punishment; there is also evidence for the extensive non-enforcement of capital punishment near the end of the early modern period. In their article “Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery,” Peter King and Richard Ward examine the geographical dimensions of capital punishment in England. They utilize “Sheriff’s Cravings” reports, which record all the hangings in each county in England and Wales from 1751 to 1775, to examine the distributions of executions under the infamous Bloody Codes.²⁹ The data generated by this research are quite clear: in London, the center of the country, the death penalty was “extremely regularly used... [and a] major plank of penal policy,” while in peripheral areas away from centers of power it was “virtually unused.”³⁰ Even accounting for different reasons for these figures, King and Ward conclude that “lower indictment rates. . . were evidence of different underlying attitudes” and “may well have been founded on a deep opposition towards the capital code.”³¹ This research has significant implications for establishing the timeline of death penalty criticism and resistance. Although this study covers a time period during the second half of the eighteenth century, coinciding with the beginning of Enlightenment calls for abolition, it is unlikely that attitudes in rural British areas were shaped by these Enlightenment ideas by the 1770s, the latest date for King and Ward’s data. King and Ward recognize the impact their research holds for establishing an understanding of death penalty criticism, writing, “a deep reluctance to use the Bloody Codes

²⁹Peter King and Richard Ward, “Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery,” *Past & Present*, Volume 228, Issue 1, (2015), 163. <https://doi.org/10.1093/pastj/gtv026>.

³⁰King and Ward, “Rethinking the Bloody Code,” 209.

³¹King and Ward, “Rethinking the Bloody Code,” 201.

was already well in place on the periphery before Beccaria's *Crimes and Punishments* was published," and concluding that the simplistic understanding of death penalty criticism as emerging only in response to Enlightenment thinking might be undercut by this research.³² This evidence demonstrates that capital punishment was not an entirely entrenched and ubiquitous historical practice in areas remote from centers of power.

Considering this body of evidence, a new understanding of the death penalty in early modern Europe emerges, one that humanizes the people of the early modern period and seeks to understand how they interacted with governmental systems of terror. Simply put, it is clear that not all people in early modern Europe completely and uncritically accepted the state's execution of criminals. In his analysis of the early American death penalty, Stuart Banner makes an observation which can be applied to Europe as well:

The standard approach to the history of the death penalty... has been a smug condescension to the past, a refusal to even try to understand. The times were rude and life was cheap, we tell ourselves. The people of the seventeenth and eighteenth centuries did not think as independently as we do.... [B]ut this story is a caricature of early modern thought, invented by capital punishment's later opponents. Executing a fellow human being was just as momentous in the seventeenth and eighteenth centuries as it is today.³³

Rather than viewing the early modern state and populace's interactions with capital punishment as merely a function of a primitive society, scholars must understand the complexity at play in the staging and interpretation of executions. While this analysis certainly does not deny the reality of the carnivalesque and cruel enactments of death which fascinated many people in early modern Europe, or the spiritual motives which may have promoted the ritualization and organization of executions, it suggests that, to avoid being cast as despotic, states actively

³²King and Ward, "Rethinking the Bloody Code," 201.

³³Stuart Banner *The Death Penalty: An American History* (Harvard University Press: 2002), 5.
<https://hdl-handle-net.umiss.idm.oclc.org/2027/heb.05192>

worked to prevent death penalty criticism and that Europeans did not blindly accept this manipulation.

CHAPTER II: DIVERSE CRITICISMS OF CAPITAL PUNISHMENT IN THE EIGHTEENTH CENTURY

The publication of Cesare Beccaria's 1764 treatise *On Crimes and Punishments* stands out as a turning point in the history of criticism of the death penalty. Recent scholarship has attributed immense credit to Beccaria for his work; Philippe Audegean writes, "The impact and significance of this pamphlet was such that the historian Michel Porret has recently described the period between its publication and the onset of the French Revolution as a 'Beccarian moment,' in which his text served as both the trigger and the enduring focal point for a new perception of criminal law."³⁴ Audegean also credits Beccaria, as do others, with being the one to "develop the first coherent case against the death penalty."³⁵ This understanding of the significance of Beccaria's treatise certainly holds value; his work did indeed have a tremendous impact on future reform movements. However, this unilateral crediting of Beccaria as the first coherent critic of the death penalty is problematic for several reasons. First, this view places Beccaria in isolation and fails to examine the writings of other Enlightenment thinkers on the death penalty. Second, Beccaria was quite simply not the first to mount a sustained criticism of the death penalty. Third, this view considers criticism of the death penalty as a single argument; instead, there were multiple historical arguments against the death penalty, many of which have continued to hold as much or more relevance in modern debates as the arguments of Beccaria. In sum, the history of the criticism of the death penalty in the eighteenth century is quite simply more nuanced than merely a short statement that Beccaria was the first to call for abolition.

³⁴Philippe Audegean, "Cesare Beccaria's *On Crimes and Punishments*: The Meaning and Genesis of a Jurispolitical Pamphlet," *History of European Ideas*, 43:8, 884, DOI: [10.1080/01916599.2016.1256591](https://doi.org/10.1080/01916599.2016.1256591)

³⁵Audegean, "Cesare Beccaria's *On Crimes and Punishments*," 884.

Before embarking on a study of how other thinkers predated or differed from Beccaria, we must first examine his arguments against the death penalty in their own right. In chapter twenty-eight of *On Crimes and Punishments*, which is devoted entirely to an analysis of the death penalty, Beccaria began with an apparent suggestion of complete rejection of capital punishment: “By what alleged right can men slaughter their fellows? Certainly not by the authority from which sovereignty and law derive.”³⁶ He argued that the state’s authority to enact punishments is derived from individual citizens’ relinquishment of personal rights when they enter a “social contract.” The death penalty is incompatible with this social contract for two reasons: people would never surrender to the state the right to kill them and, even if they wished to do so, they do not possess this right themselves. Thus, Beccaria strongly concluded, “The death penalty, then is not a right -- for I have shown that it cannot be so -- but rather a war of the nation against a citizen.”³⁷

Yet, in a seemingly contradictory turn, Beccaria goes on to argue that despite the state not having a right to enact the death penalty, there are actually two circumstances in which a state *would* be justified in using the death penalty. First, if the criminal “can threaten the security of the nation even though he be deprived of his liberty... his death is required.”³⁸ Thus Beccaria did not, despite his moving language elsewhere in the chapter and the claims of many scholars, completely forbid the death penalty. Instead, he admitted that the death of a traitorous or rebellious citizen “becomes necessary. . . when the nation is losing or recovering its liberty, or in times of anarchy, when disorder itself takes the place of the law.”³⁹ Of course, Beccaria advised that this would be unnecessary in a secure state, “under the calm rule of law.”⁴⁰ However, this

³⁶Cesare Beccaria, *On Crimes and Punishments*, trans. David Young (Indianapolis: Hackett Publishing Company, 1986), p 48.

³⁷Beccaria, *On Crimes and Punishments*, 48.

³⁸Beccaria, *On Crimes and Punishments*, 48.

³⁹Beccaria, *On Crimes and Punishments*, 48.

⁴⁰Beccaria, *On Crimes and Punishments*, 48.

exception to Beccaria's abolition is still noteworthy. It suggests that his arguments against the death penalty were based not on ideas of inalienable individual rights, but rather on utilitarian measures.

The second circumstance in which Beccaria felt that the death penalty is permissible is if the criminal's "death were the one and only deterrent to dissuade others from committing crimes."⁴¹ But this exception, Beccaria argued, should not result in any actual executions since capital punishment is never the most effective deterrent. Rather, the sentence of hard labor for life is a more terrifying and effective example to others, as it provides a constant spectacle of misery to potential criminals. Beccaria declared, "It is not the severity of punishment that has the greatest impact on the human mind, but rather its duration, for our sensibility is more easily and surely stimulated by tiny repeated impressions than by a strong but temporary moment."⁴² Beccaria devoted the largest portion of his total argument for abolition towards proving that "perpetual slavery" is the ideal punishment, as "a single crime affords a host of lasting examples" and "it is perhaps even more painful" to suffer a life of labor than a fast execution.⁴³ Here, too, Beccaria's argument looked at the aggregate societal effects of abolition, focusing on the net social benefit rather than the future or rights of the criminal.

Perhaps Beccaria's strongest criticism of the death penalty comes at the end of his chapter. He movingly declared, "It appears absurd to me that the laws, which are the expression of the public will and which detest and punish homicide, commit murder themselves, and, in order to dissuade citizens from assassination, command public assassination."⁴⁴ This concise argument against a retributive theory of punishment is a hallmark of the larger argument of *On*

⁴¹Beccaria, *On Crimes and Punishments*, 48.

⁴²Beccaria, *On Crimes and Punishments*, 49.

⁴³Beccaria, *On Crimes and Punishments*, 50.

⁴⁴Beccaria, *On Crimes and Punishments*, 51.

Crimes and Punishments: that punishment should be only as harsh as is useful to prevent crime and ensure a well-functioning society.⁴⁵

Certainly, then, Beccaria's arguments for abolition were sustained, secular, and reasoned, an excellent example of innovative Enlightenment thought. His arguments about the state's lack of the right to execute people, the ineffectiveness of capital punishment as a deterrent, and the inherent wrongness and disconnect of punishing crimes with murder still resonate with modern critics of capital punishment. However, there are also some notable absences in Beccaria's criticism of capital punishment. He did not, as is sometimes alleged, argue that capital punishment should never be used under any circumstances. And while his utilitarian and secular arguments are quite convincing and remain widely discussed, he did not devote much thought to the individual rights of the criminal. Thus, while Beccaria's treatise is rightfully given credit as a turning point in criminal law and death penalty criticism, other works and thinkers should also be examined for a more comprehensive understanding of calls for abolition of the death in the eighteenth century.

Although Beccaria is consistently given credit as the first author of a treatise against capital punishment, this attribution is simply incorrect; this accolade instead belongs to John Bellers, a Quaker and ardent social reformer. In 1699, he published the essay, "Some Reasons Against Putting Fellons to Death," which lays out a shockingly progressive argument for abolition. Some of Bellers's arguments were certainly based on religious sensibilities. He wrote,

How sincerely can we say the Lord's Prayer, *Forgive us our Trespases, as we forgive them which Trespass against us*; when for the loss, possible of less than 20 Shillings, we Prosecute a Man to Death? Would it not be more natural and agreeable with our Prayers to God, to have Compassion on our deluded Fellow Creatures? We are but men whom they offend, but God is Infinitely above us, whom we have offended.⁴⁶

⁴⁵Beccaria, *On Crimes and Punishments*, 81.

⁴⁶John Bellers, "Some Reasons Against Putting Felons to Death," *Essays about the poor, manufactures, trade, plantations, & immorality and of the excellency and divinity of inward light, demonstrated from the attributes of*

While this argument is from a religious perspective, it should not be discounted as invalid criticism of capital punishment. First, the death penalty is unquestionably a moral issue; it is unnecessary to exclude appeals to religious and ethical sensibilities from the corpus of valid and useful death penalty criticism. And second, despite its religious language, Bellers' argument that the death penalty is excessive, especially for small crimes such as petty theft, did not rely on religious appeals for its validity. In an argument foreshadowing Beccaria's about the necessity of proportionality and leniency of the laws, Bellers declared, "To make no difference between the Punishment of Theft and Murder, seem a great deficiency in our present Law."⁴⁷ While Bellers certainly writes from a different perspective from Beccaria, he too questions the ethical contradiction of punishing criminal activity with murder itself.

Instead of sentencing criminals to the death penalty, Bellers offers an alternative plan that is striking for its modern sensibility. He first declares that society and environment are partly responsible for the criminal's development: "The Idle and Profane Education of some, and the Necessities of others, brings Habits almost invincible."⁴⁸ Rather than viewing criminals as merely evil, Bellers humanizes them by recognizing that desperation and a lack of education are often responsible for criminal activity. Thus, his first alternative to the death penalty is to work to provide education to felons, perhaps during imprisonment, as a means of crime prevention: "And therefore, as we should, by a timely and industrious Education, have the greater care to prevent such Enormities, it would also very well agree with our State before God, when any fall into such Crimes compassionately to keep them from further Mischiefs, and save such to Repentance, rather than to destroy them by sudden Death."⁴⁹ Here, Bellers argued that the state should not

God and the nature of mans soul, as well as from the testimony of the Holy Scriptures, (London: T. Sowle, 1699; Ann Arbor: Text Creation Partnership, 2011), p. 18.

<https://quod.lib.umich.edu/e/eebo/A27365.0001.001/1:6.14?rgn=div2;view=fulltext>

⁴⁷Bellers, "Some Reasons Against Putting Fellons to Death," 19.

⁴⁸Bellers, "Some Reasons Against Putting Fellons to Death," 18.

⁴⁹Bellers, "Some Reasons Against Putting Fellons to Death," 19.

only allow criminals an opportunity to better their lives, but also actively work to help them by providing educational opportunities. Bellers viewed programs of education, labor, and reintegration into society as viable ways to reduce recidivism, protect society, and provide criminals with the opportunity for a better life. He wrote:

Now upon the whole, there is reason to believe, that few of them are so incourageable, but that restraint by Confinement with suitable Employment, and Marriage, or Exportations to our Plantations, in time would alter their evil habits, to a more honest one; which, as it would save their Bodies and Posterities to the *Common-Wealth*, it might be a means to save their Souls from Eternal Ruin.⁵⁰

Like Beccaria, then, Bellers thought labor sentences a viable alternative to capital punishment.

But the reasoning behind their recommendations is vastly different; Beccaria encouraged “perpetual slavery” as a means to frighten the rest of society whereas Bellers hoped that “suitable Employment” would eventually allow the criminal a more fulfilling and productive life.

Overall, Bellers’ essay condemning capital punishment is severely underappreciated for its progressive arguments. While Beccaria’s critique of the death penalty was certainly impressive for its time, appealingly rational and secular in its approach, and embedded within a larger treatise that called for vast ethical reforms, it is Bellers who deserves recognition as the first author to write a treatise against the death penalty. Additionally, Bellers was perhaps even more humanitarian and progressively minded than Beccaria; although his arguments rest more on principles of ethics and compassion than utility, they deserve at least equal regard in the history of criticism of the death penalty.

Although Bellers wrote as early as 1699, the majority of death penalty criticism circulating in the eighteenth century dates from the early 1760s. In 1762, two years before the publication of Beccaria’s *On Crimes and Punishments*, Jean-Jacques Rousseau published his famous treatise *The Social Contract*. The concept of a “social contract” was not new; previous

⁵⁰Bellers, “Some Reasons Against Putting Fellons to Death,” 19.

generations of philosophers, such as Hobbes and Locke, had also developed sustained theories of social contracts. Rousseau, however, was “arguably the premier theorist of the social contract” because of his extensive and influential development of the theory.⁵¹ While its nuances are far beyond the scope of this analysis, Rousseau’s ideal social contract involved a society where all people would give up an equal part of their individual liberty in order to gain the benefits of a “civil liberty.” The sovereign would then enact laws on behalf of the general will of all people within this contract.⁵² It is within this context that Rousseau analyzed the death penalty. Whereas Beccaria argued that individuals could not grant to the state the right to execute them, Rousseau disagreed:

He who wishes to preserve his life at others’ expense should also, when it is necessary, be ready to give it up for their sake. Furthermore, the citizen is no longer the judge of the dangers to which the law-desires him to expose himself; and when the prince says to him: "It is expedient for the State that you should die," he ought to die, because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature, but a gift made conditionally by the State.⁵³

Here, Rousseau argued that in order to live safely under the laws of the social contract, the citizen consents to the risk of capital punishment if he himself commits a crime. Thus, it seems clear that whereas Beccaria argued against the death penalty, Rousseau supported its continuation. On closer inspection, however, Rousseau’s theory has potential protections against the death penalty which are actually lacking in Beccaria’s work.

In his excellent analysis of Rousseau’s theory of punishments, Corey Brettschneider points out that although Rousseau seems “an unlikely ally of defenders of the rights of convicted criminals” and “an even less likely ally of opponents of capital punishment,” his theories actually

⁵¹Corey Brettschneider, “Rights Within the Social Contract: Rousseau on Punishment,” in *Law as Punishment, Law as Regulation*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, (Stanford: Stanford University Press, 2011) p. 51. <https://ebookcentral.proquest.com/lib/olemiss/detail.action?docID=744858>.

⁵²Jean Jacques Rousseau, *The Social Contract, or Principles of Political Right*, trans. G.H.D. Cole, Book 1, Chapter 8, https://socialpolicy.ucc.ie/Rousseau_contrat-social.pdf.

⁵³Rousseau, *The Social Contract*, Book 2, Chapter 5.

protect the rights of the accused and limit unjust punishments.⁵⁴ Brettschneider argues that Rousseau's logic means that citizens must, at the time of the formation of the social contract, “hypothetically consent” to any potential punishments for crime.⁵⁵ This hypothetical consent serves as a limitation on the ability of the state to enact punishments, a “consideration of what individuals would say about any policy in the situation of the original contract [as] a way of considering the distinct interests of all citizens when making legislation.”⁵⁶ Interestingly, this standard of measuring the justice of a law -- examining whether citizens would hypothetically agree to it at the founding of the contract -- allows for changing attitudes over time. By this interpretation of Rousseau’s logic, if a future society largely condemned capital punishment as unjust and did not consent to its enactment, the policy would no longer stand.

But Rousseau’s protection of individual rights in regard to the death penalty went even further. Despite his above justification of capital punishment as theoretically having the consent of criminals, given at the time of the formation of the social contract, Rousseau concluded his analysis of capital punishment thus: “We may add that frequent punishments are always a sign of weakness or remissness on the part of the government. There is not a single ill-doer who could not be turned to some good. The State has no right to put to death, even for the sake of making an example, any one whom it can leave alive without danger.”⁵⁷ Despite its brevity, this paragraph is actually quite impressive in its anti-death penalty sentiment. Arguably, Rousseau’s conditions for just enactment of the death penalty are even more protective against capital punishment than those of Beccaria. As discussed above, Beccaria permitted the death penalty if the criminal’s “death were the one and only deterrent to dissuade others from committing

⁵⁴Brettschneider, “Rights Within the Social Contract: Rousseau on Punishment,” 51.

⁵⁵Brettschneider, “Rights Within the Social Contract: Rousseau on Punishment,” 55.

⁵⁶Brettschneider, “Rights Within the Social Contract: Rousseau on Punishment,” 56.

⁵⁷Rousseau, *The Social Contract*, Book 2, Chapter 5.

crime.”⁵⁸ A clear difference, then, between the arguments of Beccaria and Rousseau is that Beccaria would permit the use of capital punishment as a deterrent (though he sees no reason use the death penalty given the superior effectiveness of labor sentences) whereas Rousseau would not countenance such a violation of individual rights in the first place, regardless of whether or not such social benefits exist. Brettschneider argues that Rousseau's reasoning on this is, again, derived from his belief in the necessity of the citizens' hypothetical consent to the terms of punishment at the founding of the social contract. Since Rousseau assumed that “the person would not agree to be killed if his or her death were only justified on the grounds that it would deter others,” he rejects the argument that capital punishment should be allowed if it is an effective deterrent.⁵⁹ Beccaria's more utilitarian theory was willing to allow such executions, despite the state's illegitimate right to enact them, if they were truly an effective deterrent.

The only circumstance in which Rousseau allowed capital punishment is if the criminal cannot be left alive “without danger.”⁶⁰ This condition is quite vague; it is hard to know exactly what “danger” Rousseau had in mind. It is indeed quite possible that Rousseau's interpretation of “danger” would be quite broad, and thus allow for many executions. Still, it bears a striking resemblance to Beccaria's exception that “if [the criminal] still has sufficient connections and such power that he can threaten the security of the nation even though he be deprived of his liberty. . . then his death is required.”⁶¹ Overall, both Rousseau and Beccaria seemed to make an exception for the executions of criminals who would continue to be dangerous even if carefully imprisoned.

⁵⁸Beccaria, *On Crimes and Punishments*, 48.

⁵⁹Brettschneider, “Rights Within the Social Contract: Rousseau on Punishment,” 60.

⁶⁰Rousseau, *The Social Contract*, Book 2, Chapter 5.

⁶¹ Beccaria, *On Crimes and Punishments*, 48.

Finally, Rousseau's argument that "There is not a single ill-doer who could not be turned to some good" is also different from Beccaria's reasons for abolition.⁶² Arguably, Beccaria also had in mind "good" that could be achieved by criminals: they could serve as perpetual examples to others of the consequences of crime. But given Rousseau's rejection of deterrence as an acceptable reason for punishment, it is likely this is not what he had in mind. Instead, this sentence seems to be an argument for providing criminals, even those who have committed serious crimes, with an opportunity for reform. This reference to the potential reform of criminals is underdeveloped and perhaps speculative, but still meaningful to Rousseau's argument for individual rights.

Whereas Rousseau's writings on the death penalty are only potentially abolitionist, the unpublished writings of Giuseppe Pelli unquestionably condemn the death penalty. Uncovered in the 1990s and translated to English in 2018, Pelli's treatise *Against the Death Penalty* was written in 1762, two years before the publication of *On Crimes and Punishments*.⁶³ Pelli's work, however, was unfinished and unpublished; thus, it cannot boast any impact on the international conversation on capital punishment. An analysis of this treatise, however, is still relevant to a study of arguments against capital punishment in the eighteenth century. Peter Garnsey, the translator of *Against the Death Penalty*, writes, "The fact remains, however, that Pelli's work, even in its incomplete and unrevised form, and not that of Beccaria, was the first comprehensive attack on the death penalty."⁶⁴ Entries from Pelli's extensive diaries show that he intended to create a dissertation showing that the death penalty "is excessive, unnecessary and perhaps unjust when applied to any crime whatever" and that he was "desirous of taking to a conclusion, and of

⁶²Rousseau, *The Social Contract*, Book 2, Chapter 5.

⁶³Peter Garnsey, "Introduction," *Against the Death Penalty: Writings from the First Abolitionists — Giuseppe Pelli and Cesare Beccaria*, (Oxford: Princeton University Press, 2020).

⁶⁴Garnsey, *Writings of the First Abolitionists*, 60.

publishing” this project.⁶⁵ But before he could complete and revise the treatise, Pelli obtained a new position in the judicial field and abandoned his critique of the law. Upon Beccaria’s publication two years later, Pelli regretted his abandonment of the project, writing,

My only regret is that someone else before me in Italy has published an opinion which I myself wanted to express, moved by an inner desire to make myself useful to humanity. But if this glory is not to be mine, at least I can take that glory that comes from having explored this subject in a more profound way two years before this author has done, and to have harbored the same thoughts for an even longer period.⁶⁶

Pelli clearly believed that his criticisms were “more profound” than those of Beccaria. Whether or not Pelli’s claim is true, his treatise both foreshadows the arguments of Beccaria and includes unique arguments against capital punishment.

Pelli’s discussion of the correct goals and limits of punishments are quite similar to those of Beccaria. Pelli writes, “Because every government, as Providence dictates, should provide for the greater good with the lowest level of evil that can be achieved, it is certain that the government should do its utmost to safeguard the security of others without excessively unbridled rigour, and without pointlessly applying punishments which are unnecessary.”⁶⁷ It is on these grounds that Pelli judges the death penalty to be excessive, as it is never the “lowest level of evil” possible to sentence. This argument is almost identical to Beccaria’s idea that in order for punishments to be just, they must be “the minimum possible under the given circumstances.”⁶⁸

In addition to sharing the conviction that punishment should be minimal, Pelli also made arguments for abolition similar to Beccaria’s. Like him, Pelli believed that the absence of an individuals’ right to suicide prevented them from transferring the power of capital punishment to

⁶⁵Giuseppe Pelli, *Efemeridi*, in Garnsey, *Against the Death Penalty*, 60.

⁶⁶ Giuseppe Pelli, *Efemeridi*, in Garnsey, *Against the Death Penalty*, 67.

⁶⁷Giuseppe Pelli, *Against the Death Penalty*, trans. Peter Garnsey, in *Against the Death Penalty: Writings from the First Abolitionists - Giuseppe Pelli and Cesare Beccaria*, (Oxford: Princeton University Press, 2020) p 26

⁶⁸Beccaria, *On Crimes and Punishments*, 81.

the government: “In truth, it would be necessary for me to be the master of my own life, in order to be able to cede the right that I have over it to another.”⁶⁹ Although it is unclear that Pelli had read *The Social Contract*, he specifically rejected Rousseau’s argument that people hypothetically consent to capital punishment at the formation of the social contract, declaring, “men did not intend to tie themselves down to certain duties which, once embraced, would have obliged them to pay with their lives in the event of their violation.”⁷⁰ On this point, Pelli was perhaps even more clear and convincing than Beccaria, as his argument also seems to rebuff Rousseau’s primary defense of capital punishment. Additionally, Pelli voiced the same argument as Beccaria for the alternative sentence of hard labor. He wrote:

Would it not be a thousand times more profitable to make use of criminals for public works, so that the sight of their misery at labour would serve as an ever-present example to others, than to sacrifice on the gallows a delinquent, who would provide only a spectacle of a moment for anyone who derives pleasure from witnessing the depressing tragedy of his sufferings?⁷¹

Pelli’s argument for labor sentences, while not as sustained or lengthy as Beccaria’s, espoused essentially an identical line of reasoning. Finally, Pelli also offered a similar argument on the incongruity of laws that punish murders with further violence: “It is not a rare occurrence that the laws, in order to punish someone who has killed a citizen, removes another from society, creating a new and pointless void as recompense for the first, when the latter could be filled in some other way.”⁷² While Pelli’s language here is perhaps not as strong or moving as Beccaria’s, his point is, once more, almost identical.⁷³

⁶⁹Pelli, *Against the Death Penalty*, 19.

⁷⁰Pelli, *Against the Death Penalty*, 28.

⁷¹Pelli, *Against the Death Penalty*, 30.

⁷²Pelli, *Against the Death Penalty*, 30.

⁷³“It appears absurd to me that the laws, which are the expression of the public will and which detest and punish homicide, commit murder themselves, and, in order to dissuade citizens from assassination, command public assassination.” Beccaria, *On Crimes and Punishments*, 51.

Although some of his arguments foreshadow Beccaria's, Pelli also offered other criticisms of the death penalty not found in Beccaria's later treatise. The most notable of these is an argument that the death penalty erases a criminal's potential for reform. Pelli listed reform (as well as security and deterrence) as one of the three acceptable goals of punishments.⁷⁴ Rather than predominantly focusing on the benefits of abolition to society as a whole, Pelli focused on the benefit to criminals themselves. He wrote, "I do not in fact believe that anyone can be persuaded that [capital punishment] will turn out to be in some way advantageous to the criminal, since he is being deprived entirely of the means to correct his actions."⁷⁵ Not only is capital punishment not "advantageous" to the criminal, "the civil law and the magistrates are obliged... by means of punishment to bring back evil men rather than losing them forever, uselessly; meanwhile charity and hope of reformation should counter despair of their repenting."⁷⁶ This view is striking for its suggestion that the state has an "obligation" to help reform criminals rather than merely executing them for their crimes or even sentencing them to a lifetime of imprisonment or work.

This benevolent goal of rehabilitating criminals stems from Pelli's moral reasoning. While Beccaria's work was based on rational, utilitarian arguments, Pelli freely introduced compassion into his justifications. He began his treatise with the declaration,

Humanity and Compassion are the sentiments most worthy of a man, if only he would not disdain to compare his own weakness with that of others. Only a heart that is so totally engrossed in itself that it regards others purely as objects of contempt and fit for the venting of its own passions can view without emotions and with dry eyes the spectacle of men suffering.⁷⁷

⁷⁴Pelli, *Against the Death Penalty*, 24.

⁷⁵Pelli, *Against the Death Penalty*, 29.

⁷⁶Pelli, *Against the Death Penalty*, 35.

⁷⁷Pelli, *Against the Death Penalty*, 12.

Thus, although Pelli used many identical arguments as Beccaria, his underlying justifications were less rational and more moral. While Beccaria criticized the death penalty in particular, and excessive punishment in general, as useless and unbeneficial to society, Pelli was more apt to introduce emotional language in his argument for abolition and to suggest compassion as a basis for abolition.

Overall, despite utilizing similar arguments, the works of Beccaria and Pelli are distinct. In his brief introduction, Garnsey observes that the work of Pelli is a “spirited manifesto” while that of Beccaria is “a closely argued legal treatise.”⁷⁸ Certainly, Beccaria’s arguments were much more comprehensive; his treatise expounds a cohesive, secular, and reasoned legal system and calls for widespread reform of unjust practices. Pelli, however, was arguably more decisive and effective in his call for abolition of the death penalty. First, unlike Beccaria, he did not mention any situations in which exceptions to the abolition could be made. Second, he included both the sophisticated arguments later made by Beccaria as well as more moralistic, emotional arguments based on ideas of compassion. Thus, Pelli’s arguments retain the philosophical and rational appeal of Enlightenment thinking as well as including more generally moral lines of reasoning.

Beccaria, Rousseau, and Pelli all offered expansive analyses of how punishments would function within an ideal society. Their arguments directly called for radical reductions in the use of the death penalty on a systematic level. Voltaire, however, critiqued the death penalty from an entirely different angle in his publication, “The History of the Misfortunes of John Calas: A Victim to Fanaticism.” This work focuses on a single case, the 1762 trial and execution of John Calas, and points out the potential for discrimination, injustice, and misconduct in death penalty cases. Voltaire’s outraged analysis of the blatantly unjust and discriminatory trial of Calas is

⁷⁸Garnsey, *Writings of the First Abolitionists*, 60.

especially relevant to modern attacks on capital punishment, as racial discrimination in death penalty sentencing has become a prominent argument for abolition.⁷⁹

Voltaire began his story with a background of the Calas family. Tradespeople in Toulouse, France, the Calas family were Protestants in a largely Catholic society and faced severe discrimination and “inveterate hatred” for their minority status.⁸⁰ Sadly, Marc-Antony Calas, the son of John Calas, died by suicide in the family home in 1762. Despite the presence of many witnesses to the grief of the family upon discovery of the suicide, suspicious and discriminatory community members concocted a rumor that the Calas family had themselves killed Marc-Antony for attempting to convert to Catholicism.⁸¹ Voltaire writes,

Every one agreed that Calas the father, his Wife and one of their Children had made their Son Marc-Antony fall a victim to their hatred for the Roman Catholic Religion; and though there was the highest improbability and incredibility in this Story, yet an excessive fondness for the Religion of the Country, together with Bigotry and Fanaticism gave Sanction to such an Absurdity.⁸²

“Bigotry” and “Fanaticism” not only contributed to the charges against Calas, but also impacted the investigation and trial: the police were biased against Calas, evidence was suppressed, and witnesses for the defense were prevented from giving testimony.⁸³ Ultimately, despite a complete lack of evidence to support a conviction, Calas was sentenced “to undergo the Ordinary and Extraordinary Torture, to be broke alive and to expire upon a Wheel after having been two hours upon it, and to be reduced to Ashes in a Wood-pile.”⁸⁴ Voltaire was utterly outraged by the

⁷⁹Hugo Adam Bedau, “The Case Against the Death Penalty,” American Civil Liberties Union, (1973, revised 2012). <https://www.aclu.org/other/case-against-death-penalty>. This is but one of countless sources that make this argument.

⁸⁰M. de Voltaire, “The History of the Misfortunes of John Calas, a Victim to Fanaticism. To which is added A letter from M. Calas to his wife and children,” (London: 1775), p. 2. *Eighteenth Century Collections Online* (accessed February 18, 2021).

https://link.gale.com/apps/doc/CW0125202273/ECCO?u=mag_u_um&sid=ECCO&xid=bdc59233&pg=1.

⁸¹Voltaire, “The History of the Misfortunes of John Calas,” 10-11.

⁸²Voltaire, “The History of the Misfortunes of John Calas,” 14.

⁸³Voltaire, “The History of the Misfortunes of John Calas,” 17-19.

⁸⁴Voltaire, “The History of the Misfortunes of John Calas,” 27.

injustice and barbarity of this sentence and concluded his account of the story of Calas on a note of horror: “Such is the deplorable account of one of the most tragical Events on Record, who would think that such a horrible Scene was transacted in one of the most civilized Provinces of France. Our Affliction was boundless, Our Tears will flow, but they can never restore the honest Calas to his inconsolable Widow and proscribed Children.”⁸⁵ Voltaire was horrified by the sheer spectacle of the torturous method of execution, and equally appalled by the miscarriage of justice. After hearing about the case, Voltaire worked to intervene on behalf of the Calas family, eventually securing a verdict of innocence for the rest of the family and, retrospectively, for John Calas.

While Voltaire’s account of Calas is a single story, he did not believe discrimination in capital sentencing was an isolated problem, but rather a more systemic issue. This is evidenced by his involvement in a similar case, that of the Sirven family, who were also baselessly accused of murdering their child. In a letter to the legal expert who had assisted him in retrying the Calas case, Voltaire bemoaned the Sirven family’s lack of resources: “how are they to expect, or to obtain justice? . . . Are we to appeal to the Council a Second time? Shall we attempt to incite the public pity, which the misfortune of Calas may have exhausted; when the public may be weary of having accusations of parricide to refute; convicts to reinstate; and judges to reproach and put to shame?”⁸⁶ Here, Voltaire points out the unreliability of relying on public support to overturn discriminatory death penalty cases, as this method is subjective and based on public whims.

⁸⁵Voltaire, “The History of the Misfortunes of John Calas,” 31.

⁸⁶M. de Voltaire to Mr. Elie de Beaumont, in “A treatise on toleration; memorials, letters, &c. Relating to persecution; and particularly to the cases of Calas and Sirven,” trans David Williams (London: Fielding and Walker, 1779), p 194. *Eighteenth Century Collections Online* (accessed February 18, 2021). https://link.gale.com/apps/doc/CB0130288653/ECCO?u=mag_u_um&sid=ECCO&xid=b22edc17&pg=193.

Voltaire's work offers a new and original argument against the death penalty. Whereas other Enlightenment philosophes debated the justice of the death penalty on theoretical grounds, assuming a perfectly just state and judicial system, Voltaire made an argument against capital punishment based on observable flaws in sentencing and the unavoidable reality that judicial systems make mistakes. His observation that the availability of capital sentences provides an opportunity for violent discrimination is shockingly relevant to the modern world. While it could be argued that Voltaire's complaints did not necessarily call for the abolition of the death penalty but simply for more protections against discrimination, this analysis would be incomplete. Voltaire's abolitionist views were confirmed after the publication of *On Crimes and Punishments*; he wrote a commentary on the work in which he ardently praised Beccaria's anti-capital punishment stance and agreed with his proposition that hard labor was the appropriate punishment.⁸⁷ Overall, Voltaire's firsthand account of discriminatory and unjust capital sentencing expanded the argument over the death penalty from the theoretical realm into a tangible reality.

The above thinkers were all highly educated men who contributed original written works to the eighteenth-century debate on capital punishment. Empress Elizabeth of Russia, who ruled from 1741 to 1762, left no such manifestos detailing a philosophical stance against capital punishment; yet, she worked tirelessly throughout her regime to abolish the death penalty. Given the lack of material written by Elizabeth, her abolition is difficult to reconstruct, and many scholars have accordingly ignored her efforts and discredited her movement.⁸⁸ Some modern

⁸⁷M. de Voltaire, "A Commentary on the Book of Crimes and Punishments," (Glasgow: Printed for Robert Urie, 1770), p. 180. *Eighteenth Century Collections Online*, link.gale.com/apps/doc/CW0116945488/ECCO?u=mag_u_um&sid=ECCO&xid=7724b5d6&pg=179. Accessed 18 Feb. 2021.

⁸⁸Cyril Bryner, "The Issue of Capital Punishment in the Reign of Elizabeth Petrovna," *The Russian Review* 49, no. 4 (1990), p. 390. doi:10.2307/130523.

scholarship has even suggested that Elizabeth's reasons for abolition were not developed enough to accord her a place with other early abolitionists. For example, Elena Marasinova writes that Elizabeth's abolition "contained no rational principle connected with the humanistic ideas of the Enlightenment" and that "Contemporaries and successors made little effort to fathom the monarch's motives in all their complexities, which were likely not fully understood by Elizabeth herself."⁸⁹ This rather patronizing opinion that Elizabeth did not understand why she herself wanted to abolish capital punishment is difficult to credit. Instead, it seems Elizabeth might have had personal, moral objections to the death penalty as well as more concrete objections to capital punishment. The fact that Elizabeth had no precedent or philosophical inspiration from which to derive her abolitionary agenda only makes her accomplishments more impressive.

In his article, "The Issue of Capital Punishment in the Reign of Elizabeth Petrovna," Cyril Bryner suggests that Elizabeth's abolition was motivated by her devout faith. Bryner's study of Elizabeth's religious background and influences suggests that she preferred and often listened to priests who extolled the value of mercy and encouraged her to avoid bloodshed.⁹⁰ It is impossible to know whether Elizabeth chose to listen to such sermons because of her existing beliefs or if they directly shaped her commitment to abolition, but it is nearly certain that Elizabeth's faith played a large role in her stance against the death penalty. Additionally, Bryner cites Elizabeth's consumption of "trashy French novels" as a potential inspiration for her anti-death penalty stance.⁹¹ Elizabeth apparently greatly enjoyed reading popular French fiction; by surveying the works that would have been available to her, Bryner concludes that they were

⁸⁹Elena Marasinova, "The Death Penalty Moratorium in 18th-Century Russia," *Quaestio Rossica*, vol 7. No 4. (Moscow: Institute of Russian History of RAS, National Research University, 2019), p.1101
DOI 10.15826/qr.2019.4.426

⁹⁰Bryner, "The Issue of Capital Punishment in the Reign of Elizabeth Petrovna," 406.

⁹¹ Bryner, "The Issue of Capital Punishment in the Reign of Elizabeth Petrovna," 408.

“ephemeral, light in substance but heavy in moralizing.”⁹² Perhaps Elizabeth’s consumption of “un-Enlightened” sources such as religious sermons and sentimental French novels has contributed to widespread derision of her trailblazing abolition by historical and modern scholars alike.

While it is impossible to discover with any certainty what inspired Elizabeth to dedicate so much effort to abolition, the reality of her opposition to capital punishment is clear. Bryner writes that “hardly a year” passed during which Elizabeth did not issue a new law reiterating or reestablishing the ban on capital punishment: “The force of repetition by an absolute monarch, no matter how poorly or ambiguously expressed, overrides any doubts about whether she had abolished capital punishments.”⁹³ The repetition to which Bryner refers is the issuing of many “ukases,” laws ordering that sentences of capital punishment not be enforced. The first of these ukases to order a total ban on the implementation of capital punishment sentences was issued in May of 1744:

The Governing Senate has observed that in governorates, provinces, and cities, and also in military districts and other places of the Russian Empire, capital punishment and political death not only is served to the guilty, but also to others who are not guilty. For this reason, by decree of Her Imperial Majesty, and the Governing Senate, it is ordered: For better discretion, all the Collegia and Chancelleries, Governorates, Provinces and other commands will now send detailed and itemized lists to the Senate of such convicts sentenced to capital punishment or political death; and until orders are received, those convicts should not be served executions.⁹⁴

This ukase is notable for several reasons. As Bryner points out, the abolition is indeed strangely expressed; it bans the carrying out of death penalty sentences rather than the sentence of capital punishment itself. More interesting, however, is the short statement that, “capital punishment and political death is not only served to the guilty, but also to others who are not guilty.” While most

⁹² Bryner, “The Issue of Capital Punishment in the Reign of Elizabeth Petrovna,” 403

⁹³ Bryner, “The Issue of Capital Punishment in the Reign of Elizabeth Petrovna,” 393.

⁹⁴ *Polnoe sobranie zakonov rossiiskoi imperii*, no. 8944, May 7 (corrected to 17), 1744, vol. 12, trans. Joshua First.

scholars have dismissed Elizabeth as lacking reasoning or principles behind her crusade for abolition, this statement -- that capital punishment is often incorrectly applied to the innocent -- is entirely rational. In fact, it is the same argument made by Voltaire and examined above: that the death penalty is unjust because it is impossible to prevent miscarriages of justice in a judicial system susceptible to human error.

Simply put, Elizabeth's abolition of the death penalty in Russia deserves proper recognition. Her primacy in successfully abolishing the death penalty on a national scale is a major accomplishment by a female ruler. Marasinova concludes that, despite Elizabeth's un-Enlightened motivations, she "effortlessly made a reality that philosopher's [Beccaria's] dream, something Europe was only beginning to discuss."⁹⁵ This observation, however, mischaracterizes the situation. More accurately, Beccaria made a dream out of Elizabeth's reality. And, with the exception of the work of Bellers, the philosophical critique of the death penalty did not occur until the 1760s, twenty years after Elizabeth's abolition.

As we have seen, progressive thinkers made a multiplicity of arguments against the death penalty during the eighteenth century. The simplistic assumption that Beccaria was the only figure of importance to call for abolition in his period overlooks a diversity of thinkers who argued against the death penalty for a wide variety of reasons using unique rhetorical tactics. As modern society continues to debate the use of the death penalty, it is important to recognize this variety of historical arguments made by critics of capital punishment.

⁹⁵Marasinova, "The Death Penalty Moratorium in 18th-Century Russia," 1100.

CHAPTER III: THE VARIED INFLUENCE OF *ON CRIMES AND PUNISHMENTS* ON
EARLY ABOLITION MOVEMENTS

Just as scholars unequivocally designate Beccaria as the first thinker to develop a theory against capital punishment, they also credit him with having a tremendous impact on criminal law reform in general and on the movement to abolish capital punishment in particular. To prove Beccaria's impact on abolition movements, scholars cite as evidence the early abolition movements in Tuscany, Russia, England, and France.⁹⁶ But did the early European movement to abolish capital punishment rely entirely on the rhetoric of Beccaria and advocates of his treatise? How did early abolition movements actually proceed? Although Tuscany might be an excellent example of an abolition movement largely reliant on Beccaria's logic, other countries in Europe interacted with and applied abolition movements in different ways and often relied on the arguments of other figures. In Russia, for example, Catherine the Great actually used Beccaria's treatise to retreat from the ban on the death penalty enforced by Empress Elizabeth. In England, the abolition movement proceeded by gradually reducing the crimes for which capital punishment could be applied rather than abolishing it entirely. And in France, where the anti-death penalty movement was initially strong, political conditions interacted with Enlightened rhetoric in unprecedented ways. Thus, although we can certainly credit Beccaria with igniting a dialogue on capital punishment, it is incomplete to suggest that his thought inspired further abolitions because they used the same arguments based on deterrence and natural

⁹⁶Philippe Audegean, "Cesare Beccaria's *On Crimes and Punishments*: The Meaning and Genesis of a Jurispolitical Pamphlet," *History of European Ideas*, (2017), 884-897. DOI: [10.1080/01916599.2016.1256591](https://doi.org/10.1080/01916599.2016.1256591)
John D. Bessler, "The Economist and the Enlightenment: How Cesare Beccaria Changed Western Civilization," *European Journal of Law and Economics* 46, (2018): 275-302.
doi:<http://dx.doi.org.umiss.idm.oclc.org/10.1007/s10657-016-9546-z>

law. Rather, Beccaria's thought commingled with other ideas, both abolitionist and anti-abolitionist, to produce unique trajectories towards abolition across Europe.

Russia

The first "abolition" regularly credited to the influence of Beccaria is that of Catherine the Great, who published her *Nakaz* in 1767. Catherine was extremely impressed with Beccaria's work and invited him to Russia in order to help her draft a new legal code. Although Beccaria declined the invitation, his thought is still well-represented in the *Nakaz*, as Catherine copied parts of *On Crimes and Punishments* into her own composition. For example, Article 210 reads, "If I can prove the Death of a Citizen to be neither useful nor necessary to society in general, I shall confute those who rise up against humanity," a goal straight from the pages of *On Crimes and Punishments*.⁹⁷ Catherine proceeded to include many other of Beccaria's ideas as well; she argued that for a punishment to be "conformable with Justice, it ought to have such a degree of Severity only, as might be sufficient to deter People from committing the crime."⁹⁸ Hard labor, as Beccaria recommended, would suffice for serious crimes as it is the "continued Duration of the Punishment" that makes a lasting impression on onlookers.⁹⁹ Overall, Catherine did not merely utilize the thought of Beccaria, but rather directly incorporated the language of *On Crimes and Punishments*. Thus, it would seem that Catherine's abolition clearly owed Beccaria for its inspiration and source material. However, this assumption, while partially accurate, does not accurately encompass the situation of the *Nakaz* for several reasons.

⁹⁷Catherine the Great, *The Grand Instructions to the Commissioners Appointed to Frame a new Code of Laws for the Russian Empire*, Article 210, trans. Michael Tatischeff, (London: printed for T. Jeffreys, 1768), p. 123.

<https://hdl.handle.net/2027/mdp.35112203966090>. My English translation of *On Crimes and Punishments* by Young expresses this as "If I can demonstrate that capital punishment is neither useful nor necessary, however, I shall have vindicated the cause for humanity."

⁹⁸Catherine, *The Grand Instructions*, Article 212.

⁹⁹Catherine, *The Grand Instructions*, Article 211.

Although Catherine expropriated the very language of *On Crimes and Punishments*, she made subtle changes to the material adapted from Beccaria. Notably, she included the clause that:

The Death of a Citizen can only be useful and necessary in one case; which is, when, though he be deprived of Liberty, yet he has such Power by his Connections, as may enable him to raise Disturbances dangerous to the publick Peace. This case can happen only, when a People either loses, or recovers their Liberty; or in a Time of Anarchy, when the Disorders themselves hold the Place of Laws.¹⁰⁰

This exception for dangerous criminals was also present in Beccaria; interestingly, however, Beccaria followed his allowance of the death penalty in times of anarchy with the condition that, “the sole exception would be if his death were the one and only deterrent to dissuade others from committing crimes.”¹⁰¹ Thus, while Catherine only allowed “one case” for which capital punishment could be used, Beccaria retained “two reasons.” Certainly, this is a subtle change (and, as we shall see, hard to understand in light of other material in the text). But the edit meaningfully impacts the content of the article; as we shall see, it is possible that Catherine sought to emphasize the availability of the death penalty for treason. In any case, the edits show that Catherine was not merely mimicking Beccaria, but rather selectively utilizing parts of his treatise to form her own creation.

Much more noticeable and startling than these edits is the fact that, in other parts of the *Nakaz*, Catherine deemed the death penalty acceptable for certain crimes. In Article 79, a section copied from the philosopher Montesquieu, Catherine wrote,

[Capital Punishment] is a kind of retaliation by which the society deprives that citizen of his security, who has deprived, or would deprive another of it. This punishment is taken from the nature of the thing, deduced from reason, and the sources of good and evil. A citizen deserves death, when he has violated the public security so far as to have taken

¹⁰⁰Catherine, *The Grand Instructions*, Article 210.

¹⁰¹Beccaria, *On Crimes and Punishments*, 48.

away, or attempted to take away, the life of another. Capital punishment is the remedy for a distempered society.¹⁰²

This view is unquestionably different from the Beccarian perspective espoused elsewhere in the treatise. The idea that “a citizen deserves death” is exactly the kind of retributive theory Beccaria sought to refute with his utilitarian and minimal theories of punishment. It is difficult to understand why Catherine would have included these two conflicting arguments in her *Nakaz*. We can perhaps speculate that she might have merely made an oversight in her enthusiastic inclusion of passages from other thinkers, or perhaps she sought to allow the death penalty but tempered her allowance with the more humane language of Beccaria. Whatever the reason, the inclusion of pro-capital punishment passages in the *Nakaz* significantly distances Catherine’s work from being merely a repetition of Beccarian sentiment.

Finally, and most importantly, Catherine’s decrees on capital punishment must also be interpreted in light of the existing status of capital punishment in Russia. While Catherine’s proposed reforms certainly modernized and made more humane the Russian penal code as a whole, on the specific subject of capital punishment in Catherine arguably used the Enlightened rhetoric of Beccaria and others to actually *reverse* the existing ban on capital punishment propagated by Elizabeth, whose reign was separated from that of Catherine by the six-month rule of Peter III. Although Elizabeth’s abolition was, as we have seen, awkwardly expressed, her commitment to the abolition was complete. In contrast, Catherine’s *Nakaz* used the very dialogue of Beccaria but still managed to reopen the potential for capital punishment.

The clearest example of Catherine’s reversal of Elizabeth’s ban on capital punishment is the fate of those convicted of treason. During Elizabeth’s reign, at least four cases of treason arose; however, she remained committed to the abolition of the death penalty and even issued

¹⁰²Catherine, *The Grand Instructions*, Article 79.

special orders each time to prevent the death sentences from being carried out.¹⁰³ Thus, Elizabeth's system, as piecemeal as it was, extended protection against capital punishment to convicted traitors. In contrast, Catherine included in her *Nakaz* an article specific to the application of capital sentences for treason: "In many states, the Law obliges all persons, under pain of capital punishment, to discover even those conspiracies which they know only by hearsay, and not by any communication with the conspirators. It is highly necessary that this law should be executed with the utmost severity, in cases of the highest degree of treason."¹⁰⁴ In the context of the *Nakaz* and its conflicting assortment of pronouncements on capital punishment, perhaps even this seeming allowance of death sentences for treason could be considered ambiguous. However, Catherine's action and orders leave no doubt of her willingness to utilize capital punishment for treason. Perhaps the most startling example of this willingness is her reaction to the rebellion of Emelyan Pugachev, who led a peasant uprising against her. After quashing the rebellion, "Catherine ordered his followers killed. Hundreds were beheaded and hung savagely from their ribs by a metal hook; thousands more were flogged and mutilated."¹⁰⁵ For the execution of Pugachev himself, Catherine arranged an even more gruesome spectacle: "the pieces of his dismembered body were displayed on a pole in the middle of the scaffold; his head placed on an iron spike."¹⁰⁶ Thus, Catherine's execution of traitors not only contradicted her supposed condemnation of the death penalty, but also created the exact kind of public spectacle condemned by Beccaria as ineffective and counterproductive.¹⁰⁷

Overall, while the *Nakaz* of Catherine the Great is often cited as a triumph and implementation of the ideals of Beccaria, the exact opposite is true in regards to its treatment of

¹⁰³Bryner, "The Issue of Capital Punishment in the Reign of Elizabeth Petrovna," 392.

¹⁰⁴Catherine, *The Grand Instructions*, Article 486.

¹⁰⁵Susan Jaques, *The Empress of Art: Catherine the Great and the Transformation of Russia*, (New York: Pegasus books, 2016), 146.

¹⁰⁶Jaques, *The Empress of Art*, 146.

¹⁰⁷Beccaria, *On Crimes and Punishments*, 49.

capital punishment. In fact, Catherine arguably excised portions of Beccaria's treatise and inverted them, bending them to serve her own purposes. As we have seen, Catherine retained Beccaria's exception that capital punishment is permissible "in times of anarchy, when disorders themselves hold the place of laws."¹⁰⁸ She also noticeably omitted his entire condemnation of the spectacle of capital punishment as ill-befitting a just nation and unhelpful for deterring crime.¹⁰⁹ Thus, despite Catherine's Enlightened reforms in other areas of the law, she managed to invoke the work of the Enlightenment philosophes to overturn Elizabeth's dedication to the abolition of capital punishment and reintroduce death sentences to Russia. With the exception of a few months immediately following the revolution of 1917, the movement against capital punishment did not gain ground in the Soviet Union until the second half of the twentieth century.¹¹⁰

Tuscany

Another often cited example of Beccaria's impact on abolition movements is the *Leopoldina*, passed by Grand Duke Leo of Tuscany in 1786. This new legal code abolished capital punishment entirely, declaring, "Having considered besides that a legislation very different from our preceding one, will agree better with the gentle manners of this polished age, and chiefly with those of the people of Tuscany, we are come to a resolution to abolish, and we actually abolish forever, by the present law, the pain of death, which shall not be inflicted on any criminal."¹¹¹ The edict very consciously relied on the logic of the "polished age" of the

¹⁰⁸Beccaria, *On Crimes and Punishments*, 48.

¹⁰⁹Beccaria, *On Crimes and Punishments*, 48-50.

¹¹⁰Zoltan J. Toth, "The Abolition of Capital Punishment in the Major Countries of Europe," *Journal of European History of Law*, vol 8, no 2 (2017): 86.

https://www.researchgate.net/publication/324925429_The_abolition_of_capital_punishment_in_the_major_countries_of_europe

¹¹¹Tuscany. Sovereign. *Edict of the Grand Duke of Tuscany, for the reform of criminal law in his dominions: translated from the Italian: together with the original*, Article 51, (Warrington: printed by W. Eyres, 1789), p 26. *Eighteenth Century Collections Online* (accessed April 18, 2021).

https://link.gale.com/apps/doc/CW0123701605/ECCO?u=mag_u_um&sid=ECCO&xid=b31da2c7&pg=35.

Enlightenment and, as such, contained much of the logic of Beccaria. In fact, part of the abolition edict perfectly summarized the arguments of Beccaria's chapter, reading:

The government, in the punishment of crimes, and in adapting such punishment to the objects towards which alone it should be directed, ought always to employ those means which, whilst they are most efficacious, are the least hurtful to the offender; which efficacy and moderation we find consist more in condemning the said offender to hard labor, than in putting him to death; since the former serves as a lasting example, and the latter only as a momentary object of terror, which is often changed into pity.¹¹²

Here, the *Leopoldina* reiterated Beccaria's argument about the importance of punishing in the least harmful manner and adapted his recommendation of substituting the death penalty with the punishment of hard labor for life. It even adopted his reasoning for the substitution: hard labor provides a more lasting example of deterrence. Thus, many have correctly credited Beccaria with inspiring the abolition in Tuscany.

While the *Leopoldina* was certainly an excellent example of a Beccarian abolition, it was not merely a carbon copy of Beccaria's work. Rather, it made some arguments not found in Beccaria's treatise. For example, the decree began: "We have seen with horror the facility with which, in the former laws, the pain of death was decreed, even against crimes of no very great enormity."¹¹³ This is similar logic to Beccaria's argument for proportionality between crime and punishment, referenced above. However, this statement went beyond a theoretical ideal by pointing out the operational imperfection of the justice system and the potential for injustice raised by retaining capital punishment as an option. While *On Crimes and Punishments* was entirely theoretical, the *Leopoldina* referenced the practical impossibility of justly applying death sentences.

Even more noteworthy is the inclusion in the edict of a sustained argument for the rehabilitation of criminals, again a strain of argument not found in Beccaria. It reads: "Having

¹¹²Edict of the Grand Duke of Tuscany, Article 51.

¹¹³Edict of the Grand Duke of Tuscany, Article 51.

considered that the object of punishment ought to consist, in the satisfaction due either to a private or public injury, in the correction of the offender, who is still a member and child of the society and of the state, and whose reformation ought never to be despaired of.”¹¹⁴ While Leo of Tuscany could not possibly have read the work of John Bellers or the unpublished treatise of Pelli, this statement calls to mind Pelli’s emphasis on reformation of criminals and Bellers’ suggestion that the state owes criminals opportunities for reform. Regardless of how Leo came to this argument for reformation, whether the idea came from another thinker or was his own creation, this argument sets his abolition apart as not merely a copy or prototype of Beccaria’s treatise.

Leo’s innovative and progressive abolition unfortunately did not last long. In 1790, anxiety caused by the French Revolution led Tuscany to reestablish capital punishment for political crimes, and five years later for murder and crimes against religion; however, capital punishment sentences were not carried out until 1808.¹¹⁵ Throughout the nineteenth century, capital punishment was alternately banned and reestablished until its final eradication in 1889. Thus, while Leo’s abolition was not permanent, it certainly contributed to the controversial and limited nature of capital punishment in Tuscany throughout the following century. Unlike Catherine, whose use of the philosophes reintroduced capital punishment, Leo of Tuscany used the work of Beccaria to aid the trajectory of abolition in Italy.

England

Beccaria’s treatise also reputedly nurtured opposition to capital punishment among English philosophers. For example, Anthony Draper identifies William Eden and Jeremy Bentham as thinkers who largely drew from Beccaria’s work to advocate for the radical reform

¹¹⁴*Edict of the Grand Duke of Tuscany*, Article 51.

¹¹⁵Toth, “The Abolition of Capital Punishment,” 78.

of punishment in general and the complete or near abolition of capital punishment in particular. Draper argues that each of these disciples of Beccaria took a different approach to their adaptation of his thought: Eden relied largely on Beccaria's discussions of natural law and justice to argue for humanitarianism and compassion in the laws while Bentham extracted Beccaria's utilitarianism in order to argue for the abolition of capital punishment on the grounds of its financial impracticability and the potential for mistaken convictions.¹¹⁶ John Bessler, another scholar to examine the reception of Beccaria's book in England, also argues that *On Crimes and Punishment* was immediately widely printed and well-received in England, and that it shaped influential thinkers such as Blackstone and Bentham.¹¹⁷ Certainly, then, the global conversation on capital punishment inspired by Beccaria and continued by Eden, Blackstone, Bentham, and other late seventeenth-century philosophes inevitably impacted the course of the abolition movement in England.

Bessler and Draper are also correct to draw a continuity between the work of Beccaria and the English abolition laws, the earliest of which was passed in 1808. For example, Bessler writes that although "it took many years for Beccaria's rational and humane approach to persuade members of parliament to dismantle Britain's Bloody Code," his work eventually had a "material influence."¹¹⁸ An example of this material influence is the work of Sir Samuel Romilly, the most influential early reformer of English law and the driving force behind the 1808 law abolishing capital punishment for petty theft. Romilly relied heavily on a critique of capital punishment as too extreme for lesser crimes, an echo of Beccaria's argument for proportionality

¹¹⁶Anthony Draper, "Cesare Beccaria's Influence on English Discussions of Punishment, 1764-1789," *History of European Ideas*, 26:3-4, (2001), p 177-199. DOI: 10.1016/S0191-6599(01)00017-1

¹¹⁷John D Bessler, "The Marquis Beccaria: An Italian Penal reformer's Meteoric Rise in the British Isles in the Transatlantic Republic of Letters," *Diciottesimo Secolo* 4 (2019), 107-20.

¹¹⁸Bessler, "The Marquis Beccaria," 119.

between crime and punishment. Romilly himself discussed the import and impact of Beccaria; a report of a speech he made in the House of Commons in 1808 reads:

Sir Samuel Romilly stated that, in the criminal law of this country, he always considered it a very great defect that capital punishments were so frequent; and were appointed, he could say inflicted, for so many crimes. No principle could be more clear, than that it is the certainty, much more than the severity of punishments, which renders them efficacious. This had been acknowledged ever since the publication of the works of the marquis Beccaria; and he had heard, he could not himself remember it, that upon the first appearance of that work it produced a very great effect in this country. The impression, however, had hitherto proved unavailing; for it has not in this country, in a single instance, produced any alteration of the criminal law; although in some states of Europe such alterations have been made.¹¹⁹

Thus, it is clear that even thirty-five years after its publication, Beccaria's signature ideas about the necessity of a proportion between crime and punishment were impacting discussions on abolition.

However, although it is clear that Romilly owes at least some credit to Beccaria, scholars such as Bessler and Draper perhaps go too far in according Beccaria sole credit for initiating the trend towards abolition in England. In another passage, Romilly recollected a conversation with Elizabeth Fry, a female prison reformer, in which he eagerly sought her opinion on capital punishment:

She told me that there prevails among [female prisoners] a very strong general sense of the great injustice of punishing mere thefts and forgeries by hanging; that it is frequently said by them, that the crimes of which they have committed are nothing, when compared with the crimes of the Government towards themselves; that they have only been thieves, but that their governors are murderers.¹²⁰

Here again we see how a conversation with a female activist helped shape Romilly's perspective on the death penalty, especially as applied to those convicted of crime and theft. It thus seems possible that Beccaria's work does not deserve all the credit for inspiring the first abolition laws in England; other personal influences might have immediately impacted Romilly's abolition.

¹¹⁹“Speech in the House of Commons, May 18th, 1808,” in “Sir Samuel Romilly and the Abolition of Capital Punishment.” *Social Service Review* 5, no. 2 (1931), 281-282.<http://www.jstor.org/stable/30009703>.

¹²⁰Samuel Romilly, *Memoirs*, in “Sir Samuel Romilly and the Abolition of Capital Punishment,” 279.

Additionally, crediting Beccaria with the eventual English abolition does not take into account the long standing tradition of English thinkers who criticized the use of capital punishment on those convicted of theft. While renowned thinkers of the Enlightenment criticized capital punishment unreservedly and called for its complete abolition, writers in England had been critiquing the disproportion between crimes and death sentences in England for centuries. We have already seen Thomas More's 1516 indictment of the death penalty in his satirical work *Utopia*: "This method for dealing with thieves is both unjust and socially undesirable. As a punishment it's too severe, and as a deterrent it's quite ineffective. Petty larceny isn't bad enough to deserve the death penalty, and no penalty on earth will stop people from stealing if it's their only way of getting food."¹²¹ Thus, the argument for proportionality for crimes and punishments in England began at least two hundred and fifty years before Beccaria's treatise. In the intervening period between More and Beccaria, the tradition of criticizing the death penalty's disproportionality with smaller crimes, if not its entire existence, remained strong. For example, Bernard de Mandeville, a poet and writer working from England, observed in 1725: "The Multitude of unhappy Wretches, that every Year are put to Death for Trifles in our great Metropolis, has long been afflicting Men of Pity and Humanity; and continues to give great Uneasiness to every Person, who has value for his Kind."¹²² A few decades later, in 1751, Samuel Johnson similarly condemned capital punishment, writing,

A slight perusal of the laws by which the measures of vindictive and coercive justice are established, will discover so many disproportions between crimes and punishments, such capricious distinctions of guilt, and such confusion of remissness and severity, as can scarcely be believed to have been produced by publick wisdom, sincerely and calmly studious of publick happiness.¹²³

¹²¹Thomas More, *Utopia*, trans. Paul Turner (London: Penguin Books, 2003) p. 22.

¹²²Bernard de Mandeville, "An Enquiry into the Causes of the Frequent Executions at Tyburn," (London: Fr. Roberts in Warwick lane, 1725), 14.

¹²³Samuel Johnson, *Rambler* 114, (1751), <http://jacklynch.net/Texts/rambler114.html>.

Although Johnson was willing for capital punishment to be retained as a “last resort,” he fiercely opposed the “legal massacre” of punishing petty crimes and theft with death. While these writings do not qualify as the kind of sustained arguments for complete abolition discussed in the previous chapter, the work of these authors clearly took issue with the disproportionate application of the death penalty in England.

Overall, Bellers and Draper perhaps go a bit far in their estimation of Beccaria's impact on English abolition laws. While Romilly himself referenced *On Crimes and Punishments* and even recognized its impact in his speech to the House of Commons, we cannot assume that Beccaria's treatise was the only factor that influenced Romilly to campaign against capital punishment for petty crimes. Rather, it seems that Beccaria's call for a proportion between crimes and punishment fit within an existing stream of reformist argument that had been going on in England for centuries. This more holistic interpretation is also supported by the fact that Romilly does not seem to have adopted Beccaria's call for near-complete abolition nor his reasoning based on natural law; instead, Romilly took issue with the extreme incongruity of punishing small crimes with death. Thus it seems likely that other influences, such as English writers who protested the excessive use of capital punishment and early nineteenth-century female prison reformers, meaningfully impacted the trajectory of the English abolition movement. These historical figures also deserve scholarly interest for their roles in bringing about the abolition movement in England, which continued to successfully reduce the number of capital crimes throughout the nineteenth century.¹²⁴

France

Unlike England, where the conversation on abolition took decades to result in legislation, France was more immediately impacted by Enlightened ideas about capital punishment. The

¹²⁴Toth, “The Abolition of Capital Punishment,” 82.

outlook for abolition seemed rather promising near the beginning of the Revolution; Enlightened ideas on natural law, justice, equality, and reform had shaped the Revolution considerably, and several Revolutionary politicians supported abolition. Thus, in 1791, the National Assembly heard arguments for the abolition of the death penalty. Shockingly, one of the most fervent abolitionist positions was espoused by Maximilien Robespierre, later the leader of the regime of Terror. In his speech before the National Assembly in 1791, he declared his goals: “I want to prove to them (1) that the death penalty is fundamentally unjust; (2) that it is not the most effective of penalties, and that it increases crime far more than it prevents it.”¹²⁵ Robespierre argued for these goals using reasoning we have seen repeatedly; he condemned the death penalty as an ineffective deterrent and pointed out the potential for wrongful or discriminatory convictions.¹²⁶ In his passionate denunciation of the state’s right or need to execute citizens, Robespierre’s speech was especially eloquent, surpassing even the rhetoric of Beccaria:

Within society, when the force of all is armed against one, what principles of justice can justify their putting the one to death? What necessity can pardon that? A victor who kills his captive enemies is called barbaric! A man who slaughters a child that he could disarm and punish seems a monster! A criminal condemned by society is nothing more to it than a vanquished and powerless enemy; he is weaker before society than is a child before a grown man.¹²⁷

This vivid and powerful analogy leaves no doubt about Robespierre’s fervent belief in the abolition of capital punishment. Additionally, Robespierre’s analogies suggest that there is no situation in which a captured criminal could pose enough danger to the state to justify his murder; he is merely “a child before a grown man” in this circumstance.

¹²⁵Maximilien Robespierre, “On the Abolition of the Death Penalty, May 30, 1791,” trans. Laura Mason, in *The French Revolution: A Document Collection*, ed. Laura Mason and Tracey Rizzo (Boston: Houghton Mifflin Company, 1999), 114.

¹²⁶Robespierre, “On the Abolition of the Death Penalty,” 115, 116.

¹²⁷Robespierre, “On the Abolition of the Death Penalty,” 114.

Unfortunately, the National Assembly did not choose to adopt the abolition proposed by Robespierre. Paul Friedland points out that, despite the enthusiastic reception of Beccaria's work among many members of the Assembly and the arguments of Robespierre,

There is something wrong here; for, in fact, almost no one actually proposed abolishing the death penalty altogether, and almost no one insisted on its wanton usage, without restrictions. Upon closer examination, the great debate between abolitionists and those who supported traditional capital punishment seems more like a general agreement, among all parties, that the death penalty should be made significantly rarer, but that it should be retained as a last resort for criminals who posed a threat to society.¹²⁸

Here, Friedland characterizes the “general agreement” between the parties as a compromise between those in favor of the abolitionist stance of Beccaria and those still supporting the death penalty. However, this subtly mischaracterizes the thinking of the involved parties. Instead, one could view the compromise as existing between Robespierre's faction and the supporters of the death penalty. In this interpretation, Beccaria's position is not identical with that of the abolitionist faction, but rather identical with the compromise: retaining capital punishment as a “last resort for criminals who posed a threat to society.” This interpretation is supported by a close reading of the texts. As shown above, Robespierre argued that there was no reason for the state, with its heightened power, to kill a captive criminal. Beccaria, as we have seen several times, allowed for the death penalty if the criminal could “threaten the security of the nation even though he be deprived of his liberty.”¹²⁹ Thus, the consensus of the French Assembly in 1791 closely resembled the stance of Beccaria rather than the more radical abolitionist view of Robespierre. While the Revolutionary leaders eventually interpreted Beccaria's exception far more broadly than he seems to have intended in his treatise, it is still important to recognize that the National Assembly's original consensus was quite Beccarian in its orientation.

¹²⁸Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France*, (Oxford: Oxford University Press, 2012), 215.

¹²⁹Beccaria, *On Crimes and Punishments*, 48.

From there, however, the Revolution took several gruesomely ironic turns in regard to capital punishment. To enact the humanitarian ideal of executing only extremely dangerous criminals in the supposedly most humane and uniform manner possible, the Assembly adopted the infamous guillotine machine. Edward Jones-Imhotep argues that despite the seemingly gruesome nature of the machine, “the guillotine provided a solution to the problem of public executions in an age of both sentiment and reason. It was designed to rationalize punishment and make it more humane; but it was also designed to guard against the psychological effects of older, more variable and unpredictable methods of public execution on a sentimental public.”¹³⁰ When Dr. Guillotine advocated for the machine in 1789, he also recommended that it be used privately in order to avoid the unbeneficial spectacle of public executions.¹³¹ However, at the conclusion of the 1791 debate, the Assembly chose not to adopt Beccaria’s reasoning on the useless or even counterproductive quality of public executions and instead instructed that the machines be set up in public view.¹³²

As the Revolution progressed and internal conflict shook the country, the use of capital punishment became widespread; thousands were guillotined before 1793, and even more death sentences were enacted during the period of the Great Terror from 1793-1794.¹³³ Robespierre, one of the strongest proponents of abolition, reversed his convictions and sanctioned widespread use of capital punishments before himself facing the guillotine in July of 1794. During the nineteenth century, various figures called for abolition with some success in reducing the use of capital punishment; however, it was not until 1981 that capital punishment was actually abolished in France.¹³⁴ Overall, despite the original interest in reform and abolition at the

¹³⁰Edward Jones-Imhotep, “The Unfailing Machine: Mechanical Arts, Sentimental Publics, and the Guillotine in Revolutionary France,” *History of the Human Sciences*, vol 30(4), (2017): p.11. DOI:10.177/1952695117722716

¹³¹Jones-Imhotep, “The Unfailing Machine,” 18.

¹³² Jones-Imhotep, “The Unfailing Machine,” 20.

¹³³Toth, “The Abolition of Capital Punishment,” 79.

¹³⁴Toth, “The Abolition of Capital Punishment,” 80.

beginning of the Revolution, the convictions of the early reformers did not survive the brutal conflict and the machine proposed to embody Enlightened reform transformed into an instrument of terror that lasted for centuries.

Conclusions

This survey of the way in which Beccaria's treatise produced different trajectories towards abolition in four different European countries is by no means complete. Clearly, the work of Beccaria inspired debate, thought, and reaction in other European countries not examined here. Additionally, Beccaria's work also reached America, where its impact on the early American movement against capital punishment could also be productively examined. However, while the above examination is far from comprehensive, it can yield a few interesting conclusions. First, the impact of Beccaria's treatise was far from uniform; rather, in each country, the thought of Beccaria interacted with existing standards and dialogue to produce unique results. Second, and more controversial, is the conclusion that Beccaria's treatise, while unquestionably written with the admirable goal of abolishing capital punishment, was not always used to benefit the cause of abolition. In Russia and France, governments embraced Beccaria's humane rhetoric but also seized on his small exception allowing the death penalty for dangerous criminals in times of anarchy to justify reintroduction or systemization of capital punishment, respectively. Thirdly, Beccaria's influence has perhaps been overestimated by mistaking later reformers' citation of his treatise for direct and complete inspiration. While it is true that *On Crimes and Punishments* is often cited in future calls for reduction or abolition of capital punishment, such as those in England, this does not necessarily mean that Beccaria's thought is thus entirely responsible for decades of abolitionist activity; rather, other figures, influences, and arguments deserve to be examined. Overall, while much work has been dedicated to examining Beccaria's

impact on the dialogue surrounding capital punishment in the aftermath of the publication of his treatise, more work remains to be done in order to connect this dialogue with the course of diverse abolition movements.

BIBLIOGRAPHY

- Audegean, Philippe. "Cesare Beccaria's *On Crimes and Punishments*: The Meaning and Genesis of a Jurispolitical Pamphlet." *History of European Ideas*, 43:8, 887-897. doi:10.1080/01916599.2016.1256591
- Banner, Stuart. *The Death Penalty: An American History*. Harvard University Press: 2002. <https://hdl-handle-net.umiss.idm.oclc.org/2027/heb.05192>
- Beccaria, Cesare. *On Crimes and Punishments*. Translated by David Young. Indianapolis: Hackett Publishing Company, 1986.
- Bedau, Hugo Adam. "The Case Against the Death Penalty." American Civil Liberties Union: 1973, revised 2012. <https://www.aclu.org/other/case-against-death-penalty>.
- Bellers, John. "Some Reasons Against Putting Felons to Death," *Essays about the poor, manufactures, trade, plantations, & immorality and of the excellency and divinity of inward light, demonstrated from the attributes of God and the nature of mans soul, as well as from the testimony of the Holy Scriptures*. London: T. Sowle, 1699. Ann Arbor: Text Creation Partnership, 2011.
- Bessler, John D. "The Marquis Beccaria: An Italian Penal reformer's Meteoric Rise in the British Isles in the Transatlantic Republic of Letters." *Diciottesimo Secolo* 4 (2019): 107-20.
- Bessler, John D. "The Economist and the Enlightenment: How Cesare Beccaria Changed Western Civilization." *European Journal of Law and Economics* 46, (2018): 275-302. doi:<http://dx.doi.org.umiss.idm.oclc.org/10.1007/s10657-016-9546-z>
- Birch, Thomas. *The Court and Times of James I*. In Molly Smith, *Breaking Boundaries: Politics and Play in the Drama of Shakespeare and his Contemporaries*, 215. Aldershot: Ashgate Publishing Limited, 1998.
- The Bologna Comforter's Manual, Book 1*. Translated by Shelia Das. In *The Art of Executing Well: Rituals of Execution in Renaissance Italy*. Edited by Nicholas Terpstra. Kirksville, Missouri: Truman State University Press, 2008.
- Brettschneider, Corey. "Rights Within the Social Contract: Rousseau on Punishment." In *Law as Punishment, Law as Regulation*, 53-73. Edited by Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey. Stanford: Stanford University Press, 2011. <https://ebookcentral.proquest.com/lib/olemiss/detail.action?docID=744858>.
- Bryner, Cyril. "The Issue of Capital Punishment in the Reign of Elizabeth Petrovna." *The Russian Review* 49, no. 4 (1990): 389-416. doi:10.2307/130523.

- Catherine the Great. *The Grand Instructions to the Commissioners Appointed to Frame a new Code of Laws for the Russian Empire*. Translated by Michael Tatischeff. London: printed for T. Jeffreys, 1768. <https://hdl.handle.net/2027/mdp.35112203966090>.
- Cunningham, Karen. "Renaissance Execution and Marlovian Elocution: The Drama of Death." *PMLA* 105, no. 2 (1990), 209-222. doi:10.2307/462557
- Draper, Anthony. "Cesare Beccaria's Influence on English Discussions of Punishment, 1764-1789." *History of European Ideas*, 26:3-4, (2001):177-199. DOI: 10.1016/S0191-6599(01)00017-1
- Freidland, Paul. *Seeing Justice Done: The Age of Spectacular Capital Punishment in France*. Oxford: Oxford University Press, 2012.
- Garland, David. "Modes of Capital Punishment: The Death Penalty in Historical Perspective." In *Peculiar Institution: America's Death Penalty in an Age of Abolition*, 30-71. Cambridge, Mass: Harvard University Press, 2010.
- Garnsey, Peter. "Introduction." *Against the Death Penalty: Writings from the First Abolitionists — Guiseppe Pelli and Cesare Beccaria*. Oxford: Princeton University Press, 2020.
- Howell, Thomas. *Cobbett's Complete Collection of State Trials, 33 vols*. London: Bagshaw, 1809-26. vol 1, 1130.
- Jaques, Susan. *The Empress of Art: Catherine the Great and the Transformation of Russia*. New York: Pegasus books, 2016.
- Johnson, Samuel. *Rambler* 114. (1751). <http://jacklynch.net/Texts/rambler114.html>.
- Jones-Imhotep, Edward. "The Unfailing Machine: Mechanical Arts, Sentimental Publics, and the Guillotine in Revolutionary France." *History of the Human Sciences*, vol 30(4), (2017):11-31. DOI:10.177/1952695117722716
- Kesselring, K. J. *Mercy and Authority in the Tudor State*. Cambridge: Cambridge University Press, 2003.
- King, Peter and Richard Ward. "Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery." *Past & Present*, Volume 228, Issue 1, (2015). <https://doi.org/10.1093/pastj/gtv026>.
- Mandeville Bernard. "An Enquiry into the Causes of the Frequent Executions at Tyburn." London: Fr. Roberts in Warwick lane, 1725.
- Marasinova, Elena. "The Death Penalty Moratorium in 18th-Century Russia." *Quaestio Rossica*, vol 7. No 4. Moscow: Institute of Russian History of RAS, National Research University, 2019. DOI 10.15826/qr.2019.4.426

- More, Thomas. *Utopia*. Translated by Paul Turner. London: Penguin Books, 2003.
- Nashe, Thomas, *The Unfortunate Traveller*. In Molly Smith, *Breaking Boundaries: Politics and Play in the Drama of Shakespeare and his Contemporaries*, 23. Aldershot: Ashgate Publishing Limited, 1998.
- Pelli, Giuseppe. *Against the Death Penalty*. Translated by Peter Garnsey. In Peter Garnsey, *Against the Death Penalty: Writings from the First Abolitionists - Giuseppe Pelli and Cesare Beccaria*, 9-53. Oxford: Princeton University Press, 2020.
- Pelli, Giuseppe. *Efemeridi*. Translated by Peter Garnsey. In Garnsey, *Against the Death Penalty: Writings from the First Abolitionists — Giuseppe Pelli and Cesare Beccaria*, 54-84. Oxford: Princeton University Press, 2020.
- Polnoe sobranie zakonov rossiiskoi imperii*, vol 12, no. 8944. Translated by Joshua First. May 7 (corrected to 17), 1744.
- Robespierre, Maximilien. "On the Abolition of the Death Penalty, May 30, 1791." Translated by Laura Mason. In *The French Revolution: A Document Collection*, 114-116. Edited by Laura Mason and Tracey Rizzo. Boston: Houghton Mifflin Company, 1999.
- Romilly, Samuel. *Memoirs*, in "Sir Samuel Romilly and the Abolition of Capital Punishment." *Social Service Review* 5, no. 2 (1931): 279.
- Rousseau, Jean Jacques. *The Social Contract, or Principles of Political Right*. Translated by G.H.D. Cole. https://socialpolicy.ucc.ie/Rousseau_contrat-social.pdf.
- Smith, Molly. *Breaking Boundaries: Politics and Play in the Drama of Shakespeare and his Contemporaries*. Aldershot: Ashgate Publishing Limited, 1998.
- "Speech in the House of Commons, May 18th, 1808." In "Sir Samuel Romilly and the Abolition of Capital Punishment." *Social Service Review* 5, no. 2 (1931): 281-285. <http://www.jstor.org/stable/30009703>.
- Terpstra, Nicholas. *The Art of Executing Well: Rituals of Execution in Renaissance Italy*. Kirksville Missouri: Truman State University Press, 2008.
- Terpstra, Nicholas. "Piety and Punishment: The Lay Conforteria and Civic Justice in Sixteenth-Century Bologna." *The Sixteenth Century Journal* 22, no. 4, (1991): 679-694. doi:10.2307/2542371.
- Toth, Zoltan J. "The Abolition of Capital Punishment in the Major Countries of Europe." *Journal of European History of Law*, vol 8, no 2 (2017): 77-86. https://www.researchgate.net/publication/324925429_The_abolition_of_capital_punishment_in_the_major_countries_of_europe

- Tuscany. Sovereign. *Edict of the Grand Duke of Tuscany, for the reform of criminal law in his dominions: translated from the Italian: together with the original.* Warrington: printed by W. Eyres, 1789. *Eighteenth Century Collections Online.*
https://link.gale.com/apps/doc/CW0123701605/ECCO?u=mag_u_um&sid=ECCO&xid=b31da2c7&pg=35.
- Voltaire. "A Commentary on the Book of Crimes and Punishments." Glasgow: Printed for Robert Urie, 1770). *Eighteenth Century Collections Online.*
link.gale.com/apps/doc/CW0116945488/ECCO?u=mag_u_um&sid=ECCO&xid=7724b5d6&pg=179.
- Voltaire. "The History of the Misfortunes of John Calas, a Victim to Fanaticism. To which is added A letter from M. Calas to his wife and children." London: 1775. *Eighteenth Century Collections Online.*
https://link.gale.com/apps/doc/CW0125202273/ECCO?u=mag_u_um&sid=ECCO&xid=bdc59233&pg=1.
- Voltaire. "M. de Voltaire to Mr. Elie de Beaumont." In "A treatise on toleration; memorials, letters, &c. Relating to persecution; and particularly to the cases of Calas and Sirven." Translated by David Williams. London: Fielding and Walker, 1779. *Eighteenth Century Collections Online.*
https://link.gale.com/apps/doc/CB0130288653/ECCO?u=mag_u_um&sid=ECCO&xid=b22edc17&pg=193.