Locke and Beccaria: Faculty Psychology and Capital Punishment

Steven Lynn

University of South Carolina - Columbia, lynns@mailbox.sc.edu

Follow this and additional works at: http://scholarcommons.sc.edu/engl_facpub

Part of the English Language and Literature Commons

Publication Info
Published in Postscript, Volume 5, 1988, pages 1-12.
© 1988 Philological Association of the Carolinas.
The Italian critic who called Cesare Beccaria’s *Trattato dei delitti e delle pene* (or Essay on Crimes and Punishments) “indisputably the most effective literary work of the entire eighteenth century” may perhaps be forgiven his enthusiasm, for the international influence of Beccaria’s work, published in July, 1764, and translated almost immediately into every major language, appears to have been enormous. By 1822 it was possible for Beccaria’s Paris editor to credit him with “the abolition of torture in most European states, the suppression of cruel punishments, and the improvement of penal law.” Modern assessments have agreed without exception that Beccaria “inspired far-reaching reforms in criminal law” and helped shape the thinking of a host of eighteenth-century thinkers, ranging from Benjamin Franklin to Voltaire. Yet, in reading through the history of criminal law and punishment, one notes with dismay that in England it was not until 1789 that the last execution by burning was carried out; not until 1834 that branding as a punishment was abolished; not until 1837 that the pillory was outlawed; and not until 1820 that the number of capital crimes begins to decrease, having gone from less than fifty in Tudor and Stuart times to more than two hundred. If Beccaria’s work is, as Harry Barnes says, “the most effective work in the field of the reform of criminal jurisprudence” (not as extravagant a claim perhaps as “the most effective literary work,” but certainly a substantial assertion), its effectiveness may well seem slow and limited nonetheless. To be sure, Beccaria’s profound reluctance to employ capital punishment was often echoed and invoked in the eighteenth and nineteenth centuries; and, in England in the period 1803-1810, for example, of 1,872 thieves convicted and sentenced to death, only one was actually executed. But, as Leon Radzinowicz points out in his massive *History of English Criminal Law*, replacing capital punishment with imprisonment was often replacing a quick and relatively painless death with a slow, torturous one, given the conditions of imprisonment. Moreover, Radzinowicz argues, Beccaria’s reforms were severely compromised because
his focus on capital punishment “neglected the problem of secondary punishments, without the solution of which any reform of criminal law was destined to remain abortive.”

Although there is no doubt some truth in Radzinowicz’s observation, Beccaria does not entirely neglect secondary punishments, for he does provide insistently a governing principle for all punishments: they should “make the strongest and most lasting impressions on the minds of others, with the least torment to the body of the criminal” (41-2). Beccaria’s qualified success or qualified failure (whichever one prefers) is, I would argue, more complex than a neglect or focus on this or that particular facet of crime and punishment. To understand more fully why Beccaria was accorded such immediate and continued applause, and why, given this pervasive appreciation of Beccaria, his practical impact was not more radical and precipitous, we need to understand better the intellectual context his work inhabited. Most often Beccaria has been considered as a point of origin, a context for later developments, and when Beccaria’s own contexts have been considered, the effort has been primarily to track down the genealogy of various progressive ideas. I propose here an investigation of what is in some ways a more fundamental, yet neglected, relationship: how does the model of the mind that Beccaria and his contemporaries inherited influence the genesis and reception of his ideas? Eighteenth-century assumptions about the workings of the mind, I will suggest, help to explain both Beccaria’s spectacular intellectual appeal as well as the incomplete and glacially slow response to his ideas in practice.

If we want some idea of how Beccaria and others in the eighteenth century might have viewed the mind, Locke’s Essay concerning Human Understanding, evolved in the 1670s and 80s, published in 1690, would seem to be the logical document to examine. Throughout this period, according to Kenneth MacLean, Locke’s work had the most influence of any book, the Bible only excepted; W.S. Howell agrees that Locke’s works on understanding “were without question the most popular, the most widely read, the most frequently reprinted, and the most influential of all English books.” It is not surprising then that Locke’s model of the mind pervades eighteenth-century thought. To choose only one example, Beccaria’s friend, Helvetius, uses Locke’s theory of mind to found his notions of man’s equality. Thus, to understand Beccaria, we need to consider how Locke constructs his psychology, and what its essence is—-not in order to demonstrate that Beccaria employed Locke specifically, but rather to consider the implications of the psychology Beccaria and his age would have assumed.

Locke’s principal tools of analysis in constructing his model of the mind are erasure and deformation. Seeing himself as an “Under-Labourer,” “clearing Ground a little, and removing some of the rubbish that lies in the way to Knowledge,” Locke considers what our understanding would
be like if we could not see, if our senses were quicker, if two souls occupied
the same body, if a cat and a rat mated. His most famous erasure, the
subject of Book I, removed innate ideas, thus requiring that the materials
our minds manipulate must ultimately derive from sensations. Sensations
must act upon something, and so Locke implies a mental surface that
receives the impress of sensations; then he considers what it would be like
to erase this surface, to return to that pre-infantile state of the famous tabula
rasa. He also imagines an organ or system for thought, and how this
biological thinking machine would function if it too were returned to an
original, blank state. In order to work, the mind would need various
capacities, or "faculties," that this empty mind must have in order to func-
tion. By "faculties," Locke tells us, he does not mean "some real Beings
in the Soul" or "so many distinct Agents in us"—alarming ideas (237);
rather, he means only a power or an ability (241).

In his qualification of "faculties," Locke is attempting to avoid the
kind of explanatory regress that answers the question "What digested the
groceries?" with the response "The digestive faculty." But by saying that
a faculty is not an agent but rather a power, Locke is nonetheless unable
to avoid the implication of a partitioned mind, composed of separate
functions—a model that displaces the problem of "mind" rather than ex-
plaining it, for the simple reason that some entity, some personhood, would
seem necessarily to be in charge of the various faculties. Hence, we see the
necessity and the attractiveness of positing a soul that receives and
superintends the operations of the faculties. But Locke is not willing to
situate this soul in a particular place, unlike Descartes and others who favor
the pineal gland as its home; in fact, Locke is not willing to give the soul
materiality at all, but at the same time he is equally unwilling to assign it
immaterility: "'Tis past controversy, that we have in us something that
thinks; our very Doubts about what it is confirm the certainty of its being,
though we must content our selves in the Ignorance of what kind of Being
it is."15

This displacement of the mind's agency and the ambiguous status of
its nature allow Locke's model of the mind to serve his thesis well, for a
crucial aspect of Locke's project involves exposing the extent to which the
mind is a passive receptacle for sensations: by exposing the gap between
these sensations and our ideas, especially our complex ideas (or "notions"
Locke would prefer) like "murder" and "sacrilege," Locke hopes to pro-
mote tolerance and humility: "The necessity of believing, without
Knowledge, nay, often upon very slight grounds, in this fleeting state of
Action and Blindness we are in, should make us more busy and careful
to inform our selves, than constrain others" (660). This drive toward tolera-
tion and generosity is also fostered by Locke's discussion "Of the Imperfec-
tion of Words," the title of chapter 9 in Book III. Because words cannot
cross this gap between sensations and thoughts, Locke insists that words "stand for nothing but the Ideas in the Mind of him that uses them, how imperfectly soever or carelessly those Ideas are collected from the things which they are supposed to represent" (405; emphasis is Locke’s). Among those words exemplifying the "arbitrary imposition" (478) of meaning, Locke includes "Justice, Just; Equality, Equal" (474).

Beccaria, near the outset of his treatise, similarly undermines his contemporaries’ confidence in the word "justice," informing them "We should be cautious how we associate with the word justice, an idea of any thing real, such as a physical power, or a being that actually exists" (9). By acknowledging, like Locke, the gap between res and verba, Beccaria reminds us that "justice" is an arbitrary construct, which for him means "nothing more, than that bond which is necessary to keep the interest of individuals united" (9). This move dismantles for Beccaria the institutionalized conception of "justice" as a stable standard, grounded in reality—a conception that involved retribution in the idea of justice, and led to such absurdities as trying and executing animals and even insects. It was this need to balance some evil with retribution and purgation in order to realize "justice" that led, for example, the French legal system in 1386 to try, sentence, torture, and execute by hanging a pig that had injured a young boy.14 Such a ritualistic approach to punishment survives well into the eighteenth century with the procession to Tyburn, or the practice in aggravated cases of returning the criminal to the crime’s scene for his punishment. Beccaria and other enlightened eighteenth-century thinkers reject an economy of justice that requires an injury to be offset by an equal injury.

"Justice" is not the only term that Beccaria writes under erasure. All complex words, he says in Lockean language, are composed of "simple ideas" that are "easily confounded"—which explains why "truths of morality" are less distinctly known than "the revolutions of the heavenly bodies" (32). As examples, Beccaria points to "the uncertainty of our notions of honour and virtue," an uncertainty made inevitable by the arbitrary connection between "names" and "the things they originally signified" (23). Beccaria, tacitly following Locke, is so much aware of the prisonhouse of language that he would have no one placed in a more substantial prisonhouse on the basis of words: "when the question relates to the words of a criminal," "the credibility of a witness is null." Actions, res, must found an accusation, not verba—which, as Locke tells us, "stand for nothing but the Ideas in the Mind of him that uses them."

Thus, Locke’s description of the mind’s fundamental faculty establishes this position, crucial to his argument as well as Beccaria’s: "the first faculty of the Mind" is "bare naked Perception," which is "the inlet of all Knowledge,"; in the performance of this faculty, "the Mind is, for the most part, only passive" (149, 143)—Locke will later say the mind, "in respect
to its simple Ideas, is wholly passive” (288). The ambiguous status—where is it? what is it?—of the “something that thinks” tends to accentuate the primacy of sensations and the passivity of the mind. This passivity, together with the arbitrariness of words (which is built on the apparent happenstance of sensation), presents a model of the mind conducive to forgiveness, not harsh punishment: We are shaped by our environments, by the sensations we receive and the actions of our faculties upon these sensations. And because of the imperfection of words, and the lack of innate ideas, including the absence of an innate moral code, our convictions (in both senses) should be suspect and tentative.

Beccaria’s humanitarian outlook is thus based on assumptions that obviously accord with Locke’s model of perception. Beccaria takes for granted, for example, that our ideas are based on our sensations: while the legal system in his day presumed the accused to be guilty and forced him to prove his innocence, Beccaria argues, based tacitly on Lockean psychology, that the presumption should be against the accuser, “for no man is cruel [that is, in accusing another of a serious crime] without some motive of fear or hate. There are no spontaneous or superfluous sentiments in the heart of man; they are the result of impressions on the senses” (45). Similarly, Beccaria’s argument against the practice of using torture to extract the truth is based on the following premise: “Every act of the will is invariably in proportion to the force of the impression on our senses; and the sensibility of every man is limited” (60). If a man’s ideas are completely occupied at the fundamental level by pain, he is not likely to tell the truth; he is only likely to tell whatever will end the pain.

Beccaria’s extraordinary reluctance to invoke capital punishment, or any extreme punishment, is also related to the perceiver’s passivity in Locke’s model. Because our sentiments are “all the result of impressions on the senses” (45), Beccaria is especially reluctant to punish harshly those crimes that obviously result from the criminal’s environment and experiences. For example, punishing sodomy with torture and severe punishment, including capital punishment, seems outrageous to him because the crime is the result not so much of “the passions of man” as the present system of education, in which “ardent youth are carefully excluded from all commerce with the other sex, as the vigour of nature blooms” (125). Indeed, in all crimes Beccaria tends to see the perpetrator as another victim, driven to do wrong by what he has experienced. Robbery “alas! is commonly the effect of misery and despair” (80), he says for example. Beccaria in fact goes so far as to argue that the punishment of any crime cannot be just if the state has not endeavored by the best available means to prevent it (118).

Beccaria shares with a number of eighteenth-century reformers this willingness to imagine sympathetically the thought processes of the criminal (and potential criminal). Samuel Johnson, to quote only one illustrious ex-
ample quoting another illustrious example, in Rambler 114 confirms Boerhaave’s remark “that he never saw a criminal dragged to execution without asking himself, ‘Who knows whether this man is not less culpable than me?’” Such empathy, which becomes more and more common as the age of reason becomes the age of sensibility, certainly owes something to Locke’s influence; and the idea that our minds work in the same ways, and this working is not entirely under our control, certainly tends to foster Boerhaave’s sort of consideration. As Johnson writes in Sermon 26, perhaps revealing more of his own conscience than he intended, “scarce any one can see” a convicted thief “in the hands of the executioner, without reflecting that the crimes, for which they dye are less than his own.”

If Locke’s description of the first faculty tends to suggest to his readers how anyone, shaped by his perceptions, might go astray, it is his discussion of the second faculty, retention, that actually gives a much deeper insight into the workings of deviance, and even madness. The implications of this second faculty also appear to strengthen our sympathy for the criminal/victim; but at the same time, pursued to their logical end, its implications finally underscore the necessity of punishment—even severe punishment, even (perhaps) capital punishment, despite our psychologically grounded sympathy.

The second faculty in Locke’s model of the mind, “retention,” or memory, allows us to store sensations in order to compare, relate, combine, discriminate, abstract, etc. This storage has its own problems, as “there seems to be a constant decay of all our Ideas, even of those which are struck deepest, and in Minds the most retentive” (151). Thus, if our ideas are not “sometimes renewed by repeated Exercise of the Senses, or Reflection on those kind of Objects, which at first occasioned them, the Print wears out, and at last there remains nothing to be seen” (151). Beccaria obviously employs a similar model of thinking when he notes that “ideas of morality are stamped on our minds by repeated impressions” (106). Unlawful acts become potentially failures of morality that are arguably the fault of the society, which fails to write its moral code on its citizens clearly enough or which allows its code to be naturally erased by neglect. Lacking an innate moral code, requiring “repeated exercise of the senses” in order to sustain an idea, human beings confront a fragile and even arbitrary system of right and wrong, as Beccaria stresses:

Whoever reads with a philosophic eye, the history of nations, and their laws, will generally find, that the ideas of virtue and vice, of a good or a bad citizen, change with the ages; not in proportion to the alteration of circumstances, and consequently conformable to the common good; but in proportion to the passions and errors by which the different law-givers were successively influenced. (23)
This remark, which must be unsettling to anyone who would enforce the current laws with any ferocity, is followed by an even more disarming one, asserting that in fact “the passions and vices of one age, are the foundation of the morality of the following.” This moral topsy-turvey results, Beccaria makes clear, from the way our sensations, impressions, passions, are “weakened by time.”

If the imperfection of words and the fragility of ideas do tend toward empathy and leniency toward criminals, there is another aspect of this second faculty of retention that would appear to compel society to punish those who do wrong, despite its sympathy for them. This aspect is the association of whatever ideas we are able to retain and manipulate. Because we cannot work with a multitude of primary or “simple” ideas, as Locke explains, relationships between and among ideas are inevitably and necessarily formed as a function of thinking. Some of these associations, he says, are “natural” or real and therefore valuable. But, “there is another Connexion of Ideas wholly owing to Chance or Custom; Ideas that in themselves are not at all of kin, come to be so united in Mens Minds, that ’tis very hard to separate them” (395). This accidental association is not only a problem; it is, Locke thinks, “the foundation of the greatest” for not “all the Errors in the World” (401)—an astonishingly broad indictment. For Locke, however, such accidental associations, which occur with distressing frequency, engender an unreality, a kind of madness even, and he points to the unfounded yet irreconcilable and often violent oppositions between “different Sects of Philosophy and Religion” and “Party” as a prime example of the power (and danger) of association. With the second faculty, the mind, so passive in the workings of the first faculty, becomes disturbingly alive.

The plasticity of associations provides a logical basis for punishment, even harsh punishment, as a deterrent. In fact, Beccaria sees such deterrence as essential to the life of society, which is prevented from approaching to that dissolution (to which, as well as all other parts of the physical and moral world, it naturally tends) only by motives that are the immediate objects of sense, and which being continually presented to the mind, are sufficient to counterbalance the effect of the passions of the individual, which oppose the general good. Neither the power of eloquence nor the sublimest truths, are sufficient to restrain, for any length of time, those passions which are excited by the lively impressions of present objects. (6)

Such pessimism, which immediately strikes one as Hobbesian, can also be traced to Locke, who thinks it would be “utterly in vain” to propose a
law without rewards and punishments (351). Servan, who refers enthusiastically to Beccaria's essay only three years after its publication, reveals how deterrence comes to be seen in terms of Lockean psychology, writing that "the immutable base of the strongest empires rests upon the soft fibres of the brain," and "to establish an association of ideas" to deter criminal acts, "there must be a regular association of events: in brief, the citizenry must see crimes punished always as soon as they are committed." Although Beccaria is more cautious than his adherent, raising the issue of justice miscarrying in the "promptitude of punishment," he considers the temporal connection of crime to punishment so important, being "one of the most powerful means of preventing crimes" (115), that the dangers of miscarriage are outweighed, and therefore crimes should be punished as soon as possible--if not "as soon as they are committed." Here is Beccaria, employing obviously Lockean language, even referring indirectly to Locke's Essay it appears, to explain the role of association in deterrence:

An immediate punishment is more useful; because the smaller the interval of time between the punishment and the crime, the stronger and more lasting will be the association of the two ideas of Crime and Punishment; so that they may be considered, one as the cause, the other as the unavoidable and necessary effect. It is demonstrated, that the association of ideas is the cement which unites the fabric of the human intellect; without which, pleasure and pain would be simple and ineffectual sensations. (73-4)

When time elapses between the crime and punishment, Beccaria notes, the spectators see the punishment as "a terrible sight" rather than "the necessary consequence of a crime" (75), and deterrence is weakened.

Thus, the role of association in deterrence not only supports a rush to sentencing and punishment, it also makes severe, horrible punishment seem reasonable, for the more dramatic the associated deterrent, the more powerfully persons may be dissuaded from crime. If punishments were sufficiently horrible, one may reason, then no one in his or her right mind would break the law. Such logic led William Paley, who assumed with Beccaria and others that "The proper end of human punishment is not the satisfaction of justice but the prevention of crimes," to speculate soberly in 1785 on the possibility of beneficially augmenting "the horror of punishment" by "casting murderers into a den of wild beasts, where they would perish in a manner dreadful to the imagination, yet concealed from the view." The check on such a not uncommon train of thought is expressed by Beccaria, once more working in terms of Lockean psychology: "In proportion as punishments become more cruel, the minds of men, as a fluid rises to the same height as that which surrounds it, grow hardened and in-
sensible” (96). Such a hydraulic comparison, especially effective given the fluid mechanics of the nervous system as Locke and the medicine of his day understood it, might not apply to punishments not witnessed by the public, but only related to them. Hence Paley's stipulation, “concealed from the view.”

This sort of thinking, supported powerfully by Locke's treatment of association, is arguably behind the widespread endorsement in Beccaria's day and even our own of capital punishment. And it is not enough, as Fielding argues in his Enquiry into the Causes of the Late Increase of Robbers (1751), to legislate capital punishment, and even to sentence persons to die; if the wrongdoers are frequently pardoned, as they were throughout the century (but less so after his Enquiry), then the deterrent effect is weakened because the association is impaired. Logically then, if capital punishment deters strongly, then why not employ that prevention against more and more crimes? This multiplication of capital crimes is, of course, what happened over the course of the seventeenth and eighteenth centuries.

But Beccaria brings other lines of argument to bear against making punishments more horrible and severe. To understand these arguments better, we might compare his reasoning to that of William Blackstone, whose famous Commentaries came out almost simultaneously with Beccaria's Essay. Blackstone was able to justify capital punishment by reference to the Bible and “the social contract,” but he was nonetheless uncomfortable with applying capital punishment to crimes only mala prohibita rather than mala in se. Blackstone could imagine capital punishment being invoked to stop loaded wagons from damaging roads, since current penalties had been unable to curtail the practice. Such a law would lack proportion, Blackstone felt.

Beccaria assumes with Blackstone and virtually every other eighteenth-century theorist that there should be a proportion between the crime and the punishment, and that the current system failed in that respect. Beccaria argues effectively that the proportional classification of crimes and punishments should be based on “the injury done to society” (27), not the crime's degree of evil, for only “the Almighty...who cannot receive impressions of pleasure, or pain, and who alone, of all other beings, acts without being acted upon” (27) can discern gradations of evil--can, in other words, escape the subjectivity and arbitrariness that, as Locke makes clear, pervade all our judgments. Thus, physical punishment, including execution, would be possibly appropriate only when the crime involved physical injury or murder--certainly not in cases of forgery or theft.

Even for the most severe injuries to another person, however, Beccaria opposes capital punishment, and the grounds of his opposition are not solely the result of sympathy (based on the implications of Lockean perception) outweighing deterrence (based on the implications of Lockean association).
Beccaria’s acceptance of association and deterrence is clear enough: but he finds capital punishment inappropriate for many crimes by refining the idea of proportion. He thinks that making "the punishment as analogous as possible to the nature of the crime" would actually strengthen "this important connexion between the ideas of crime and punishment" (75). In other words, if a man commits robbery, then he should himself be "robbed," with his own goods confiscated and also (since this crime is so often "the effect of misery and despair"—read "poverty") the fruits of his forced labor taken (80).

But the force of analogy will not dispense with all capital punishments, and Beccaria sets forth a principle that tends to soften all punishments of whatever severity. While punishment should "make the strongest and most lasting impressions on the minds of others," it should do so "with the least torment to the body of the criminal" (41-2). The logic for the important latter part of this formula is not based simply on the thesis that extreme punishments may harden the public to violence. Rather, in a seminal statement, Beccaria holds that "The certainty of a small punishment will make a stronger impression, than the fear of one more severe, if [the more severe one is] attended with the hopes of escaping" (95). If punishments are perceived to be too severe for small crimes, not only is the system reluctant to carry out the sentence, but offenders will proceed to commit a larger crime to avoid detection (95). Beccaria also makes the related argument that execution is "a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continued example of a man deprived of his liberty, condemned, as a beast of burden, to repair, by his labour, the injury he has done to society" (134). Only when a citizen by simply remaining alive threatens "the security of the nation" (as in revolutionary times) can the state illegally but justifiably take from him what he has no power to give, his life—and even then it is a sign of the government's weakness, Beccaria says.

Beccaria's consideration of Crimes and Punishments employs, as we might expect and as we have seen, a Lockean model of the mind. Some part of the power of Beccaria's amalgamation and extension of previous humanitarian sentiments must be due to the grounding of his argument in a coherent and widely accepted model of the mind. But, as I have argued, while Locke's discussion of "perception" (and the relationship of language to sensations) tends to support Beccaria's progressive, humane stance on the one hand, the implications of retention (and association) tend to call it into question on the other. As Locke writes in his discussion of "Power," "when we compare present Pleasure or Pain with future (which is usually the case in the most important determinations of the Will) we often make wrong Judgments of them" because "Objects, near our view, are apt to be thought greater, than those of a larger size, that are more remote" (275).
Such psychological facts suggest that only severe punishments will function as an effective deterrent. Although Beccaria’s argument against severe punishments, especially capital punishment, is appealing, and Beccaria eventually came to be seen as the most important force in the abolition of torture, the more humane treatment of criminals, and the eventual elimination of capital punishment for many laws, the psychological case on Lockean grounds for a powerful deterrent arguably fettered the movement toward reform, authorizing both the celebration (in spirit) and the disregard (in particulars) of Beccaria and his followers.


Barnes 95.

Cooper 31-32.

Radzinowicz 300.


The lack of attention to Beccaria and eighteenth-century psychology (and especially Locke) can be exemplified by noting that: Locke’s name does not appear in Maestro’s fine book on Beccaria and the origins of penal reform, cited in note 1.


While the centrality of these strategies has not been noted by Locke’s readers, they are part of the tradition of “constructive scepticism” that R.S. Woolhouse, for one, sees Locke inhabiting, in Locke (Brighton, Sussex: Harvester Press, 1983) 10-14. These strategies are also common in eighteenth-century theoretical investigations: see, for example, Condillac’s Traité des sensations, which focuses on a speechless statue that is brought to life one sense at a time,


*Johnson, Sermons,* Volume 14 of the *Yale Edition* (New Haven: Yale UP, 1978) 279. For a discussion of Johnson's attitude toward capital punishment and his role in the case of William Dodd, a case that stimulated considerable pressure toward reform, see Radzinowicz 336-38 and 456-64.

*Heath 170.*


*See Radzinowicz 135-36, 407, and 409.


*Cited in Heath 184.*