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Saggi

Crime, punishment, and law in eighteenth-century British encyclopedias

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Abstract. In the second half of 18th-century Europe, the notions – and the administration – of *law* and *justice* underwent dramatic and fundamental epistemological changes. *Crime* and *punishment* were gradually reconceptualised and redefined. The general aim of the present study is to provide an overview of selected contents included in 18th-century British dictionaries of arts and sciences: a survey on the words connected to *crime* and *punishment*, and the function of reference works in the dissemination of traditional vs. innovative contents. The detailed aim is at least twofold: to analyse the notions and terms of *crime*, *punishment*, *corporal punishment* as *judicial torture*, and their relationship with *law* and *justice*, and to verify the inclusion of Beccaria's work and his ideas in encyclopedic entries after 1767.

Keywords. Crime, Punishment, Law, Torture, 18th-Century Encyclopedias.

1. INTRODUCTION.

In the second half of the eighteenth-century, the notions of *law* and *justice*, as well as their administration, underwent dramatic and fundamental epistemological changes. On the basis of these epistemological changes, the notions of *crime* and *punishment* were gradually reconceptualised and redefined.

These theoretical and practical changes involved, among others, a shift «from the vengeance of the sovereign to the defence of society» and «the disappearance of the tortured, dismembered, amputated body»¹. It was a long process which undermined customary practices, and favoured «the development of the rule of law as against the rule of King and Queen»²; the idea of punishment as a way to prevent the proliferation of evil in the future³; «a complete separation of crime from ideas of sin» and «deterrence [as] the

¹ M. Foucault, *Discipline & Punish. The Birth of the Prison*, Engl. transl. by A. Sheridan, Vintage Books Edition, New York 1995, pp. 8 and 90 (first edition *Surveiller et Punir: Naissance de la Prison*, Gallimard, Paris 1975).

² D. Friedman, *Torture and the Common Law*, «European Human Rights Law Review», 2, 2006, pp. 180-199: 190.

³ P. Audegean, *Cesare Beccaria's On Crimes and Punishments: the Meaning and Genesis of a Jurispolitical Pamphlet*, «History of European Ideas», 43, 2017, 8, pp. 884-897: 886.

primary theoretical justification for the application of punishment»⁴; «punishments and the means adopted for inflicting them [...] consistent with proportionality»⁵. The notion of proportionality and its interaction with other emerging principles, namely social contract, equality, utilitarian analysis and retributive elements, the right to punish, amount of punishment, and the economic issues included in the notion of crime⁶, transform the background for crime and punishment to enact. The debate on «health, education and social policy [...] as crime-prevention tools»⁷, «the idea of a Code and the idea of ‘Codification’» of crimes, punishments, and criminal laws⁸, the emergence of humanitarian issues, religious toleration, educational reform, and modern police forces⁹, highlight a more constructive and benign outlook on life.

All these progressive ideas and perspectives were clearly and effectively introduced and discussed in Beccaria's *Essay on Crime and Punishments*¹⁰, and represent the issues of a complex, laborious, and strenuous «epistemological conflict»¹¹. It is from this conflict that the new attitudes concerning the conceptualisation and the administration of justice across nations emerge. The gradual abolition of bodily pain and judicial torture, and the introduction of alternative penalties to death definitely become an essential and constitutive background in establishing human rights¹². It was – and still is – a long process of adaptation and modification of the traditional punitive outlook:

⁴ A.J. Draper, *Cesare Beccaria's Influence on English Discussions of Punishment, 1764-1789*, «History of European Ideas», 26, 2000, 3-4, pp. 177-199: 181 and 183.

⁵ K.P. Haggard, *On Crime, Punishment, and Reform of the Criminal Justice System*, «Athene Noctua: Undergraduate Philosophy Journal», 1, 2013, pp. 1-7: 4.

⁶ B.E. Harcourt, *Beccaria's On Crimes and Punishments: A Mirror on the History of the Foundations of Modern Criminal Law*, «Chicago Case – Sandor Institute for Law and Economics Working Paper», 2nd s., 648, 2013, pp. 1-22, *passim* [also «Public Law and Legal Theory Working Paper» No. 433].

⁷ L. Ferrajoli, *Two Hundred and Fifty Years since the Publication of On Crimes and Punishments: The Currency of Cesare Beccaria's Thought*, «Punishment & Society», 16, 2014, 5, pp. 501-519: 505.

⁸ A. Cadoppi, *Cesare Beccaria, John Bessler and the Birth of Modern Criminal Law*, «University of Baltimore Journal of International Law», 3, 2015, 2, pp. 1-29: 11.

⁹ P.M. Warthon, *The Humanitarian Movement in European History*, «Il Politico», 48, 1983, 4, pp. 693-726: 698-699.

¹⁰ C. Beccaria, *An Essay on Crimes and Punishments, Translated from the Italian; with a Commentary, attributed to Mons. De Voltaire...*, London 1767 (hereafter: *Essay*). For a thorough treatment of the first English translation of Beccaria's *Essay*, cfr. R. Loretelli, *The First English Translation of Cesare Beccaria's On Crimes and Punishments. Uncovering the Editorial and Political contexts*, «Diciottesimo Secolo», 2, 2017, pp. 1-22. The original Italian version, titled *Dei delitti e delle pene*, was published anonymously in 1764.

¹¹ Audegean, *Meaning and Genesis*, cit., p. 894.

¹² For this specific topic, cfr. Warthon, *Humanitarian Movement*, cit.

*The state of the criminal law in Europe in the early 18th century was appalling. Laws everywhere in Europe were confused, cruel and inconsistent and their administration was often corrupt. [...] The convicted were condemned in large numbers not merely to death itself but to agonising death, by burning, breaking on the wheel and other terrible tortures. [...] The use of torture to extract confessions was defended by the Spanish inquisitors, but also by the English scholar and Lord Chancellor Francis Bacon and in 1686 by Sir Robert Wiseman*¹³.

and

*In England, there had been attempts as far back as the Magna Carta to limit the king's power of arbitrary arrest and unjust trials and punishments and torture was not permitted by customary Common Law, although special measures of legislation had introduced it*¹⁴.

In this context, the general aim of the present study is to provide an overview of selected contents made available to the educated and curious reader in eighteenth-century British dictionaries of arts and sciences: a survey on the words connected to *crime* and *punishment*, and the function of reference works in the dissemination of traditional vs. innovative contents¹⁵.

The detailed aim is at least twofold: to analyse the notions and terms (lexical items) of *crime*, *punishment*, *corporal punishment* as *judicial torture*, and their relationship with *law* and *justice*, and to verify the inclusion of Beccaria's work and the dissemination of ideas in encyclopedic entries after 1767. Before starting with the investigation of the key words and entries above mentioned, it is worth introducing the lexicographic nature of universal dictionaries of arts and sciences and their socio-cultural function, though in general terms.

1.1. Lexicographic and textual features.

Universal dictionaries of arts and sciences, or 'lexicographic encyclopedias', had been a typical emerging phenomenon since the opening of the century, the first of this kind was John Harris's *Lexicon Technicum* (1704)¹⁶, followed by the well-known *Cyclopædia* (1728),

¹³ *Ibidem*, p. 701.

¹⁴ *Ibidem*, p. 703.

¹⁵ The close textual analysis of encyclopedic entries on a selected number of topics, also including traditional and up-to-date measures of legislation in the administration of justice, will be carried out later on in this paper, precisely in sections 2 and 3.

¹⁶ J. Harris, *Lexicon Technicum, or, an Universal English Dictionary of Arts and Sciences explaining not only the Terms of Arts, but the Arts themselves*, London 1704.

compiled by Ephraim Chambers¹⁷. These pioneering examples, and those which came later on in the century, can be considered as the

*realisation of the Baconian programme for the advancement of natural knowledge [...] with their coverage of the sciences and the practical arts and crafts, were called 'scientific dictionaries', in spite of the fact that they also included subjects such as law, music, and heraldry*¹⁸.

Organised in alphabetical order, they include many topics, or subjects, and they share a kind of double nature: as dictionaries they start from words to unfold the general meaning of the thing or idea to be represented; as encyclopedias, their primary aim is to display present and past realities, entities, processes, notions and ideas. The general aim is both to display the many subjects in their complex relations with other disciplines (cross-references), and to unfold each of them in detail (individual entries):

*because the dictionaries of arts and sciences aspired to cover a range of subjects, the decision to use alphabetical order implied a radical break with respected assumptions concerning proper relations between subjects*¹⁹ [...] *alphabetical order authorises all reading strategies; in this respect it could be considered an emblem of the Enlightenment. [...] The alphabet thus gave scientific dictionaries the flexibility to absorb the new findings of the Scientific Revolution without having to assess the implications for traditional doctrines in long treatises*²⁰.

Generally interested in including and recording developing and expanding disciplines (medicine, botany, geography, natural history, 'scientific' discoveries), they also include more traditional topics (heraldry, house-

hold, religion or ecclesiastical matters, law, music). The entries may vary in length, some of them only consist of the lexical meaning of the headword, some just include one or more cross-references, others expand for pages (in-folio pages).

The entries may include descriptive, narrative, informative, instructive passages, encompassing the history of the discipline and the present state of the art (e.g. finance, trade and commerce, customs, laws and statutes, etc.), up-to-date discoveries (e.g. geography, botany, physics and chemistry, etc.), anecdotes and case studies (e.g. medicine, pharmacy, natural sciences, etc.), quotations taken from scholars of the past and contemporary men of science.

The dissemination of knowledge in English within the restricted circles of an educated elite, mainly belonging to the upper and the middle classes, was directly connected to «the rise of the vernacular as a form of scholarly communication»²¹. This does not mean that Latin was abandoned, but that its role and usage were redefined as the highest form of disciplinary and specialised communication among the men of science, as a restricted professional tool. Latin was definitely given a precise role, as distinct from the outstanding possibilities of vernacular to communicate both between experts, and between experts and the lay readership. It was a period in which the intention of disseminating knowledge for the benefit and the utility of mankind was rapidly expanding, also supported and stimulated by the expansion of the book market²², for those who could afford the expense. The opportunity of collecting many different disciplines and topics under key headwords in a few volumes represented then a crucial turning point in the reading practice.

1.2. Sources.

The sources for the present study are the most relevant universal dictionaries of arts and sciences compiled and published in eighteenth-century Britain. One is Ephraim Chambers's *Cyclopædia*²³, issued in the first half of the century, long before Beccaria's *Dei Delitti e Delle Pene* (1764)²⁴ was published in Italian. Two of the three reference works selected for this analysis were instead issued in the second half of the century, after the

¹⁷ E. Chambers, *Cyclopædia: or, an Universal Dictionary of Arts and Sciences; containing the Definitions of the Terms, and Accounts of the Things signify'd thereby, in the several Arts, both Liberal and Mechanical, and the several Sciences, Human and Divine...*, Printed for James and John Knapton, etc., London 1728; E. Chambers, *Cyclopædia: or, an Universal Dictionary of Arts and Sciences; containing an Explication of the Terms, and an Account of the Things signified thereby, in the Several Arts, Both Liberal and Mechanical; and the several Sciences, Human and Divine... The fifth Edition in Two Volumes*, London 1741-1743 (hereafter: CCy and 5thCCy, respectively).

¹⁸ R. Yeo, *Encyclopædic Visions. Scientific Dictionaries and Enlightenment Culture*, Cambridge University Press, Cambridge 2001, p. xiv.

¹⁹ In the case of Chambers's *Cyclopaedia*, a detailed *Tree of Knowledge* is included in the long Preface. The function of the Tree is to unfold knowledge as a hierarchical whole, in which single branches are represented in further detail, and connected to each other. Another strategy largely used by Chambers is the cross-reference technique, in a way that many *headwords-topics* are related to each other, to recreate the *whole-part* and *part-whole* relationship, and to stimulate a kind of 'systematic reading'.

²⁰ Yeo, *Encyclopædic Visions*, cit., p. 25.

²¹ *Ibidem*, p. 157.

²² M. Fissel, *The Marketplace of Print*, in M.S.R. Jenner & P. Wallis (eds.), *Medicine and the Market in England and its Colonies, c. 1450-1850*, Palgrave Macmillan, Houndmills, Basingstoke and New York 2007, pp. 108-132.

²³ Cfr. CCy and 5thCCy, note 17.

²⁴ For reference to the English version, cfr. note 10.

English version of Beccaria's book was translated and made known to the public in 1767²⁵: the *Encyclopædia Britannica* (1768-1771)²⁶, and Abraham Rees's *Cyclopædia* (1778-1788)²⁷. Besides the socio-historical, socio-cultural, and pragmatic relevance of these encyclopedias as representatives of a momentous period in European history, this selection is also strictly motivated by chronological reasons, 1767 being the date *ante quem* reference works might include traditional ideas and practices in the administration of justice, and the date *post quem* new perspectives, attitudes, and practices might be gradually assimilated and accepted in society, and be included in the entries.

Johnson's *Dictionary of the English Language*²⁸ (1755 and 1777) will also be of help in the attempt to define the meanings and senses of some words under scrutiny, to clarify their contextual meaning and to avoid anachronistic interpretations.

1.3. Background notions and methodological issues.

The analysis starts from CCy and, in particular, from its paratext. The preface, which introduces and presents the many disciplines treated in the work, includes a typical *Tree of knowledge*, displaying its many branches as subdivisions of a hierarchical order in which connec-

tions are highlighted. Law belongs to «ETHICS, or NATURAL RELIGION», directly connected to «Relations [...] to our Happiness»²⁹. A more detailed contextualisation of *law*, is displayed further on in the Preface: Chambers organises the main topics, among which *law*, into separate sections, headed and numbered. These sections function as lexical sets, or list of the most representative headwords concerning the general topic, in this case *law* («LAW, or the rules...»). The lexemes are further clustered under thematic, and more specific, headings (e.g. «1° Persons [...] 2° Estates or Things [...] 3° Wrongs or Injuries», etc.). In this section, *Law* is lexically represented as follows:

¹⁵LAW, or the rules and Measures of SOCIETY; publish'd in Act, Statute, Charter, Rescript, Constitution, Decretal, Senatus-consultum, Pragmatic Sanction, &c. Recorded, in Institute, Code, [...] Kinds, Civil, Canon, [...] Respecting, 1° Persons, as the King; his Prerogatives, [...] Officers and Magistrates [...] Corporations [...] 2° Estates or Things; either Real [...] Or Personal [...]. 3° Wrongs or Injuries; either Criminal, and to Persons, as Treason, Parricide, Murder, Felony, Assault, Rape, Assassins, Adultery, Fornication, Defloration, Polygamy, Heresy, &c. Prosecuted by Indictment, Accusation, Actions of Conspiracy, and upon the Case, Habeas Corpus, &c. Punish'd, with Hanging, Crucifixion, Wheel, Furca, Scala, Pillory, Transportation, Divorce, Scaphism, &c. Or Civil, and to Things; [...]. Suit or Course of Proceedings whereby Redress is procured; including, 1°, Process [...] 2°, Pleading [...] 3°, Issue [...] 4°, Trial; whence Proof, Evidence, Presumption, Oath, Duel, Champion, Purgation, Ordeal, &c. Paine fort & duret, Rack, Torture, &c. 5°, Judgment; whence Arrest, &c. 6°, Execution, whence Scire facias, Reprieve, &c. (CCy, Preface, iv, topic 15)³⁰.

This concise passage of about half an in-folio column already includes all the key words which embody the complex and general network of any legal system: regulating rights and social interaction according to «the rules and Measures of SOCIETY», prosecuting «Wrong and Injuries», sanctioning criminal behaviour, and punishing it «with Hanging, Crucifixion, Wheel, Furca, Scala, Pillory, Transportation, [...] Ordeal, &c. Paine fort & duret»³¹, Rack, Torture [...] Execution». The law punishes

²⁵ Cfr. Loretelli, *First English Translation*, cit.

²⁶ *Encyclopædia Britannica; or, a Dictionary of Arts and Sciences, compiled upon a new plan. In which the different Sciences and Arts are digested into distinct Treatises or Systems; and the various Technical Terms, &c. are explained as they occur in the order of the Alphabet...*, Printed for A. Bell and C. Macfarquhar, Edinburgh (1768-)1771 (hereafter: EB).

²⁷ *Cyclopædia: or, an universal dictionary of arts and sciences ... by E. Chambers, F.R.S. With the supplement, and modern improvements, incorporated in one alphabet. By Abraham Rees, D.D. In four volumes*, London 1778-88 (hereafter RCy). In this context, and for reasons of space, time, and aims of the work, it is not possible to expand the description of single encyclopedias, and discuss them in detail. For an in-depth reading, the following works are worth citing: G. Abbattista, *La 'folie de la raison par alphabet'. Le origini settecentesche dell'Enciclopedia Britannica (1768-1801)*, «Studi settecenteschi», 16, 1996 (*L'enciclopedia in Italia nel XVIII secolo*, a cura di G. Abbattista), pp. 397-434; L.E. Bradshaw, *Ephraim Chambers' Cyclopædia*, in F.A. Kafker (ed.), *Notable Encyclopedias of the Seventeenth and Eighteenth Centuries: Nine Predecessors of the Encyclopédie*, The Voltaire Foundation, Oxford 1981, pp. 123-140; F.A. Kafker, *William Smellie's Edition of the Encyclopædia Britannica*, in F.A. Kafker (ed.), *Notable Encyclopedias of the Late Eighteenth Century: Eleven Successors of the Encyclopédie*, The Voltaire Foundation, Oxford 1994, pp. 145-182; S. Werner Stephen, *Abraham Rees's eighteenth-century Cyclopædia*, ivi, pp. 183-199; R. Yeo, *Reading Encyclopedias: Science and the Organization of Knowledge in British Dictionaries of Arts and Sciences, 1730-1850*, «Isis», 82, 1991, 1, pp. 24-49; Id., *Ephraim Chambers's Cyclopædia (1728) and the Tradition of Commonplaces*, «Journal of the History of Ideas», 57, 1996, 1, pp. 157-175.

²⁸ S. Johnson, *A Dictionary of the English Language*, 2 vols., London 1755 (first edition, hereafter ^{1st}1755), and 1777 (fourth edition, hereafter ^{4th}1777).

²⁹ CCy, Preface, p. II.

³⁰ For the nature of the analysis and for practical reasons, the references to the *headwords-entries* will immediately follow the lexicographic extracts under scrutiny, in the sequence 'encyclopedia/title, s.v. HEADWORD', between brackets.

³¹ This expression is recorded with different spellings throughout the paper, according to the sources under scrutiny. The *Oxford English Dictionary*, 2005³, s.v. PAIN, at <<http://www.oed.com.pros.lib.unimi.it/>> (03/2019) makes the word derive from Anglo-Norman *peine*, *paine*, etc., the spelling <paine> is regional and

‘the body’ of the accused to reestablish, «Redress is procured», an ideal order. Judicial torture, though formally banished in England³², comes into play.

Law is also discussed in individual entries in each work: in *CCy*, ^{5th}*CCy* and *RCy*, the entry covers about three and half an in-folio columns; in *EB*, *Law* is a treatise included in the alphabetical lemmata and essentially discussing the «PRINCIPLES OF THE LAW OF SCOTLAND» (*EB*, s.v. *LAW*, pp. 882-960), besides a very concise opening paragraph which defines the word *law* in general. For reasons of space, and according to the focus of this study, only the most general notions of *law* are introduced here, as a background to more specific headwords and topics.

Law is defined as «a Command or Precept coming from some superior Authority, to which an inferior is obliged to obey» (*CCy* and ^{5th}*CCy*, s.v. *LAW*), «a command or precept, constituting a rule of action, coming from some superior authority, which an inferior is obliged to obey» (*RCy*, s.v. *LAW*); and as «The command of the sovereign power, containing a common rule of life for the subjects» (*EB*, s.v. *LAW*). *Law* is then a regulating principle established by a «supreme power» (*EB*, s.v. *LAW*), or by «some Person, or Power» (*CCy*, ^{5th}*CCy*, and *RCy*, s.v. *LAW*), but also «a rule of action» (*RCy*, s.v. *LAW*) determining practical, human behavior in social interaction. *Law* is also subdivided into two branches. On the one hand, it highlights and embodies the «rule of life» (*EB*, s.v. *LAW*), it is the distributive function: «Distributive is that Branch by which every Man has his Right; or that which constitutes the Rules and Measures of Things» (*CCy*; ^{5th}*CCy* and *RCy* with minor morpho-syntactic changes, s.v. *LAW*). On the other hand, *law* punishes the offender, or the convict: it is the «Vindicative [...] Branch by which the Punishments to be inflicted on those who violate the *Laws* are determined»

archaic, whereas <pain> is the usual one at the time. *PAIN* refers to «1. a. Punishment; penalty; suffering or loss inflicted for a crime or offence; (sometimes) spec. a fine, a tax. Also in extended use» and «†c. Law. *pain fort and dure*: = *PEINE forte et dure* at *PEINE* n. 1. *Obsolete*». The spelling <peine fort et dure> is also attested in English, s.v. *PEINE*, it is defined as follows: «1. *Law*. Pain, punishment. Originally and chiefly in *peine forte et dure*: a form of torture used on a prisoner who refused to plead, in which the prisoner's body was pressed with heavy weights until submission or death. Cf. *PENANCE* n. 2. *Now hist.* *Peine forte et dure* was abolished by the Felony and Piracy Act 1772, in which refusal to plead to a charge was made equivalent to pleading guilty. For an Anglicized version of the phrase see *PAIN* n.1 1c.». The etymology goes back to «Middle French *peine* (French *peine*) *PAIN* n.1, apparently via Law French in phrase *peine forte et dure* (lit. 'severe and hard punishment'), although this is apparently first attested later (1560). Compare Anglo-Norman *prison forte et dure* (1275 in the first statute of Westminster (3 Edw. 1, c. 12), and post-classical Latin *pena fortis et dura...*», s.v. *PEINE*. Cf. also notes 44 and 45 for the 'refusal to plead'.

³² Warthon, *Humanitarian Movement*, cit., pp. 701-703 and 718-719.

(*CCy*, ^{5th}*CCy*, and *RCy*, s.v. *LAW*). However, laws change in time according to new ideas and needs, since «the supreme power of one age cannot [...] be fettered by any enactment of a former age, otherwise it would cease to be supreme. Hence the law last in date derogates from prior laws» (*EB*, s.v. *LAW*).

Two considerations are necessary here: the first regards the inclusion of a more practical and social-bound outlook s.v. *LAW* in *RCy* and *EB*, «constituting a rule of action» and «common rule of life» respectively. These expressions suggest very pragmatic issues in everyday life, besides the more abstract concept of *law*. It seems relevant to highlight the fact that these encyclopedias were both published in the second half of the century. The latter concerns the notion of 'change in law', and the fact that the supreme power is not fixed once and for all: to be supreme, it has to be legitimised and updated according to new needs and innovative ideas, «otherwise it would cease to be supreme» (*EB*, s.v. *LAW*). *Law* more clearly emerges as an agreement in progress within a community. Hence, the interpretation and the representation of *justice*, *crime*, *punishment*, and *penalties* would change as well, according to a restatement of social values and aims.

A further step in the analysis considers both suggestions which emerged from prefatory materials, and the close reading of individual entries: as noted above, the key words are *crime*, *punishment*, and *torture* and their relationship with *law* and *justice*. Further suggestions for the debate are also introduced by internal and external referencing: on the one hand, cross-reference is a dynamic and effective tool to organise discourse and connect the entries with one another; on the other hand, external reference usually cites, and sometimes quotes – relevant sources on related topics. What follows represents only a few of these connections, as they emerge from dictionaries of arts and sciences; the focus is on *penal law*:

Law civil & penal:

- a. *Right, justice, judgment*
- b. *Free/dom, liberty, happiness*
- c. *Society, government, policy/ty, politics*
- d. *Crime, punishment/s, penalty/ies, question, torture*
- e. *Stocks, pillory, burning in the hand, whipping, cucking stool [or ducking stool]³³, hanging, beheading, quarter-*

³³ The *Oxford English Dictionary*, 1989², <<http://www.oed.com.pros.lib.unimi.it/>> (03/2019), defines a cucking-stool as «An instrument of punishment formerly in use for scolds, disorderly women, fraudulent tradespeople, etc., consisting of a chair (sometimes in the form of a close-stool), in which the offender was fastened and exposed to the jeers of the bystanders, or conveyed to a pond or river and ducked», s.v. *CUCKING-STOOL*.

*ing, burning, transportation, pain(e) fort et dure, gal-
lows, gibbet, rack, etc.*

Law is at the centre of a complex network, in which every single word opens on to supplementary notions, events, contexts and situations³⁴. Some of the words included in the two lexical sets d. and e. above will be discussed in sections 2. and 3 below. The analysis will follow a narrowing process, based on the sense relation of hyponymy, from general notions to specific practices.

2. CRIME AND PUNISHMENT.

This section presents and discusses two of the key words under scrutiny, and delineates the general features and the two major components of penal law: *crime* and *punishment*. In *CCy*, ^{5th}*CCy* and *RCy*, *crime* is said to be

a Breach, or Transgression of a Law; or an Action contrary to the Tenor [RCy: purport] of a Law, either Natural or Divine, Civil, or Ecclesiastick; to which a Penalty is annex'd. See LAW. [5thCCy: See LAW, TRANSGRESSION; no cross references in RCy]

The Romans distinguished [...].

With us, Crimes are distinguish'd into Capital, as Treasons, Murders, Robberies, &c. and Common, as Perjuries, &c. [...] (CCy; 5thCCy and RCy with minor spelling and lexical changes, s.v. CRIME).

The three entries definitely overlap (about twenty in-folio lines each), except for the concluding sentence. *CCy* introduces further semantic matter for the interpretation of the word, alongside the etymology. This was a systematic component in eighteenth-century dictionaries, and dictionaries of arts and sciences, particularly in the first half of the century, as a basic tool to start or support the discussion, as in this context: «The Term *Crime* includes in it the Idea of a Determination, and a Design form'd to do an Injury. It is deriv'd from the Latin *Crimen*, of the

³⁴ It is worth quoting here the complex definition of *law* included in Johnson's *Dictionary of the English Language*, in the first (1755) and fourth (1777) editions respectively: «1. A rule of action. *Dryden*. 2. A decree, edict, statute, or custom, publicly established. *Davies*. 3. Judicial process. *Shakespeare*. 4. Conformity to law; any thing lawful. *Shakespeare*. 5. An established and constant mode or process. *Shakespeare*» (1st1755, s.v. *LAW*) and «1. A rule of action. 2. A decree, edict, statute, or custom, publicly established as a rule of justice. 3. A decree authoritatively annexing rewards or punishments to certain actions. 4. Judicial process. 5. A distinct edict or rule. 6. Conformity to law; any thing lawful. [...] 12. Jurisprudence; the study of law: as, a doctor of *law*...» (4th1777, s.v. *LAW*). The expansion of the concept, by the addition of further senses in the 4th1777 edition, testifies to the central role *law* has in this period, and also reflects a parallel attitude and practice in *EB* and *RCy*, as mentioned above.

Greek κρινω, judico», (*CCy*, s.v. *CRIME*). ^{5th}*CCy* omits the sentence on etymology, but adds further cross-references to «*Quasi CRIME. CRIMEN Falsi*», a fraudulent behaviour including perjury. *RCy* omits etymology, and replaces it with relevant up-to-date information: «There is an excellent book on the subject of *crimes* and *PUNISHMENTS*, published by the marquis de Beccaria. *CRIME, quasi*. See *QUASI crime. CRIMEN falsi*. See *FALSI*», (*RCy*, s.v. *CRIME*).

It is not clear whether Abraham Rees directly knew, read, and used Beccaria's *Essay*, but he might have been acquainted with Blackstone's *Commentaries* (1765-1769)³⁵. Blackstone quotes Beccaria more than once in his fourth volume, and Rees himself cites Blackstone in his entries (cfr. *punishment, torture, transportation*). *RCy* also includes the headword «*CRIMINAL law*», which testifies, both at a lexical and lexicographic levels, to the intense and current debate about the relationship between *crime* and *law*: «*CRIMINAL law*, is that which discusses the nature of crimes, and inflicts suitable penalties; or, as it is more usually denominated in England, the doctrine of the *PLEAS of the Crown*», (*RCy*, s.v. *CRIMINAL law*). *Criminal law* does not only distinguish the nature of crimes, but also establishes «penalties» according to the extent of the offence, «suitable». It seems that the notion of proportionality is suggested here. Moreover, though the notion of *punishment* and *penalty* partially and significantly overlap, the word *penalty* does not directly entail *punishment* and/or *vengeance*. In this respect, Johnson's definitions, and the inclusion of Locke's perspective by way of example, are particularly revealing³⁶.

To conclude the discussion on the term *crime*, and expand the notion of crime as *crime-to-society*, *EB* puts forward the following opening paragraphs, in the section «*Tit. 26. Of Crimes*» (p. 953-960):

The word crime, in its most general sense, includes every breach, either of the law of God, or of our country: in a more restricted meaning, it signifies such transgressions of law as are punishable by courts of justice. [...]

6. Those crimes that are, in their consequences, most hurt-

³⁵ W. Blackstone, *Commentaries on the Laws of England*, Clarendon Press, Oxford 1765-69, voll. 1-4.

³⁶ Johnson's *Dictionary of the English Language*: «*PUNISHMENT* [...] Any infliction imposed in vengeance of a crime», (1st1755, s.v. *PUNISHMENT*); «*PUNISHMENT* [...] Any infliction or pain imposed in vengeance of a crime», (4th1777, s.v. *PUNISHMENT*); «*PE'NALTU, PENALTY* [...] 1. Punishment; censure; judicial infliction. *Brown*. [...]», (1st1755, s.v. *PENALTY*); «*PE'NALTU* [...] 1. Punishment; censure; judicial infliction. [...] (1.) Political power is a right of making laws with *penalties* of death, and consequently all less *penalties*, for preserving property, and employing the force of the community in the execution of laws. *Locke*...», (4th1777, s.v. *PENALTY*).

ful to society, are punished capitally, or by death; others escape with a lesser punishment, sometimes fixed by statute, and sometimes arbitrary, i.e. left to the discretion of the judge, who may exercise his jurisdiction, either by fine, imprisonment, or a corporal punishment.

Where the punishment is left, by law, to the discretion of the judge, he can in no case extend it to death... (EB, s.v. LAW).

Two fundamental principles emerge from the passage. On the one hand, crimes are perceived as a breach or transgression towards an entire community, «most hurtful to society»: the concept was not explicit in CCy's, 5thCCy's and in RCy's definitions. On the other hand, «the discretion of the judge» is limited in the determination of a punishment: the relationship is not direct, or personal, but mediated «by law». It is worth remembering that EB essentially discusses the «Principles of the Law of Scotland»³⁷.

This section of the study closes with the notion of *punishment*, strictly connected with *crime*, and mostly overlapping with *penalty*, the equivalent used as primary semantic reference in all the dictionaries of arts and sciences³⁸:

PUNISHMENT, a Penalty impos'd upon the Commission of some Crime [5thCCy and RCy: or offence against the laws]. See CRIME.

'Tis essential to the Nature of a Law, that it import or decree a Punishment to the Transgressors thereof. See LAW.

The Forms and Manners of Punishment are various in various Countries, and Ages, and for various Crimes; as Treason, Felony, Adultery, Parricide, &c. See ADULTERY, &c. [...]

³⁷ The first section of the treatise Law, «Title I. *General Observations*», introduces the Law of Scotland as a mixed system, mostly based on written law, rather than common law. It is worth mentioning some defining passages: «I. The municipal law of Scotland, as of most other countries, consists partly of statutory or written law, which has the express authority of the legislative power; partly of customary or unwritten law, which derives force from its presumed or tacit consent. 2. Under our statutory or written law is comprehended, (I.) Our acts of parliament: [...] 3. The remains of our ancient written law were published by Sir John Skene clerk-register, in the beginning of the last century, by licence of parliament. [...] 4. Our written law comprehends, (2) [...] ordinances for regulating the forms of proceeding before the court of session in the administration of justice, made by the judges, who have a delegated power from the legislature for that purpose. Some of these acts dip upon matter of right, which declare what the judges apprehend to be the law of Scotland, and what they are to observe afterwards as a rule of judgment. 5. The civil or Roman and canon laws, though they are not perhaps to be deemed proper parts of our written law, have undoubtedly had the greatest influence in Scotland. The powers exercised by our sovereigns and judges have been justified upon no other ground, than that they were conformable to the civil or canon laws...», EB, vol. 2, p. 883.

³⁸ Cfr. Johnson's definitions, s.v. PUNISHMENT and PENALTY, *supra*, note 36.

Among us, the principal Civil Punishments, are Fines, Imprisonments, the Stocks, Pillory, Burning in the Hand, Whipping, Cucking-Stool, Hanging, Behading, Quartering, Burning, Transportation, &c. See FINE, PILLORY, CUCKING-STOOL, GALLOWES, GIBBET, &c. [...]

The Military Punishments, are, being Shot, Running the Gantelope³⁹, Riding the wooden Horse, Bilboes, &c. [...] (CCy; 5thCCy and RCy with minor spelling and lexical change, s.v. PUNISHMENT).

and, «PUNISHMENT, in law, the penalty which a person incurs on the breach or transgression of any law», (EB, s.v. PUNISHMENT).

The combination *punishment-penalty-crime-transgression-law*, or the lexical set defining the area of meaning, is strengthened in any definition. EB is extremely concise, the entry simply includes the lexical meaning; whereas CCy, 5thCCy and RCy expand their contents to encompass very specific examples of punishment. These are mainly corporal punishments inflicting pain, and were probably still in use, according to the present tense *are* of the expression «*Civil Punishments, are*». The list of punishments provides evidence for further analysis and comment. In particular, the discussion on the notion of *judicial torture*, and specific corporal procedures.

3. TORTURE AND PAIN.

This section concentrates on the effects of the relationship between *crime* and *punishment* already introduced, exemplified, and discussed in previous entries. In particular, the analysis focusses here on both the response, or 'action', of the authority to a personal or public offence, and the physical pain systematically employed to extort a confession. According to CCy, 5thCCy and RCy, torture is:

a grievous Pain inflicted on a Criminal, or Person accused; to make him confess the Truth. See QUESTION.

The Forms of Torture are different in different Countries. In some they use Water, in others Iron, in some the Wheel or Rack, in some the Boot, Thumbkins, &c. See RACK. [5thCCy and RCy also add BOOT, &c.] [...]

In England the Use of all Torture is abolished, both in Civil and Criminal Matters; and even in Cases of High Treason; tho' something like it still obtains, where the Criminal

³⁹ The expression *running the gantelope*, or *running the gauntelet* refers to a military punishment «in which the culprit had to run stripped to the waist between two rows of men who struck at him with a stick or a knotted cord. *rare* except in †*to pass the gantlope, to run the gantlope*», s.v. GANTELOPE, *Oxford English Dictionary*, 1989². The words *gantelope* and the corrupted variant *gauntelet* derive from Old Norse, and mean 'run through a lane'.

refuses to plead⁴⁰. See PAINÉ fort & dure. [RCy omits the closing sentence: “tho’ ... Paine fort & dure”] (CCy, 5thCCy and RCy, s.v. TORTURE).

The three encyclopedias regularly display their similarities: most of 5thCCy and RCy entries match CCy. Torture is an appalling and heinous pain inflicted on a person accused, not condemned. It is a preventative treatment: the cross-reference “QUESTION” is more than a relevant suggestion, and will be discussed below.

The general definition of *torture* is immediately followed by exemplification: to make the «Criminal, or Person accused» confess, different strategies are used according to different countries and customs. Besides being officially abolished in England, sometimes *torture*, or «something like it», may be used: it is the case of «Paine fort & dure», actually leading to death. However, it is worth noting that the clause dealing with it (cfr. extract above) is completely omitted in RCy, in the second half of the century, whereas it is still included in 5thCCy. This may suggest that this practice was not in use in England in the 1770s, when RCy started to be compiled.

The three works also include a quotation from La Bruyère (1645-1696), taken from his *Caractères* (originally published in 1688)⁴¹, and dealing with *torture-question*:

The Torture, says M. Bruyere, is a sure Expedient to destroy an innocent Person of a weak Complexion, and to save a Criminal of a robust one. – It was a noble Saying of an Ancient, They who can, and They who cannot bear the Torture, will equally lie. [5thCCy: They who can bear the torture will lie, and they who cannot bear it. RCy: They who can bear the torture will lye, and also they who cannot bear it] (CCy, 5thCCy and RCy, s.v. TORTURE).

Question was a term used in France to refer to a standardised procedure in providing judicial evidence:

⁴⁰ Cfr. *infra*, notes 44 and 45 for the ‘refusal to plead’.

⁴¹ The following French version is drawn from La Bruyère, *Les Caractères de Théophraste et de la Bruyère, avec des notes par M. Coste*, Nouvelle Edition, t. II, Paris 1769, p. 208: «La question est une invention merveilleuse & tout-à-fait sûre, pour perdre un innocent qui a la complexion foible, & sauver un coupable qui est né robuste» (ch. XIV. «Des quelques usages»). The first edition of *Les Caractères* was published in anonymity in 1688. According to E.R. Clark, *Le siècle des Lumières face à la torture*, «Man and Nature», 6, 1987, pp. 173-180: 177-178: «La formule célèbre de La Bruyère [...] deviendra un lieu commun au siècle suivant et sera reprise par Voltaire, Beccaria et Jaucourt, autour de l'article ‘Question’ de l’*Encyclopédie*, parmi bien d’autres. Même Beccaria en 1765 ne trouvera pas d’autres principes pour renforcer son apologie de la justice humaine, qui a pourtant fini par ébranler l’immobilisme institutionnel, là où d’autres avaient échoué».

l’accusé est appliqué à la question, [...] le terme ‘question’ est le seul admis, faisant oublier les abus trop visibles dans des expressions telle ‘supplices’, ‘tourments’ et, bien entendu, ‘torture’. [...] L’accusé [...] devait tout avouer devant le spectacle affreux qui l’attendait⁴².

The term is also included in CCy, 5thCCy and RCy with a general meaning of inquiry in logic and law, but *question* with specific reference to torture is only included in RCy, as a sub-headword closing the entry: «QUESTION is also sometimes used for TORTURE», (RCy, s.v. QUESTION).

The quotation from La Bruyère closes the entry TORTURE in CCy and 5thCCy. On the contrary, RCy further expands its contents, and provides noticeable external reference in the closing paragraph:

The marquis Beccaria (chap. 16) with exquisite raillery proposes this problem: the force of the muscles and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime (RCy, s.v. TORTURE).

This is the second time that Rees includes Beccaria’s work and thought in his RCy⁴³, in this case also commenting – and positively supporting – Beccaria’s approach, «exquisite raillery». It is clear that Rees is well aware of the debate of the age, and of his effort to update very complex and disconcerting topics. As regards EB, the entry TORTURE is listed in alphabetical order and is very concise, limited to the lexical definition: «TORTURE, a grievous pain inflicted on a criminal, or person accused, to make him confess the truth», (EB, s.v. TORTURE). It overlaps with the general definition in CCy, 5thCCy and RCy, and does not add new information.

At this point of the discussion, it is worth introducing some encyclopedic passages which deal strictly with very specific judicial treatments, that is to say kinds of torture and punishment, according to the definitions and cross-references provided by the compilers. The key words are *rack*, *pain fort & dure*, *beheading*, and *transportation* in the four works under scrutiny. The aim is primarily to examine how reference works encompass

⁴² Clark, *Le siècle des Lumières face à la Torture*, cit., p. 174.

⁴³ The quotation refers to Beccaria’s words on torture: «The result of torture, then, is a matter of calculation, and depends on the constitution, which differs in every individual, and is in proportion to his strength and sensibility; so that to discover truth by this method is a problem, which may be better solved by a mathematician than a judge, and may be thus stated. The force of the muscles, and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime». The extract was drawn from Beccaria’s *Essay*, ch. 16, p. 64; cfr. note 10.

this matter, and how they verbalise these dreadful experiences. The first entry refers to *rack*, which is defined as

an Engine furnished with Cords [^{5th}CCy: chords], &c. for extorting Confession from Delinquents [RCy: criminals]. See TORTURE.

The Duke of Exeter, Constable of the Tower under Henry VI with the Duke of Suffolk, and others, having a design to introduce the Civil Law into England; for a Beginning, the Rack, or Brake allowed in many Cases by the Civil Law, was first brought to the Tower, where it is still preserv'd. In those Days the Rack was call'd the Duke of Exeter's Daughter. (CCy, ^{5th}CCy and RCy, s.v. RACK).

In CCy and ^{5th}CCy, the entry finishes at this point. The definition, followed by historical reference, confirms the *rack* as a practice to make the accused person confess: it is an extortion, referring back to torture. EB proposes a similar definition, only focussed on the lexical meaning, and very concise: «RACK, an engine of torture, furnished with pullies and cords, &c. for extorting confession from criminals». Nothing new, and nothing else is added. On the contrary, an interesting addition is provided by RCy, after «the Duke of Exeter's Daughter». The *rack* appears to be a practice of the past, but definitely abandoned at the time of writing:

RACK, an engine of torture furnished with cords, &c. for extorting confession from criminals.

The duke of Exeter [...].

It was occasionally used as an engine of state, not of law, more than once in the reign of queen Elizabeth. But when, upon the assassination of Villiers, duke of Buckingham, by Felton, it was proposed in the privy council to put the assassin to the rack, in order to discover his accomplices, the judges, being consulted, declared unanimously, to their own honour, and the honour of the English law, that no such proceeding was allowable by the laws of England... (RCy, s.v. RACK).

The past tense «was occasionally used [...] it was proposed [...] declared unanimously [...] no such proceeding was allowable», alongside the exemplification by historical reference, would confirm the *rack* as not in use. Torture was actually not allowed for the Common Law, but it was sometimes used as a political tool until Felton's case (1628), and formally abolished in England in 1640. A similar case is that of *PAIN fort & dure* (about twenty in-folio lines), CCy and ^{5th}CCy completely overlap. The opening paragraph in the present tense (*refuses, stands*) is followed by a quotation, describing in detail the «prescribed» procedure. It is worth highlighting here the deontic strength of the verb *shall*:

PAIN fort & dure, in Law, an especial Punishment for one,

who being arraigned of Felony, refuses to put himself upon the ordinary Trail of God and his Country⁴⁴, and thereby stands mute by the interpretation of the Law. See MUTE.

This is vulgarly called Pressing to Death. The Process whereof is thus prescribed: "He shall be sent back to the Prison, whence he came, and be laid in some low dark House; where he shall lie naked on the Earth, without any Litter, Rushes, or other Cloathing, and without any Raiment about him, but only something to cover his Privy-Members; and he shall lie upon his Back with his Head covered, and his Feet; and one Arm shall be drawn to one Quarter of the House, with a Cord, and the other Arm to another Quarter, and his Legs in the same Manner: Let there be laid upon his Body, Iron, or Stone, as much as he may bear, or more; and the next Day following, he shall have three Morsels of Barley-Bread without Drink; and the second Day he shall have Drink three Times, as much at each Time as he can drink, of the Water next unto the Prison, except it be running Water; without any Bread: and this shall be his Diet, till he dies". (CCy and ^{5th}CCy with minor spelling changes, s.v. PAIN fort & dure).

Pain fort & dure is not a systematic preventative punishment, but «an especial» one to be applied occasionally. It is described as a step-by-step process, a ritual, a ceremony leading to death: «shall be sent back [...] be laid in some low dark House [...] shall lie naked [...] he shall lie upon his Back [...] one Arm shall be drawn [...] he shall have three Morsels [...] He shall have Drink [...] this shall be his Diet, till he dies». No comments are added at the end of the quotation. The almost biblical language is self-evident: the description anticipates the act of torture, inflicted by an external, distant, irrefutable authority.

Similarly, RCy introduces the topic with the general definition, immediately followed by the same quotation included in CCy and ^{5th}CCy. However, things are different here, the original present tense is replaced by the past participle and past tense (*inflicted, refused, stood*), also reinforced by the adverb *formerly*:

PAIN fort & dure, in Law, an especial punishment, formerly inflicted on one, who, being arraigned of felony, refused to put himself [...] and thereby stood mute [...]. (RCy, s.v. PAIN fort & dure)

⁴⁴ This passage refers to the necessary practice for the accused to plead, in order to undergo the ordinary judicial process. Only in this case, a legal verdict was possible. If the accused was found guilty for crimes of felony and treason, the penalty would be forfeiture of property, and hence the potential destitution of his family. By 'standing silent', «stands mute» (cfr. quotation above), the accused refused to plead, and to be judged. For this reason, the «ordinary Trail of [...] his Country» could not regularly operate, hence neither verdict, nor forfeiture of property, were issued. Cfr. note 45 on the 'refusal to plead': some revealing passages of the entries MUTE and FORFEITURE are transcribed, and briefly discussed.

[*This is vulgarly called... till he dies, cfr. CCy and 5thCCy*].

The entry closes with an external reference to the Acts of Parliament for the abolition of this practice, which is «now discontinued», that is to say suspended or come to an end: «This species of punishment is now discontinued by 12 Geo. III. Cap. 20. See MUTE», (*RCy*, s.v. *PAINE fort & dure*)⁴⁵.

Two further examples are provided below, before concluding this concise, though meaningful, review of corporal punishments in British encyclopedias: in this case, the extracts describe «a capital punishment», *beheading*, and «an Alleviation or Commutation of Punishment», *transportation*, after the judicial sentence is pronounced. They are not preventative treatments. Beheading is not included in *CCy* and *5thCCy*, whereas *RCy* (twenty in-folio lines) and *EB* define it as «a capital punishment, wherein the head is severed from the body by the stroke of an ax, sword, or other cutting instrument», (*RCy*, s.v. *BEHEADING*); and «a capital punishment, inflicted by cutting off the head with an ax, sword, &c.», (*EB*, s.v. *BEHEADING*).

⁴⁵ This reference goes back to the Felony & Piracy Act 1772, by George III, 1738-1820, King 1760-1820. As regards the the entry *MUTE*, it refers to the attitude of «a person that stands dumb or speechless, when he ought to answer or plead», (*RCy*, s.v. *MUTE*), cfr. also the entry *TORTURE* in *CCy*, *5thCCy* and *RCy*. The opening definition of *mute* is followed by a thorough explanation which also confirms the abolition of *PEINE fort & dure* by an Act of Parliament: «But in appeals or indictment for other felonies, or petit treason, it was the custom till of late not to consider him as convicted, so as to pass judgment for the felony; but for his obstinacy he was to receive the terrible sentence of penance, or *PAINE fort & dure*. Before this was pronounced, the prisoner was allowed not only *trina admonitio*, but also a convenient respite for a few hours, and the sentence was distinctly read to him, that he might know his danger; and, after all, if he continued obstinate, and his offence was clergyable, he was allowed the benefit of his clergy, even though he is too stubborn to pray it. But in this respect the law is now altered; for by 12 Geo. III. cap. 20. standing *mute* in felony or piracy is made a conviction. To advise a prisoner to stand *mute* is an high misprision, a contempt of the king's court, and punishable by fine and imprisonment», (*RCy*, s.v. *MUTE*). It is also worth quoting here some relevant passages of the entry *FORFEITURE* (cfr. also note 44 above), which «originally signified a transgression or offence against some penal law. [...] But with us, it is now more frequently used for the effect of such transgression, or the losing some right, privilege, estate, honour, office, or effects, in consequence thereof, than for the transgression itself [...]. The true reason of any *forfeiture* for crimes, says judge Blackstone, is this: that all property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for that degree of natural freedom, which every man must sacrifice when he enters into social communities: if, therefore, a member of any national community violates the fundamental contract of his association [...] he *forfeits* his right to such privileges as he claims by that contract; and the state may very justly resume that portion of property, or any part of it, which the laws have before assigned him. [...] in many cases a perpetual, in others only a temporary, loss of the offender's immoveables or landed property [...] Blackst. Com. vol. i. p. 299», (*RCy*, s.v. *FORFEITURE*). Cfr. also note 31 on *PAIN(E)/PEIN(E) fort et dure*.

Besides the opening definition, both works add extra information as historical background and present practice across nations. As is usual, *RCy* expands the entry including many details, whereas *EB* is more selective and just sums up the key points:

Beheading was a military punishment among the Romans, known by the name decollatio. Among them the head was laid on a cippus or block, placed in a pit dug for the purpose; in the army without the vallum; in the city, without the walls, at a place near the porta decumana. Preparatory to the stroke, the criminal was tied to a stake, and whipped with rods.

In the early ages the blow was given with an ax; but in after-times with a sword, which was thought the more reputable manner of dying. The execution was but clumsily performed in the first times; but afterwards they grew more expert, and took the head off clean, with one circular stroke.

In England and France, beheading is the punishment of nobles; being reputed not to derogate from nobility, as hanging does.

In Scotland they do not behead with an ax, as in England; nor with a sword, as in Holland and France; but with an edged instrument called the MAIDEN. (RCy, s.v. BEHEADING).

and

Among the Romans, beheading was a military punishment, performed at first with an ax, but afterwards with a sword, as done at present in Holland and France. In England the ax is preferred; and in Scotland they use, for this purpose, a machine called a maiden. (EB, s.v. BEHEADING).

There are two relevant aspects here to be highlighted. On the one hand, the fact that this punishment is included in *RCy* and *EB*, issued in the second half of the century, would testify to the involvement in the lively debate on judicial procedures of the time. On the other hand, the expansion in *EB* seems to be a kind of summarised version of the expansion in *RCy*. However, since *RCy* (1778-1788) was published later than *EB* (1768-1771), they might have used, and collected materials from, the same source. These differences also reflect an alternative, if not divergent, approach in compiling the two works: *RCy* aims at comprehensive, analytical entries, whereas *EB* aims at very practical conciseness. This is clear from the accurate and commented description on 'beheading variants' provided by *RCy*, and the essential outlook on tools and procedures in *EB*, without commentary.

The last extract regards transportation as an alternative punishment, which replaces capital execution in certain circumstances. The headword is included in all the encyclopedias: the general definition and the opening

section (about twenty-five in-folio lines in CCy, ^{5th}CCy, and RCy) refer to commerce and navigation, except for the EB, in which *transportation* only refers to other fields of knowledge than law. In CCy, ^{5th}CCy, and RCy, *transportation* as punishment is a sub-headword, and is said to be

[RCy: in Law,] a kind of Punishment; or, more properly, an Alleviation or Commutation of Punishment, for Criminals convicted of Felony, who, for the first Offence, unless it be an extraordinary one, are ordinarily Transported to the Plantations, there to bear hard Labour for a Term of Years [RCy: transported to some foreign country for a term of years or for life;], within which if they return, they are executed without further Trial [RCy: than ascertaining their identity]. See FELONY, PUNISHMENT, &c. (CCy, ^{5th}CCy with minor spelling variants, RCy with minor spelling and lexical variants, s.v. TRANSPORTATION).

If in CCy and ^{5th}CCy the entry is limited to these few lines, consisting of a gloss, «kind of Punishment», and a lexical definition, «an Alleviation or Commutation of Punishment», followed by a concise expansion, «for Criminals [...] further Trail», RCy proves to be, once again, analytical, innovative and up-to-date. *Transportation* is a long and informative sub-entry of about fifty in-folio lines, describing in detail the many acts and statutes which regulate the new practice:

Transportation, in Law, is also a kind of punishment, or, more properly, an alleviation or commutation of punishment, for criminals convicted of felony; [...] trial than ascertaining their identity.

This is made felony without benefit of clergy by statutes 4 Geo. I. cap. II. 6 Geo. I. cap. 23 16 Geo. II. cap. 15 and Geo III. Cap. 15. As is also the assisting transports to escape from such as are conveying them to the port of transportation.

Exile and transportation are punishments at present unknown to the common law; and whenever the latter is now inflicted, it is either by the choice of the criminal himself, to escape a capital punishment, or else by the express direction of some modern act of parliament. Accordingly, it was enacted by the statutes 4 Geo. I. cap. II. and 6 Geo. I. cap. 23. that when any persons shall be convicted of any larceny or felony, who by the law shall be intitled to the benefit of CLERGY, and liable only to the penalties of burning in the hand or whipping, the court in their discretion, instead of such burning in the hand or whipping, may direct such offenders to be transported to America (or, by statute 19 Geo. III. Cap. 74. to any other parts beyond the seas) for seven years. And by the subsequent statutes 16 Geo. II. cap. 15. and 8 Geo. III. Cap. 15. many wise provisions are made for the more speedy and effectual execution of the laws relating to transportation, and the conviction of such as transgress them. But now, by the statute 19 Geo.

III. Cap. 74. all offenders liable of transportation may, in lieu thereof, at the discretion of the judges, be employed, if males (except in the case of petty larceny) in hard labour for the benefit of some public navigation; or, whether males or females, may, in all cases, be confined to hard labour in certain penitentiary houses, to be erected by virtue of the said act, for the several terms therein specified, but in no case exceeding seven years; with a power of subsequent mitigation, and even of reward, in case of their good behavior: but if they escape and are retaken, for the first time an addition of three years is made to the term of their confinement; and a second escape is felony without benefit of clergy. Transportation is said to have been first inflicted as a punishment by 39 Eliz. Cap. 4. Blackst. Com. Vol. iv. P. 370, &c. Burn's ed. (RCy, s.v. TRANSPORTATION).

On the one hand, punishments may undergo some modification in the judicial process, «mitigation», and law itself is adjusted to newly emerged perspectives on the punishment system, maybe at the dawn of a rehabilitation process, «reward, in case of their good behavior». In this context, «hard labour for the benefit of some public navigation», or «hard labour in certain penitentiary houses» are alternative strategies to transportation, and ultimately to harsher corporal punishments. The convict is thus made partly responsible for his or her destiny: «but if they escape and are retaken, for the first time an addition of three years is made to the term of their confinement; and a second escape is felony without benefit of clergy». On the other hand, Rees's technique in compiling his dictionary is revealing of his epistemological outlook. Besides the preceding tradition, his main sources are CCy and ^{5th}CCy, the attention to contemporary context is well marked, as well as the ability to include real data. His approach is dynamic, as dynamic is the period he lives in. Once more, Blackstone is included as a source, a very precise and reliable citation at the end of the entry⁴⁶.

⁴⁶ According to Blackstone, *Commentaries on the Laws of England*, Book 4, Clarendon Press, Oxford 1769, pp. 370-371, «Some punishments consist in exile or banishment, by abjuration of the realm, or transportation to the American colonies: others in loss of liberty, by perpetual or temporary imprisonment. Some extend to confiscation, by forfeiture of lands, or moveables, or both, or of the profits of lands for life: others induce a disability, of holding offices and employments, being heirs, executors, and the like. [...] DISGUSTING as this catalogue may seem, it will afford pleasure to an English reader, and do honour to the English law, to compare it with that shocking apparatus of death and torment, to be met with in the criminal codes of almost every other nation in Europe. And it is moreover one of the glories of our English law, that the nature, though not always the quantity of degree, of punishment is ascertained for every offence...».

4. CONCLUDING REMARKS.

The study has focussed on the notions of *crime* and *punishment*, with a view on *corporal punishment* and *judicial torture*, and their relationship with *law* and *justice* in the Eighteenth century. The analysis, carried out on a selected number of entries – *law*, *crime*, *punishment*, *torture*, *rack*, *pain fort & dure*, *beheading*, and *transportation* – included in British dictionaries of arts and sciences, has highlighted the persistence and the perpetuation of appalling traditional practices in the administration of justice, alongside the emergence of humanitarian approaches in the second half of the century. The lexicographic examples testify to some fundamental differences between *CCy* (1728) and *5thCCy* (1741-43) on the one hand, and *RCy* (1778-88) and *EB* (1768-71) on the other. All of them include records and plain descriptions of brutal corporal punishments and, even though some minor lexical changes are already introduced in the *5thCCy*, a watershed is evident at mid-century, particularly in *RCy*.

EB usually provides only the lexical definition, which, besides being a lexicographic choice, also involves the omission of dreadful details. *RCy* considerably modifies some of the entries drawn from *CCy* and *5thCCy*, by omitting (cfr. *crime*, *torture*) and modifying (cfr. *crime*, *punishment*, *torture*) certain passages, adding material (cfr. *crime*, *punishment*, *torture*, *rack*, *beheading*, *transportation*), and updating contents (cfr. *torture*, *rack*, *pain/e fort & dure*, *transportation*). Updating is the most relevant feature in *RCy*, since Rees includes fundamental external reference to current issues and works on the administration of justice. The entries refer to acts of parliament (cfr. *peine fort & dure*, *transportation*), and to contemporary jurists, economists, and philosophers lively debating and writing on *crime*, *punishment* and *judicial reform*: Beccaria (cfr. *crime* and *torture*), and Balckstone (cfr. *transportation*). The use of past tense instead of present tense in a few entries (*rack*, *peine for & dure*) is further indication, suggesting that some corporal punishments were definitely dismissed, at least by law, if not by practice.

The selection of key terms, though limited, and their close investigation provides evidence of a dramatic epistemological change throughout the century. The dictionaries of arts and sciences, besides recording traditional topics and issues, also testify to in-depth socio-historical transformations. They cannot overlap with reality, but, certainly, they help mirror socio-cultural habits, conflicts and innovations.