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 future 3; «a complete separation of crime from ideas of sin» and «deterrence [as] the

primary theoretical justification for the application of punishments; «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 crime\(^6\), 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 laws\(^8\), the emergence of humanitarian issues, religious toleration, educational reform, and modern police forces\(^9\), 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 conflicts»\(^11\). 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 rights\(^12\). It was – and still is – a long process of adaptation and modification of the traditional punitive outlook:


\(^8\) 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.


\(^11\) 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 18\(^{th}\) 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\(^13\).

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 contents\(^15\).

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 Chambers\textsuperscript{17}. 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\textsuperscript{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\textsuperscript{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\textsuperscript{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-

\textsuperscript{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 Accounts 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 \textsuperscript{30}CCy, respectively).


\textsuperscript{19} In the case of Chamber's Cyclopædia, 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'.

\textsuperscript{20} Yeo, Encyclopaedic Visions, cit., p. 25.

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\textsuperscript{23}, issued in the first half of the century, long before Beccaria's Del Delitti e Delle Pene (1764)\textsuperscript{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

\textsuperscript{21} Ibidem, p. 157.


\textsuperscript{23} Cfr. CCy and \textsuperscript{60}CCy, note 17.

\textsuperscript{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 1767\textsuperscript{25}; the *Encyclopedia Britannica* (1768-1771)\textsuperscript{26}, and Abraham Rees’s *Cyclopaedia* (1778-1788)\textsuperscript{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 quen reference works might include traditional ideas and practices in the administration of justice, and the date post quen 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*\textsuperscript{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 connections are highlighted. Law belongs to «Ethics, or Natural Religion», directly connected to «Relations [...] to our Happiness»\textsuperscript{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:

\[\text{LAW, or the rules and Measures of Society; publish`d in Act, Statute, Charter, Rescript, Constitution, Decretal, Senator`s-consultum, Pragmatic Sanction, &c. Recorded, in Institute, Code, [...]} \]

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 quen reference works might include traditional ideas and practices in the administration of justice, and the date post quen new perspectives, attitudes, and practices might be gradually assimilated and accepted in society, and be included in the entries.

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The 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, Divorce, Scaphism, &c. Or Civil, and to Things; [...]»

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\[\text{Ordeal, &c. Paine fort & duret, Rack, Torture, &c. 5°, Judgment; whence Arrest, &c. 6°, Execution, whence Scire facias, Reprieve, &c. (CCy, Preface, iv, topic 15)} \]

\[\text{CCy, Preface, p. ii.} \]

\[\text{For the nature of the analysis and for practical reasons, the references to the headwords-entries will immediately follow the lexicographic extracts under scrutiny, in the sequence encyclopedia/title, s.v. HEADWORD, between brackets.} \]

\[\text{This expression is recorded with different spellings throughout the paper, according to the sources under scrutiny; The Oxford English Dictionary, 2005\textsuperscript{30}, s.v. PAIN, at <http://www. oed.com.pros.lib.unimi.it/> (03/2019) makes the word derive from Anglo-Norman peine, paine, etc., the spelling <paine> is regional and} \]

\[\text{30 C.f. Loretelli, First English Translation, cit.} \]

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

\[\text{27 Cyclopaedia: or, an universal dictionary of arts and sciences ... by E. Chambers, F.R.S. With the supplement, and modern improvements, incorporated in one alphabet. By Abraham Rees, D.D. In four volumes, London 1778-88 (hereafter: RC).} \]


\[\text{28 S. Johnson, *A Dictionary of the English Language*, 2 vols., London 1755 (first edition, hereafter 1s1755), and 1777 (fourth edition, hereafter 4s1777).} \]
'the body' of the accused to reestablish, «Redress is procured», an ideal order. Judicial torture, though formally banished in England, comes into play. Law is also discussed in individual entries in each work: in CCy, 5thCCy 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, 5thCCy and RCy, 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, 5thCCy, 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, 5thCCy and RCy with minor morphosyntactic 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» (CCy, 5thCCy, 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]32, hanging, beheading, quarter-


32 The Oxford English Dictionary, 1989, <http://www.oxford dictionaries.com/> (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, gallows, 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 situations. 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, 5thCCy 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 Ecclesiastic; to which a Penalty is annex’d. See LAW. [5thCCy: See LAW, TRANSERSION; 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 lexicographic changes, s.v. CRIME).

The three entries definitely overlap (about twenty infolio 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 Greek κρινω, judico», (CCy, s.v. CRIME). 5thCCy 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). 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 denounced 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 revealing.

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-

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» (1755, 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...» (1777, s.v. LAW). The expansion of the concept, by the addition of further senses in the 18th1777 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.


36 Johnson’s Dictionary of the English Language: «PUNISHMENT [...] Any infliction imposed in vengeance of a crime», (1755, s.v. PUNISHMENT); «PUNISHMENT [...] Any infliction or pain imposed in vengeance of a crime», (1777, s.v. PUNISHMENT); «PENALTY, PENALTY [...] 1. Punishment; censure; judicial infliction. Brown. [...]», (1777, s.v. PENALTY), «PENALTY [...] 1. Punishment; censure; judicial infliction. [...]» (1755, 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 [CCy 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. [...] 3. TORTURE AND PAIN.

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, GALLOWS, 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).

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. [CCy 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

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.

39 The expression running the gantelope, or running the gauntlet 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, 1989. The words gantelope and the corrupted variant gauntlet derive from Old Norse, and mean ‘run through a lane’.
refuses to plead. See Paine 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:

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 the accused 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:

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

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

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 [5thCCy: chords], &c. for extorting Confession from Delinquents [RCy: criminals]. See TORTURE.*

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 [...]» 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». (CCy and 5thCCy 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». (CCy and 5thCCy with minor spelling changes, s.v. PAIN fort & dure).**

Similarly, RCy introduces the topic with the general definition, immediately followed by the same quotation included in CCy and 5thCCy. 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. PAINE 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.
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. PAINÉ fort & dure)

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).

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

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).

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 summarized 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.

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, 5thCCy, 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, 5thCCy, 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, 5thCCy with minor spelling variants, RCy with minor spelling and lexical variants, s.v. TRANSPORTATION).

If in CCy and 5thCCy 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 5thCCy, 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 5th CCy (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 5th CCy, 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 5th CCy, 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 Blackstone (cfr. transportation). The use of past tense instead of present tense in a few entries (rack, peine fort & 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.