CONTENTS

Preface vii
Introduction 3

Giuseppe Bencivenni Pelli (1729–1808) 7

Texts 9
Giuseppe Pelli: Against the Death Penalty. Text and Fragments 9
Giuseppe Pelli and Cesare Beccaria: Correspondence (1766–67) 48

Context 54
Tuscany 54
The Man 57
The Life-Cycle of Against the Death Penalty 61
Milieu 69
Career 75
Conclusion 81

Argument of Against the Death Penalty 85
Preliminaries 85
The Proofs 91
Lex talionis 96
Conclusion 99
## Contents

### Cesare Beccaria Bonesana (1738–1794) 103

#### Texts 105
- Beccaria, against the Death Penalty and for Forced Labour 105
- Law of Grand Duke Leopold of Tuscany, against the Death Penalty (1786, excerpts) 113
- Opinion (’Voto’) of Beccaria, Gallarati Scotti and Risi, against the Death Penalty (1792) 115

#### Context 122
- Lombardy 122
- *On Crimes and Punishments* 125
- Career 127
- Milieu, Authorship, Character 129
- Patronage and Publication 135

#### Argument against the Death Penalty 137
- Preliminaries 137
- Chapter 28 in Outline 141
- Commentary 146

#### Postscript: From Forced Labour to Penal Servitude 150
- Preliminaries 150
- Beccaria on Forced Labour 155
- Beccaria and Bentham 156
- Beccaria and Jefferson 159

#### Notes 163
- Select Bibliography 193
- General Bibliography 199
- Index 205
Introduction

In 1968–69, the Archivio di Stato di Firenze acquired from the archives of the Pelli-Fabbroni family two large collections of documents composed by the last Pelli, Giuseppe Bencivenni Pelli (1729–1808). Around two decades later, at the end of the 1980s, the draft of an unfinished dissertation Against the Death Penalty came to light among the documents.¹ The manuscript was introduced to the world of scholarship (in 1990) by Renato Pasta, who had unearthed and identified it, and by Philippe Audegean, who produced the first edition, complete with a substantial introduction to the text and its contents, in Italian (2014) and then in French (2016).²

Pelli was a minor aristocrat from Florence who pursued a career within the Austrian Habsburg administration in the Grand Duchy of Tuscany. His most prominent post, and the one that gave him the greatest satisfaction, was that of director of the Uffizi Gallery (1775–93). According to his own testimony, he wrote Against the Death Penalty between 24 November 1760 and 6 January 1761.³ It was published more than 250 years later. He never completed it. It remains in the form of an advanced draft, tapering off toward the end, and finishing with a number of fragments, some of them substantial. It is an extended treatment of a subject which had not previously been discussed from a critical standpoint and in a comprehensive way. As far as we know, it is the first systematic attack on the death penalty in history.

It is known precisely when he began to write and stopped writing, because he tells us in his Efemeridi, the enormous diary that he compiled, day-in, day-out, over almost half a century, from 1759. A question that I set out to answer, with the aid of the Efemeridi, is how he came to write the dissertation in the first place, and why he gave up the project.

Against the Death Penalty was composed approximately three years before the publication, in July 1764, of On Crimes and Punishments, by an anonymous
author, who was later revealed to be Cesare Beccaria Bonesana (1738–94). Beccaria was also a member of the minor nobility, but of Milan, who worked for the Austrian administration in Lombardy. Before the discovery of Pelli’s work, it was assumed that Beccaria’s work contained the first serious attack on the death penalty.

Previously, abolition had had its advocates, such as the English radical Gerrard Winstanley in 1649, writing from a religious perspective, and the Quaker John Bellers, in 1699, who employed arguments from utility. The list lengthens somewhat if we include thinkers such as Thomas More and Blaise Pascal, who were critical of the death penalty without being outright abolitionists. In this category one might also place two anonymous English pamphleteers, Solon Secundus (1695) and A Student in Politics (1754). Both protested against the plethora of public executions and pressed for an alternative punishment, which they called imprisonment and hard labour, or slavery, but they contemplated reduction of the use of the death penalty rather than total abolition. Another potential ‘candidate’, a Sicilian, Tommaso Natale (1733–1819), whose treatise on penalties has much in common with that of Beccaria, also fails the test, on two counts: first, his work was published in 1772—his claim to have completed an early version in 1759 is not accepted by scholars—and second, he wished to retain the death penalty for particularly serious crimes.

Pelli targeted the death penalty exclusively, whereas Beccaria’s work was an attack on the whole system of criminal law operating in his time. The latter’s critique of the death penalty occupies only one chapter (28) out of his forty-seven. It is by far the longest, however: it can be assumed to have contained all that he wanted to say on the subject, and his arguments are significant and weighty. The abolition of the death penalty is also the most radical of his proposals for reform, and it attracted the most attention and controversy. There is every reason to attempt a comparison between the two treatments of the subject.

The treatments are strikingly different. This is in itself remarkable. Here we have two men, living in neighbouring regions of the Austrian Habsburg empire, writing at more or less the same time, each ignorant of the existence of the other, each under the impression that he was the first to venture into these dangerous waters, and approaching the same subject in contrasting ways. Pelli’s work reads rather like a juristic treatise, though his humanity shows through, and he knows how to appeal to the emotions. Beccaria’s treatise is a
manifesto: it is passionate, highly rhetorical, and it pulls no punches. In sum, what we have before us is a rare opportunity to study and compare two works on the same highly controversial subject in a highly critical vein, written entirely independently of each other and more or less contemporaneously.

I offer translations of the relevant texts—in the case of Pelli’s manuscript, the first English translation. Next, I explore the historical and intellectual contexts in which Pelli and Beccaria lived and wrote, and I attempt to understand their personalities and mentalities. This is an especially rewarding pursuit in the case of Pelli, thanks largely to the existence and nature of his diaries (Efemeridi). They are a goldmine, full of fascinating detail about his character, beliefs and interests, and the social and cultural life of Florence in the middle and second half of the eighteenth century. I then set out to assess the two writers’ arguments against the death penalty, pointing to significant differences and similarities, and attempting to identify the sources that inspired or influenced them.

In terms of argumentation, in summary, Pelli lines up in the main with the Dutch and German natural law philosophers and jurists of the past, joining the debate which had been in progress since the early seventeenth century on the State of Nature, the transition into civil society via the Social Contract, and the ends and justification of punishment. He made a move, however, that none of these thinkers had contemplated or dared to make, in denying the necessity, utility and justice of the death penalty.

Whereas Pelli’s outlook is firmly Catholic, as shown among other things by the dominance in his discourse of the notion of original sin, which in his view underlies both criminal behaviour and the penal law that has been enacted to suppress it, Beccaria follows the secularist tendencies of the French Enlightenment philosophers in making a clean break between sin and crime, divine and human justice. His trademark doctrine, which stemmed from a utilitarian interpretation of the Social Contract, is that the penal system must essentially be directed at avoiding public harm and promoting private good, or as he famously stated, ‘the greatest happiness shared among the greatest number.’ Pelli arrives, nevertheless, though by a different route, at something very similar to this utilitarian and minimalist view of the criminal justice system.

My final chapter is necessarily centred on Beccaria, in as much as it is an essay on the impact of his work on selected later thinkers and politicians, with special reference to his alternative, or surrogate, penalty, namely forced
labour. It is a crucial element of Beccaria’s argument that the death penalty is less efficacious than forced labour as a deterrent (and the essential end of punishment, in his account, is deterrence). I am especially interested in the way Beccaria conceptualised his substitute penalty as slavery, and the way this was received in Britain and America, where his work was especially closely read and was extremely influential. The key figures in my enquiry are Jeremy Bentham and Thomas Jefferson.

Pelli left an incomplete draft of a thoughtful and searching critique of the death penalty; Beccaria published a finished product which many regard as the most significant tract of modern (and early modern) times on the reform of the criminal law, and which contained a highly effective attack on the death penalty. The former work was buried without trace for two and half centuries; the latter launched a movement of reform which has not yet run its course. A comparison between Pelli and Beccaria can only go so far, and is of limited utility. The same applies to the hypothetical question of what would have happened, what difference it would have made, if Pelli had published a full, polished treatise before Beccaria; and of how Beccaria would have reacted in such a circumstance. A more profitable line of enquiry might be to assess each of the two treatises as products of their times—rather than as definitive statements on the issue in question, which they are not—and, in the case of Beccaria’s work, in terms of the impact that it had in the short term and the long. Modern penal law was born with Beccaria: there was a ‘Beccaria moment’.
## INDEX

A Student in Politics, 4, 163n6, 186n7, 189n47  
abolition: of branding, 115; of death penalty, 4, 10, 55, 74, 82, 86, 88, 101, 113–115, 117, 120, 147, 150, 152, 159, 165n6, 169n28, 170n39, 190n62; of mutilation, 115; resistance to, 148; of slavery, 160–61, 190n60; of torture, 55, 82, 113–14, 116, 126, 170n39; of transportation, 153–54, 187n20  
abolitionism, abolitionist. See abolition, of death penalty  
Academia of Fisticuffs. See Accademia dei Pugni  
Accademia Colombiana, 70–71, 75  
Accademia dei Georgofili, 70  
Accademia dei Pugni (Milan), 70, 123–24, 127–28, 130, 134, 171n49, 178n6, 180n26, 182n8  
Accademia dei Trasformati (Milan), 127  
Accademia della Crusca, 171n64  
Accademia Etrusca di Cortona, 71  
Act of Reform (Tuscany 1786), 82. See also law, Leopold's law  
Adami, Anton Filippo, Cavalier, 72, 171n57  
Addleley, Charles Bowyer, 1st Baron Norton, British politician, MP for North Staffordshire, 189n45  
Addison, Joseph (1672–1719), English essayist and politician, 124  
administration: imperial, 4, 122, 124, 128, 134, 148 (see also Beccaria, civil servant; Habsburg empire; Pelli, career in Tuscan administration); and economy of Milan and Lombardy, 128  
Alba, Fernando Alvarez de Toledo, Duke of, 30, 166n28  
Alberti, Vincenzo, Count, 79  
Alcandros, Spartan, 27  
Alemençon, Jean le Rond d', French philosopher and Encyclopedist, 16, 52, 99, 149  
America, 6, 13, 87, 150, 156, 159–62, 189nn49 and 50, 190n52 and 53  
American Congress. See Congress, American  
Antinori, Gaetano, Florentine patrician, patron of Lampredi, 71  
Antonines, Roman emperors, 112, 151, 186n4  
Arcangiolci, Francesco, thief, 66  
Athens (ancient), 28, 30  
Atilius Regulus, 20, 90  
Aubert le Mire: Donationum Belgicarum, 15  
Audegean, Philippe, 3, 141, 163n1, 164n12, 166n36, 174n8, 175n13, 176n35, 177n48 and 51, 180n33, 182n11, 183n22  
Augustine, Saint, 57, 174n4  
Australia, 156, 159. See also transportation authorities, 43, 80, 143; British, 156; civil, 47, 98, 179n16; ecclesiastical, 61, 87, 179n16; in France and elsewhere, 174n4; judicial, 61, 98, 159; philosophical, 147; political, 61; public, 44  
authority: civil, 166n36; critics of, 69; ecclesiastical, 166n36; derived from the laws of nature, 17; higher, 16, 25, 37–39, 42, 89; of individuals, 11, 28, 93, 106–7; of judges, 111, 140; judicial, 140; of law, 16, 117; of legislator, 34; political, 86; public, 25, 27, 29, 38, 43, 92; of Regency Council of Tuscany, 54; of sovereignty, 16, 31, 112–14; supreme and legitimate, 16  
Bacon, Francis, philosopher and statesman, 60, 130, 149  
Bartoli, Giovanni Andrea, friend of Pelli, 70–71
Index

Beccaria Bonesana, Cesare, 4–6, 48–53, 56–57, 59–60, 62, 67–68, 70, 74, 81–86, 88–89, 91–93, 95, 100–102, 115–21, 123–59, 162, 163n11 and 12, 170n9, 176n29, 31, 33 and 37, 177n45, 178n10 and 12, 179n15, 181n3, 182nn5, 8, 10, 12 and 16, 183n17, 21 and 23, 184n27, 29 and 33, 185n2, 41, 44, 186n7, 189n47 and 48; as Atticus, 178n6; civil servant, 4, 60, 128–29, 134, 136, 148, 179n17; family and early years, 127–28, 179n16; mathematician, 128, 187n24; member of the Accademia dei Pugni, 70, 123, 127–28, 130, 171n49, 178n6; member of the Accademia dei Trasformati, 127; member of the Council for Economy, 128, 179n17; Opinion of Beccaria, Gallarati Scotti and Risi against the death penalty, 115–21, 148, 149; and Pelli (see Against the Death Penalty, comparison with Beccaria's work; Pelli, and Beccaria); and penal servitude, 150, 153, 180n28 and 33, 181n4 (see also Verri, Alessandro; Verri, Pietro); work and impact (see On Crimes and Punishments)

Bellers, John, Quaker, 4

benevolence. See compassion, benevolence

Bentham, Jeremy, English philosopher and jurist, 6, 126, 138, 150, 154, 156–159, 182n9, 186n8, 187n24, 189n41 and 44, 189n47, 47 and 48; Rationale of Punishment, 157; View of the Hard Labour Bill, 157–58

Bible, 87, 97; Apocalypse, 46; Deuteronomy, 45; Exodus, 45; Genesis, 45; Gospels, 12, 14, 36, 38, 45, 87, 98; Leviticus, 45; Scriptures, 45–46, 98; New Testament, 46, 97–98; Old Testament, 97–98. See also law, Mosaic law

Blackstone, William, English jurist and politician, 126, 154, 156–57, 188n39

Blasco, Teresa, wife of Beccaria, 127

Boccaccio, Giovanni, poet and writer, 47, 177n44

Botta Adorno, Antoniotto, president of the Regency Council of Tuscany, 55, 77, 80, 82

Bridewells. See prison

British, 6, 126, 150, 152–53, 156, 158, 160. See also England

Buffon, Jean-Louis Leclerc, comte de, Encyclopedist, 149

Buondelmonti, Giuseppe Maria, poet, orator, philosopher, 171–72n64

Caffè, II. See Il Caffè

Calas, Jean, merchant, 125, 178n9

Camus, Albert, 184n34

Carpzov, Benedikt, criminal lawyer, professor of Law in Leipzig, 127, 181n4

Carthaginians, 20, 90

Cartouches, Louis Dominique Bourguignon, alias, French highwayman, 34

Catholic. See Catholicism, Catholics; Pelli, a Catholic

Catholicism, 54, 56, 102; anti-Catholicism, 31, 124; Catholic church, 35, 54, 56, 77, 83, 86–87, 91, 101, 124, 126, 150 167n2; Catholic doctrine and theology, 56, 88; Catholics, 70–71, 175n15

Charles VI, emperor of Austria, 54

Charles XII, king of Sweden, 16

Chastisement, 11, 17, 21, 23, 30–31, 37, 42, 46; of disobedience, 24; in Gelopolis, 73; and punishment, 17, 24, 37, 73, 89

Christians. See Christianity, Christians

Christianity, 87, 175n10; Christian religion, 124; Christians, 23, 35 (see also sovereign, Christian emperors; philosopher, Christian and gentle)

Church. See Catholicism, Catholic church

Ciamagnini Pelli, Teresa, Pelli's adopted daughter, 57

Cicero (Marcus Tullius Cicero), Roman politician, philosopher and orator, 18, 29, 57

civil cases, 64, 81

civil servant. See Beccaria, civil servant; Pelli, career in Tuscan administration

Claro, Giulio, Piedmontese statesman and jurist, 127, 181n4

clemency, 13, 47, 64, 66, 177n44. See also compassion

Cocceji, Heinrich, Baron von, German jurist and professor of law, 38, 40–42, 44, 86, 96–98, 100, 167n63, 175n14

Cocceji, Samuel, Baron von, son of Heinrich, German jurist and official, 38, 40–42, 86, 96–97, 100, 175n14

code: Austrian, 116–17; of crimes and punishments, 129; French, 161; of law, 17, 32–33, 55, 96, 140, 164n12, 190n59; of nature, 27, 92; penal, 55–56, 74, 95, 115–17, 119, 137, 158, 163n, 170n39; Russian, 136; Tuscan, 116–17; of Virginia, 162

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Commission for Legal Reform (Lombardy), 152
Commission for the Penal Code, 181n35
compassion, 11–12, 35, 86–87, 108, 114, 118, 120, 144 (see also clemency; obligation); benevolence, 12, 27, 32–33, 65; gentleness, 12, 20, 35, 38, 45, 87, 98; humanity, 11–12, 24, 29, 32, 35, 49, 87, 93, 129, 136; inhumanity of man, 71, 82, 97
compensation, 17–18, 61, 89, 91, 109; in the State of Nature, 21
Condillac, Etienne Bonnot de, French philosopher, 149
Congregazione del Conservatorio dei Poveri di San Giovanni Battista, 75
Congress: American, 159–61, 190nn59 and 60, 191n64
contract. See Social Contract
contractualism, 88, 138, 142. See also Social Contract; utilitarianism; utility
convention, 14, 27–28, 92, 137. See also Hobbes, Covenant; obligation; Social Contract
Convict Bill. See hard labour, Hard Labour Bill convict. See prisoner
Covenants. See Hobbes, Covenant
Cranworth, Lord, British Chancellor, 154
Craon, Marc de Beauvau, Prince de, President of the Regency Council of Tuscany, 54
crime, 4–5, 11, 15, 22, 24–26, 28–36, 38–47, 61–66, 69, 88, 91, 94–96, 98, 101, 105–21, 126, 137, 139–45, 149, 152, 154, 160–62, 175n23, 176n31, 182n5, 190n21 (see also anarchy; code, of crimes and punishments; criminals; law, Talion); as act of war against the State, 143; adultery, 34, 38, 43–44, 47, 98, 166n35; blasphemy; heresy and idolatry, 17, 35, 38, 46–47, 95, 98, 166n29 and 36; capital, 115–17, 145, 151, 159; definition of, 38–39; frequency of, 34, 106, 118, 151; in Gelopolis, 73; gravity of, 94, 115–16, 118, 140; homicide, 43–44, 47, 98, 110–11, 116, 119, 165n17, 189n48, 189–90n62; lèse-majesté, 36, 96, 113; murder (see crime, homicide); prevention of (see ends of punishment, deterrence); public, 26; rioting, 107, 117; scale of, 106, 140; smuggling, 112, 152–53; sedition, 117; subversion of State, 117, 120, 126; Talion as, 47, 99; theft or robbery, 66, 73, 105–6, 155, 159, 166n34; treason, 73, 144, 190–91n62; unpunished, 21, 24, 112, 118 criminal courts of Tuscan Pistoia e Pontremoli. See Pratica Segreta di Pistoia e Pontremoli
Criminal Law Committee, 115 criminals, 10, 13, 32, 87, 93–94, 105, 111, 116, 145, 176n30 (see also prisoner; slavery; Verri Alessandro, Protector of Criminals/Prisoners; Verri, Pietro, Protector of Criminals); Bentham on, 158; breaching the social pact, 155; Hobbes on, 142; murderer, 109, 112, 119, 141; punishment of, 24, 25, 28–31, 40, 42, 47, 49, 61–62, 68, 73, 82, 86, 91, 97, 101, 108, 114, 118–21, 152, 155, 158, 183n21 (see also ends of punishment); robber, 38, 116; Rousseau on, 143, 184nn28 and 29; as slave, 158–59, 184n33 (see also slavery); smuggler, 112; thief, 109, 112
criminality, 24, 95, 129, 132, 140; in Gelopolis, 73–74
Cristina, queen of Sweden, 16
Damiens, Robert François, 26, 165n17
Dante Alighieri, 72, 85, 171n63
death penalty, 19, 23, 38, 61, 67, 69, 71, 77, 89–90, 129, 150, 163n4, 173n88, 177n44 (see also abolition, of death penalty; punishment, execution); as an act of war, 107, 117, 141, 143; abuse of, 13, 139; alternative to, 4–6, 91, 95, 102, 108, 116–17, 120, 145–46, 150, 152, 155–56, 158, 190n52 (see also hard labour; slavery; transportation); as appropriate, 32, 34, 94–95, 117, 119, 121; attack on and critique of, 3–6, 10, 55, 59–61, 67, 69, 87–88, 96, 99, 101–2, 115–21, 124, 137, 141, 163–64n6, 182n10; 190n52; barbarity of, 20, 26, 29–30, 32, 65, 69, 93; Bentham on, 189n47 and 48; as a common punishment, 29, 31, 34, 93, 95, 111, 118, 142, 190n52; and conventional punishment, 19–20, 37–38, 89–90; death sentence, 32, 38, 44, 61, 64–65, 81–82, 91, 94, 120, 140, 143, 145, 147; as deterrent, 6, 92–94, 107–8, 139–41, 145, 150, 152–53, 163–64n6, 184n33 (see also, ends of punishment, deterrence; hard labour, as deterrent; slavery, as deterrent); efficacy of, 6, 30–33, 92, 114, 117–19, 140, 145, 163–64n6; and ends of punishment, 23, 25, 91–92, 106, 114, 139, 141, 144, 146; as excessive, 13, 32, 38, 62, 93–94, 175n23; in Gelopolis, 73; as illogical, 119; inconsistency in application of, 34;
death penalty (continued)  38, 95; irreversibility, 117, 119–20, 147–48, 164n11, 170n37; as just or unjust punishment, 5, 38, 62, 106–7, 119–20, 144; as a legitimate measure, 95–96, 144; as mark of a bad government, 32, 93–94; Montesquieu in defence of, 147; as necessary, 107, 116, 118, 120, 139–40, 144; opinions on, 110–11, 116–17; opposition to (see death penalty, attack on and critique of); as public murder, 110, 141, 145; as a public spectacle, 30, 93, 108, 110, 118, 144, 153; retention of, 4, 116, 118, 120, 126, 142–44, 185n2, 189n48, 190–91n62; as revenge, 16, 93; Rousseau on, 143, 184n28; and Talion, 44 (see also law, Talion); as ultimate punishment, 29, 89, 107, 115–16; as unnecessary, 5, 13, 26, 62, 107, 113, 117, 140, 175n23; usefulness, utility of, 106–7, 109, 139, 141–42, 145; uselessness of, 5, 26, 33, 62, 93, 107, 109–10, 116, 139–41, 145, 182–83n16; wastefulness of, 146

dead: legal, 110 (see also death penalty; hard labour; punishment); public view of death, 108, 118; violent, 111; in warfare, 17

defence. See right, to self-defence or self-preservation
despout, 16 (see also despotism; tyrant)
despotism, 22, 31–32, 91–94, 106, 111, 112, 123, 139, 155 158; 176n32 (see also despot; tyrant; tyranny); in Gelopolis, 73
detention. See prison; prisoner; punishment; methods of punishment, imprisonment
diaries (Pelli). See Efemeridi
Diderot, Denis, French philosopher and Encyclopedist, 149
Draco, Athenian legislator, 26
Dumont, Etienne, editor and publisher, 158, 188n44
duty, 11, 14, 18, 22–25, 27–30, 39, 41, 48, 65, 89–90, 92, 120, 139, 147, 176n35. See also obligation; right
Eden, William, British diplomat and politician, 126, 156–57
Edict of Nantes (1685), 56
Egmont, Lamoral, Count of, general and statesman of Spanish Netherlands, 30, 166n28
Elisabeth, tsarina of Russia, 13, 87, 107, 165n6 emperor. See despot; monarch; sovereign
Encyclopedia, 52. See also Enlightenment
Encyclopedists, 125, 177n46
ends of punishment, 23–25, 40, 62, 91–92, 96, 100, 106, 114, 139, 141, 175n19 (see also death penalty, and ends of punishment; Grotius; hard labour; slavery); deterrence, 6, 91, 93–95, 99, 107–8, 110, 117, 139–41, 144–46, 150, 152–53, 163n6, 175n19, 183n19 and 20, 184n33, 185n2 and 44 (see also death penalty, as deterrent; hard labour, as deterrent; slavery, as deterrent); as example, 24–25, 30, 38–39, 47, 73, 91–93, 99, 108–10, 114, 118–19, 121; 176n38; in Gelopolis, 73; physical suffering, 15, 109–10, 114, 144, 176n30 (see also pain; punishment, corporal; torture); preservation of society, 15, 94, 120, 139; prevention, 26, 30, 32–33, 91–93, 96, 99, 113–14, 139, 141, 144, 146, 175n19, 183n19 and 21, 185n2; public utility, 92; reform of criminal, 24, 38, 47, 91–93, 97, 99, 114, 141, 183n21, 185n44; reparation, 17, 21, 24, 38, 40, 42, 45–46, 90, 98, 177n39; repression of crime, 118, 120–21; retribution, 91, 96, 101, 139, 164n9, 165n16, 183n17; revenge, 24, 91, 97, 175n19 (see also vengeance and revenge); satisfaction, 24–25, 30, 38, 40–42, 45–46, 91, 97, 114, 165n16, 175n19; security, 24–26, 29, 33, 39, 43, 47, 64, 90, 92, 94, 98, 107, 114, 139, 165n16, 175n19

England, 157, 187n20. See also Britain
Enlightenment, 56, 99; enlightened individuals, 5, 13, 49–50, 52, 65, 112, 123, 146; French, 5, 56, 99, 124, 149; Italian, 164n10; Lombardian, 122; Scottish, 99; Transalpine, 86
equality, 40, 43, 45, 60, 97, 130, 138, 160, 176n30, 177n40. See also sociability
Europe, 12, 62, 102, 112, 126, 132, 146, 149, 152
Eustratius, bishop of Nicea, 38, 41, 99
evil, 9–11, 24, 115, 134, 139, 175n19, 177n39; done to an enemy, 25; of human life, 19, 37; of men, 24, 35, 37, 86, 106, 143, 184n29; punishment as an, 14–17, 21, 26, 37, 39–43, 89, 92, 106, 109, 140
exile. See methods of punishment, exile
Fabbroni, Giovanni, husband of Teresa Ciamagnini Pelli, 57
Facchinei, Ferdinando, monk, 125–26, 128, 181n4
Farinacci, Prospero, Roman judge and lawyer, 127, 181n4

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Index

Felons Bill. See hard labour, Hard Labour Bill
Filangieri, Gaetano, jurist and philosopher, pupil of Genovesi, 164n9
Filtze giornaliere, 168n15
fines. See methods of punishment, pecuniary
Firmian, Karl Joseph von, governor of Lombardy, 122, 124, 135–36, 179n17
Fisticuffs, Academy of. See Accademia dei Pugni
forced labour. See hard labour
Foucault, Michel, 186n13
France, 56, 99, 124, 134, 160, 165n17, 174n4
Francis I, emperor of Austria, Grand Duke of Tuscany, 54, 55. See also sovereign freedom. See liberty
French Declaration of Rights (1791), 160
Galileo Galilei, astronomer, 135, 181n37
Gallarati Scotti, Francesco, pupil of Beccaria, councillor in the ministry of justice, 148, 186n11; Opinion of Beccaria, Gallarati Scotti and Risi against the death penalty, 115–21
Gellius, Aulus, Roman author, 34, 43, 166n34
Gelopolis, 72–74
Genovesi, Antonio, philosopher and economist, 164n9
gentleness. See compassion, gentleness
Giannone, Pietro, philosopher, jurist, historian, 135, 181n37
God, 13, 35, 39, 45–47, 62–63, 89, 100, 185n44; Being (First, Supreme), 11, 27, 44, 86, 92, 100; Creator, 17, 35, 89, 90, 92, 95; infinite Wisdom, 112; Lord, 45; Providence, 26, 92; Sovereign, 18; Supreme Lawgiver, 46–47, 98
government, 23, 26, 31, 33, 45, 54, 76, 81, 106–7, 114, 136, 141–43, 152 160 (see also authorities; despotism; state); civil, 35, 95–96; despotic, 32, 158; good, 9, 35, 87, 95; Tuscan, 77, 82
Grand Duchy of Tuscany, 3, 54, 57, 59, 60, 114–15, 123
Grotius, Hugo, Dutch humanist and jurist, 14, 16, 20, 26, 86, 90–91, 97–98, 100, 102, 139, 141–42, 146, 148–49, 151–52, 165n16, 166n38, 175n14 and 19, 181n3, 183n17, 185n41, 42 and 44 (see also Cocceji, Heinrich; Cocceji, Samuel; jurist, natural law); and definition of punishment, 15, 37, 89; and ends of punishment, 24–25; and just war, 20–21, 175n14; Rights of War and Peace (de iure belli ac pacis), 148, 174n8, 175n14, 183n17
Habsburg empire, 3–4, 57, 60, 122–23, 128, 170n32. See also administration, imperial
Habsburgs: Austrian, 54–55, 122, 125, 129, 170n39; Spanish, 122
Hansard, 186n17
hard labour, 112, 118, 158, 188n35 (see also slavery); as alternative to death penalty, 4, 6, 30, 61, 91, 114, 116, 126, 146, 149, 150–53, 155, 159, 186n5, 187n31; in Antiquity, 186n5; death by, 145, 184n35; as deterrent, 6, 30, 93, 114, 118, 121, 144–45, 150–53 (see also slavery, as deterrent); economic argument for, 93, 146; efficacy of, 30, 93, 108, 114, 118, 121, 144–45, 151–52; or forced labour, 5–6, 92, 150–53, 155, 163–64n6; Hard Labour Bill, 156–57; imprisonment at, 152–53, 159, 162, 188n39, 190n52; as long term punishment, 114–15, 118, 126, 145, 152, 189n47 (see also slavery); as public labour, 61, 91, 93, 114–16, 121, 152–53, 159; a reversible punishment, 120; severity of, 116, 145, 152; as short-term punishment, 126, 155, 189n47; as slavery (see slavery, hard labour as); as voluntary labour, 188n44; and women, 152 (see also methods of punishment, of women)
Hebrews, 45, 47, 98
Heineccius, Johann Gottlieb, German jurist, 15, 28, 86, 97, 100, 149, 151, 166n38, 176n26, 185n44; and punishment, 16, 89, 149, 165n7, 175n12 and 14
Helvétius, Claude Adrien, French philosopher, 138, 142, 149, 177n46, 180n28, 182n9
Hilarion, Fedro. See Lampredi, as Fedro Hilarion
Hobbes, Thomas, 84, 146, 181n3, 182n13, 184n31, 185n2; Covenant, 142; Leviathan, 142, 184n26; and State of Nature, 37, 90, 139, 147
Horn, Philip de Montmorency, Count of, 30, 166n28
house of repentance. See prison, house of repentance
Hugo, Victor, 169n28
hulks. See prison, hulks
human nature. See humanity, human nature
humanity, 4, 32–33, 48, 65, 67, 86, 89, 92, 98, 100, 107, 110–12, 129, 138, 142, 147, 176n31; as compassion (see compassion, humanity);
humanity (continued)
human nature, 15, 41, 86, 117–18, 144,
170–71n46; human race, 10, 13, 17, 22, 29,
50, 52, 58, 63, 86, 89
Hume, David, 149
Hus, Jan, 31, 166n29
Hutcheson, Francis, philosopher, 149, 182n8

Il Caffè (magazine), 51–52, 70, 124, 128, 130

imprisonment. See methods of punishment,
imprisonment; methods of punishment, of
women
inhumanity. See compassion, inhumanity of man
injury, 16, 18, 20, 24–25, 36–37, 40–45, 47, 89,
97, 99, 114, 167n51 (see also vengeance and
revenge); reparation of injury (see ends of
punishment, reparation; ends of punishment,
retribution)

injustice, 20, 43, 60, 82, 110

Inquisition, 69, 125–26, 170n31

Italy, 50, 52, 56, 62, 67, 70–71, 102, 125–26, 130,
134, 150, 178n9

Jebb, Joshua, British Lieutenant-Colonel, Surveyor
General of Prisons, 187n19

Jefferson, Thomas, 6, 150, 154, 159–62, 189n49,
190nn59, 60, 61 and 62

Joseph I, king of Portugal, 26, 165n17

Joseph II, emperor of Austria, 122–24, 129, 134,
179n24

judge, 26, 30, 64, 86, 88, 111, 115, 119, 127,
137, 184nn39 and 40; as corrupt, 145, 147;
criminal law judge (see Pelli, as judge); critique
of, 140, 147; under the law of nature, 37

judgement, 13, 15, 42, 45, 77, 119–20, 132, 162,
191n64; on criminals, 49, 82, 143; of Heaven, 46

jurisprudence, 45, 65, 102, 128, 131. See also
justice, law

jurist, 16, 18, 24, 43–44, 48, 91, 127, 129, 149–51;
British, 126, 152, 154, 156–57, 188n41; critique
of, 88, 140, 147; Dutch and German, 177n48;
Italian, 57, 181n37; jurisconsult, 140, 179n16,
181n4; jurisprudent, 147; natural law, 5, 70, 86,
97, 99–101, 141; Prussian, 97; Roman, 28, 151,
162, 186n4

justice, 10, 25, 30, 34, 38, 43–44, 46, 73, 95, 97,
111–12, 115–16, 127, 139, 141, 182–83n16,
183n19 (see also injustice); criminal justice
system, 5, 48, 77, 81–3, 85, 101, 125–26,
128–9, 131, 137, 139, 145, 147–48, 150, 157;
and death penalty (see death penalty, as just or
unjust punishment); divine, 5, 11, 23, 91; cruel
formalities of, 111; in Gelopolis, 73; human, 5,
182n10; personification of, 155; of punishment
(see punishment, as just); in State of Nature,
21–22, 25

Justinian, Roman emperor, 151, 157, 181n4

Kaunitz-Rietberg, Wenzel Anton, Prince von,
Chancellor in Vienna, 122, 124, 135–36,
178n8

Khevenhüller, Emanuele de, adviser of emperor
Francis I and landowner in Lombardia, 181n35

king. See monarch

Lacedaemonians. See Spartans

Lampredi, Giovanni Maria, 70–75, 100–101,
171n55, 177n48; as Pedro Hilarion, 72, 171n63

Lastri, Marco, friend of Pelli, 71, 171n53

law, 9–11, 15–17, 23, 25–26, 30, 33, 37–39, 41,
60, 66, 77, 88, 94, 105–11, 117–18, 128–29,
140, 145–46, 159, 161, 187n30 (see also
convention; obligation; reform; slavery, servus
poenae; Social Contract); American, 154;
ancient, 13, 26, 30, 45, 112, 115 (see also law,
Mosaic; law, Roman); canon, 71; civil, 35, 37,
48, 96, 175n14; code of (see code, of law);
conventional, 18; criminal, 4, 6, 33, 60, 81,
84–85, 102, 113, 121, 126–27, 129, 137, 146,
149, 179n24, 190nn59 and 62; disobedience
to, 23, 27, 95; divine, 9, 17, 47, 89, 91, 93, 98,
138; fiscal, 113; imperfection of, 119; just,
43; legal system, 31, 60, 114, 126; legislation,
13, 37, 52, 112–14, 119, 121, 137, 166n39;
Leopold’s law, 55, 83, 113–115, 152; Mosaic,
38, 45; natural, 14, 17, 21, 28–29, 35–37,
39–44, 46, 48, 89, 91–93, 95–98, 100, 138,
142, 148–49, 166n39, 176n30, 177n48, 185n44
(see also jurist, natural law; philosopher, natural
law; State of Nature); of nations, 17, 42;
New and Old Law, 47, 177n44 (see also Bible;
God; Hebrews); penal, 5–6, 119, 151, 156,
162, 164n9 and 12, 166n36, 176n33, 188n43;
positive, 14, 36, 38–39, 89, 96–97, 99, 138,
165n7, 175n12, 185n2; power of, 109, 118–19;
property, 81, 105; public, 71, 74; Roman, 33,
148–49, 151, 155 (see also jurist, Roman;
Salvius Julianus; Ulpian); Talion, 38–47, 91,
96–101, 164n9, 177n39 and 40, 190–91n62
(see also State of Nature, and Talion; ven-
geance and revenge, and Talion); Thirteenth
Amendment, 154, 160–61, 189n49; universal,
112; unjust, 44, 47–48; violation of, 17, 48,
109, 143; written law, 14, 17–18, 22, 39, 89–90
Index

Inde x

211

legislation. See law, legislation

legislator, 15, 33–34, 88, 118, 157, 163n6 (see also jurist); attack on, 147, 181n4; enlightened, 13; sovereign-legislator, 120, 142

Leibniz, Gottfried Wilhelm, 16, 166n38

Leo X, Pope, 12, 165n4

Leopold II, Grand Duke of Tuscany, 55, 82–83, 113, 120, 123, 129, 152, 170n39, 173n90 (see also Grand Duchy of Tuscany; law, Leopold's law); his Royal Highness, 52

liberty, 21–22, 25, 29, 33, 106, 110, 115, 157, 182n6; Bentham on, 158, 189n47; deprivation of, 107–08, 114, 117–18, 139, 142–43, 155; of the nation, 107, 126; in the State of Nature, 139; unrestricted, 18

Livy, Roman historian, 20, 33

Locke, John, 142, 181n3

Lombardy, 4, 55, 60, 122–23, 125, 128–29, 135–36, 143, 148, 152, 178n1

Lorraine, Francis Stephen, duke of. See Francis I

Lycurgus, Spartan lawgiver, 27

Machiavelli, Niccolò, 72, 135, 171n63, 181n37

magistrate. See judge

Maria Theresa, empress of Austria, 54, 122

Medici dynasty, 54, 83

Menzini, Benedetto, priest and poet, 9, 165n3

methods of punishment: branding, 115; decapitation, 176n30; exile, 22–23, 25, 29, 64, 73, 90–91, 143, 175n17; expulsion from society (see methods of punishment, exile); gallow, 13, 30, 93, 109, 115, 156, 186n13; imprisonment, 4, 16, 64, 112, 115, 121, 142, 152–53, 156, 158–59, 162, 186nn5 and 13, 188n39, 189n45 and 49, 190n52 (see also hard labour; prison; prisoner; slavery; transportation); mutilation, 115; pecuniary, 32, 38, 94, 105, 188n39; wheel, 106, 109, 125, 176n30; of women, 115, 152

Milan, 4, 49, 51–52, 55, 57, 70, 122–25, 127–30, 133, 135–36, 178nn1 and 2, 185n1

monarch, 16, 33, 46, 112, 116, 123, 126, 151 (see also despot; monarchy; sovereign; tyrant); benevolent, 112; enlightened, 123, 146

monarchy, 31, 94, 123 (see also despotism; monarch; sovereignty; tyranny); benevolent, 146–47

Montaigne, Michel de, 57–58, 60, 64, 70, 168n17, 174n4

Montesquieu, Charles-Louis de Secondat, Baron de, 20, 33, 60, 70, 86–87, 90, 95, 99, 139, 147, 149, 174n7, 176n27 and 29, 180n28, 182n13;

De l'esprit des lois (The Spirit of the Laws), 13, 32, 126; Persian Letters, 149

More, Thomas, 4, 188n39

Morellet, André, French Encyclopedist, 125–27, 129, 134–35, 138, 149, 178nn10 and 12, 182n8

mortmain (mani morte), 56, 76–77, 172n75

Mozzi, Giulio, Cavalier, 76, 173n84

Muratori, Lodovico Antonio, historian, 57, 126

Natale, Tommaso, jurist, 4

Neapolitan School, 164n9

necessity, 14, 20, 60, 66, 89, 110–11, 115–16, 120, 139, 143, 146, 182n10 (see also death penalty, as necessary; death penalty, as unnecessary; punishment, necessity of; utility)

Neri, Pompeo, jurist and politician, 55–56, 76–77, 82, 122

New World. See America

NorthWest Ordinance, 154, 159, 161–62, 189n49, 190n61

Novelle Letterarie (journal), 58, 70

obligation, 11, 15–17, 19, 22, 36, 39, 47–48, 91–92, 188n39 (see also convention; duty; responsibility; Social Contract); of a delinquent, 24; dissolved by death, 20; in State of Nature, 18, 20–22, 27, 89–90, 139, 147

offence. See crime

On Crimes and Punishments (Beccaria), 3, 48, 67–68, 70, 82, 124, 129, 155; argument of, 137–49; comparison with Pell's work, 4–6, 59–60, 62, 68, 89, 91–93, 95, 100–2, 135, 150–53, 169n28, 176n29, 183n17; excerpts, 105–12; genesis and character of the work, 125–27, 130–33, 146–47; patrons and publication, 130–33, 135–36; reception and impact, 125–26, 134–36, 150, 157, 162, 169n28, 182n9, 185n1, 187n31, 188n39 and 41, 189n47 and 48; translations, 125, 153, 186n15

Paganino, Mario Francesco, jurist and thinker, pupil of Genovesi, 164n9

pain, 15, 38, 40–41, 99, 110–11, 145, 176n30 (see also ends of punishment, physical suffering; punishment, corporal; torture)

Palmerston, Henry John Temple, Viscount, Home Secretary, 187n20

pardon, 29, 45, 93, 187n20, 190n53

Pascal, Blaise, French philosopher, 4

Pasta, Renato, 3, 164n8

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Phillimore, John George, British jurist, politician, 16–17, 22, 52, 66, 71, 75, 77, 83–85, 131, 134, 138. See also Verri, Pietro

patronage, 52, 68–69, 78, 135–36

Pelham, Henry, Prime Minister of Britain, 151, 163n6

Pelli, Giuseppe Bencivenni, 3–6, 48–84, 127, 135, 150–153, 163n1 and 6, 164n9 and 11, 165nn2, 4, 5, and 16, 166n36 and 39, 167nn51 and 63, 170nn33, 37 and 39, 170–71n46, 171n64, 173n90, 174nn4 and 8, 175nn14, 17, 19, 21 and 22, 176nn30, 31, 32, 35 and 38, 177nn39, 40, 44, 46 and 48, 183n17, 185n2 (see also Against the Death Penalty; Efemeredi);
as abbatte, 56; as author of biography of Dante, 72, 85; 171n63; and Beccaria, 48–53, 56–57, 67–70, 81–82, 85–86 (see also Against the Death Penalty, comparison with Beccaria’s work); in career in Tuscan administration, 3, 54–57, 68–69, 75–81, 168nn13, 172nn77 and 83, 173n84, 87 and 88; a Catholic, 5, 56, 58, 70, 100; and definition of punishment, 15–16, 37, 39, 96; as director of the Uffizi Gallery, 3, 55, 58, 83; as editor of Novelle Letterarie, 58, 70; family and background, 3, 57, 84, 168n10; friends, 58, 61–62, 68–72, 74–76, 83, 85, 91; as judge, 59, 64–67, 75, 77, 80–82, 169n25 (see also Pratica Segreta di Pistoia e Pontremoli);
as law student, 57, 75; as member of various Academies, 70–72, 75; as a philosopher, 58, 65–66, 82, 91; Serie dei ritratti degli uomini illustri toscani, 52; and torture, 65–66, 81–82, 85; as Verecundo, 72, 74, 171n63; and women, 58, 168n10; work (see Against the Death Penalty)

penal colonies, 157, 187n20, 188n36. See also transportation

penal law. See law, penal

penal servitude. See slavery

penal system, 5, 62, 69, 87, 94–95, 102, 138, 159, 176n32, 189n47 (see also law, legal system; law, penal); critique of, 57, 77, 141; of Gelopolis, 72–74

penitentiary. See prison

Pennsylvania, 159, 190nn52 and 53. See also America

penology, 127, 151

petitions of amortisation. See mortmain

Philip II, king of Spain, 31, 166n28

Phillimore, John George, British jurist, politician, MP for Leominster, 187n20

Philosophers, 112, 136, 147, 150–51 9 (see also philosophy); ancient, 29, 41–43 (see also Cicero; Eustratius; Seneca); Beccaria (see Beccaria, as a philosopher); Christian and gentle, 41, 97; Dutch and German, 5; English and British, 4, 126, 151–52, 154, 187n31, 188n41; French, 5, 60, 86, 99, 125, 128, 138, 149, 177n46 (see also Montesquieu; Rousseau; Voltaire); Italian, 181n37; natural law, 5, 86, 97, 99–101; Pelli (see Pelli, as a philosopher);

Transalpine Enlightenment, 86, 149

philosophy, 126, 129–30, 144, 146, 179n12 (see also philosophy); enlightened, 87; secularist, 149

Piccolomini, Tommaso, senator, 79, 81, 172n83

Pisa, 54, 57, 71, 75

Pistocia e Pontremoli. See Pelli, as judge; Pratica Segreta di Pistoia e Pontremoli

Plato, 36, 183nn17 and 21

Pragmatic Sanction (1713), 54

Pratica Segreta di Pistoia e Pontremoli, 58–59, 64, 66, 68, 77, 79–80, 83, 169n24

prejudice, 22, 35, 49, 50, 68, 98

prevention. See ends of punishment, prevention

prison, 46, 120, 142, 152–53, 156–59, 181n37, 187n19, 189n50 (see also hard labour, imprisonment at; methods of punishment, imprisonment; slavery; transportation);

Auburn prison NY, 159; bridewells, 156; house of repentance, 159; hulks, 188n35; prisoner, 156, 159, 161, 163n6, 187nn19 and 20, 188n35 (see also war, prisoner of); Protector of Prisoners (see Verri, Alessandro, Protectors of Criminals/Prisoners; Verri, Pietro, Protector of Criminals); treatment of, 131, 133

privileges, 123; of the Church, 56, 124, 167n2

Ps.-Quintilian, 20, 90, 165n12

public labour. See hard labour, as public labour

Pufendorf, Samuel, Baron von, German jurist and political philosopher, 86, 97, 100, 146, 174n8, 175n14, 181n3, 185n44

Pugliesi, Filippa, character in Decameron, 47, 177n44

punishment, 18–19, 29, 31–35, 39, 44–45, 64–65, 89, 95, 141, 158, 160–61, 190n52 (see also chastisement; cruelty; death penalty; ends of punishment; evil, hard labour; methods of punishment; sanction; slavery; State of Nature; torture; transportation; utility; vengeance and revenge; violence; war); as alternative to death penalty (see death penalty, alternative to; hard
labour, as alternative to death penalty); appropriateness, 32, 41, 46, 85, 94, 98, 106, 121, 144, 152 (see also death penalty, as appropriate); barbarity of, 30, 32, 93, 181n4 (see also death penalty, barbarity of); capital (see death penalty); civil, 14, 17, 19, 37, 88–89, 165n7, 175n12; conventional, 14, 17, 19, 37–38, 88–90, 165n7, 175m12; corporal, 14, 23, 39, 105–6, 155, 186n13, 188n39 (see also ends of punishment, physical suffering; torture); criminal, 37; of criminals (see criminals, punishment of); definition of, 14, 17, 37, 100 (see also Grotius, and definition of punishment; Heineccius, and punishment; Pelli, and definition of punishment); execution, 4, 25, 30, 86, 92–94, 110, 116–17, 141–44, 146, 163n6, 185n1; exile (see methods of punishment, exile); extreme (see death penalty); fear of, 14–15, 32, 73, 106, 144, 176n30 (see also death penalty, as deterrent; ends of punishment; hard labour, as deterrent; slavery, as deterrent); in Gelopolis, 73; harshness of (see punishment, scale or severity of); by Heaven, 46; ideal, 91; inevitability of, 106, 118–19; intensity of (see punishment, scale or severity of); as just, 20, 38, 46, 90, 101, 117, 120, 141, 182n16 (see also death penalty, as just or unjust punishment); legitimacy of, 17, 19, 24, 27, 97, 141 (see also death penalty, as a legitimate measure); leniency (see punishment, moderation in); method of (see methods of punishment); minimalisation of (see punishment, moderation in); modernisation in, 14, 33, 87, 92, 98, 106, 108, 113–14, 139–40, 148 (see also utilitarianism); natural, 14, 22, 32, 38, 90; nature of, 61, 112; necessity of, 13, 15, 26, 37, 42, 48, 92, 120, 126, 139, 141, 182–83n16 (see also death penalty, as necessary; death penalty, as unnecessary); pecuniary (see methods of punishment, pecuniary); proportionality of, 33, 46, 87, 94, 98, 106, 113, 116, 118, 137, 140, 176n29; as a public spectacle, 32, 118, 144 (see also death penalty, as a public spectacle); reversibility of, 120 (see also death penalty, irreversibility of); as a public spectacle; scale or severity of, 31, 33, 38–39, 44–46, 56, 86, 94–96, 98, 106–8, 117–18, 121, 137, 140–41, 144, 152, 181n4, 182–83n16, 183n19; in Scriptures, 45–46; secondary (see hard labour; slavery); and Social Contract, 139–40, 182–83n16; structure of, 95, 137; Talion (see law, Talion); theory of, 148; ultimate (see death penalty, as ultimate punishment); unnecessary (see punishment, necessity of); usefulness of, 97–98, 182–83n16 (see also death penalty, usefulness of); as vice, 86; visibility of, 120, 153; wheel (see methods of punishment, wheel)

rationality, principle of, 99
Ravillac, François, assassin of Henry IV, 26, 165n17
Reautan (Monsieur), held a position in Secretariat of State, 80, 173n84
reform, 4, 6, 11, 38, 47, 54–55, 70, 82, 122–23; of the Church, 56, 87, 123–24; of criminals (see ends of punishment, reform of criminal); of criminal law (see reform, legal); of judicial practice, 63; legal, 6, 60, 63, 65, 82, 88, 101, 113, 126, 146, 152, 173m90; penal, 56, 59–60, 74, 83, 101, 127, 130, 136, 164n10, 170n39, 190n52; of prison system, 156; programme of, 55, 124; reform of judicial administration, 55, 126
Regency Councils, 54, 76–80
religion, 13, 29, 35, 58, 71–72, 86–87, 93, 110–11, 124, 145, 174nn4 and 6, 176n31. See also Catholicism; Christianity
responsibility: of individuals, 11, 17, 22, 36, 96, 117; of various powers, 33, 35, 39, 42, 83, 88, 113, 172n77, 179n23 and 24, 184n40
revenge. See ends of punishment, revenge; vengeance and revenge
revolution, 107–8, 149; revolutionaries, 123; revolutionary activities, 176n31
Richard, Domenico, 80, 168n3
Richecourt, Emmanuel, Count de, president of the Regency Council of Tuscany, 54–55, 167n2
right, 13–14, 22, 33, 39–40, 42–44, 94, 98, 106, 120, 139, 184n29 (see also French Declaration of Rights); to obtain satisfaction, 18, 30, 44 (see also vengeance and revenge); human rights, 185n2; individual, 19, 28, 31, 37, 42, 60, 106, 124, 127, 130, 158; to kill, 20, 30, 37, 45, 90, 106–7, 142–43 (see also suicide); to live, 90, 143; to punish, 20–21, 23, 39, 42–44, 90, 98, 139, 142; to self-defence or self-preservation, 18–19, 21, 27–29, 37, 89–90, 92–93, 142, 176n35, 184n26; to vengeance, 98; to war, 21, 23, 44, 100–101, 143, 177n48
Risi, Paolo, associate of the Accademia dei Trasformati, 148, 184n40, 186n11; Opinion of
Risi, Paolo (continued)

Beccaria, Gallerati Scotti and Risi against the death penalty, 115–21

Robespierre, Maximilien de, French lawyer and revolutionary, 184n40

Romans (ancient), 12, 20, 32–33, 36, 73, 90, 94, 149, 151. See also Antonines; Cicero; jurist, Roman; Livy; Salvius Julianus; Seneca; sovereign, Roman emperors; Ulpian

Rome, 165n4; ancient, 12, 32, 34, 94, 113, 152, 176n32

Romilly, Samuel, lawyer and politician, 126

Rousseau, Jean-Jacques, 9, 57, 87, 142, 147, 168n17, 177n46, 183n23, 184n29; Confessions, 57; Discourse on the Arts and Science, 86; Discourse on the Origin and Foundations of Inequality, 86; Emile or on Education, 165n2; Social Contract, 5, 38, 92, 100–101, 106, 130, 137–40, 142–43, 145–46, 148, 155, 177n51, 182nn10 and 15, 182–83n16, 183n19 (see also contractualism; convention; Hobbes, Covenant; obligation; punishment, and Social Contract; Rousseau, Social Contract; utility) social pact. See Social Contract

society: civil, 5, 27, 88, 90–92, 100, 166n39. See also Social Contract; state, civil; State of Nature

Socrates, 12, 36, 87

Solon Secundus, 4, 163n6

sovereign, 14, 16–17, 22, 24, 26, 31, 33, 44, 48, 50, 65, 93, 97, 107, 115–17, 120, 139, 182n15 (see also despot; God; legislator; monarch; tyrant); Christian emperors, 186n5; emperor of Austria, 54, 76–78, 80, 123, 129, 168n13, 178n7 (see also Charles VI; Francis I; Habsburgs; Joseph II; Maria Theresa); Roman emperors, 32, 36, 46, 94, 186nn4 and 5 (see also Antonines); European, 126; Grand-duke of Tuscany (see Leopold II); legislator (see legislator, sovereign-legislator); tsarina (see Catherine the Great; Elisabeth) sovereignty, 106, 123

Sparta, Spartans (ancient), 26, 34, 38, 108, 166n34

State of Nature, 5, 17–22, 27–28, 39, 90, 92, 100–101, 110, 142–43, 147, 166n39 (see also duty; justice, in State of Nature; law, natural; obligation, in State of Nature; Social Contract; society, civil; war, in State of Nature); and punishment, 17–20, 25, 28, 39, 43, 88–90, 100, 139, 182n12; and Talion, 43–45, 98

State Secretariat (Tuscany), 76–82, 168n13, 169n24, 170n33, 173nn84 and 87. See also Pelli, career in Tuscan administration

state, 21, 24, 31, 34–36, 56, 83, 95, 99, 114, 116–17, 120, 159–60, 162, 175n22, 177n45,

transportation); Penal Servitude Bill (see hard labour, Hard Labour Bill); perpetual slavery or servitude, 106, 109–10, 117–18, 144–45, 150, 152–53, 155, 184n33; as punishment, 106, 109, 112, 118, 148–49, 151–52, 155, 158, 160, 162, 163–64n6, 186n8, 188n39, 189n47, 190n52; qualified servitude, 187n20; servus poenae or servitus poenae, 149, 151, 162, 186n4 and 6; as substitute for death penalty, 4, 6, 108, 117, 144, 150–151; 158; temporary, 106, 155

Smith, Richard, English civil servant, editor of Bentham, 158, 188n44

sociability, 60, 124, 127. See also equality

social contract, 5, 9, 57, 87, 142, 147, 168n17, 177n46, 183n23, 184n29; Confessions, 57; Discourse on the Arts and Science, 86; Discourse on the Origin and Foundations of Inequality, 86; Emile or on Education, 165n2; Social Contract, 5, 38, 92, 100–101, 106, 130, 137–40, 142–43, 145–46, 148, 155, 177n51, 182nn10 and 15, 182–83n16, 183n19 (see also contractualism; convention; Hobbes, Covenant; obligation; punishment, and Social Contract; Rousseau, Social Contract; utility)
INDEX

183n17, 185n2 (see also America; Grand Duchy of Tuscany; government; Regency Councils; State Secretariat; State of Nature); Florentine State, 55, 82; preservation of, 143; civil, 19, 25, 90

Steele, Richard, Irish writer and politician. See Addison

suffering. See ends of punishment, physical suffering; pain

suicide, 36–37, 96, 107, 176n35 and 36. See also right, to kill

Sumner, Charles, senator from Massachusetts, 160, 190n61

Supreme Economic Council, 135, 179n17

Talion. See death penalty, and Talion; law, Talion; State of Nature, and Talion; vengeance and revenge, and Talion

terror, 15, 108–9, 114

Tertullian, early Christian author, 47, 177n44

The Spectator (magazine), 124

Thirteenth Amendment. See law, Thirteenth Amendment
torments. See torture

Torriggia, Giovanni Battista, 125
torture, 26, 60, 102, 106, 119, 125, 127, 147–48 (see also abolition, of torture; ends of punishment, physical suffering; pain; Pelli, and torture); barbarity of, 65, 147

translation: of Beccaria (see On Crimes and Punishments); of Bentham, 158, 188n44; of Pelli (see Against Death Penalty)

transportation, 154, 156, 159, 187n19 and 20, 189n45. See also abolition, of transportation; slavery; penal servitude

Tuscany, 50, 54–56, 76, 83, 113–14, 120, 122–23, 125, 168n3. See also Grand Duchy of Tuscany; Leopold II; Regency Councils
tyranny, 26, 32–33, 105, 140 (see also despotism); and Gelopolis, 73
tyrant, 26, 31–33, 38, 94, 106, 110. See also despot

Uffizi Gallery. See Pelli, director of the Uffizi Gallery

Ulpian, Roman jurist, 28, 151. See also jurist, Roman

United States. See America

utilitarianism, 5, 86, 138, 148, 187n31. See also necessity; Social Contract; utility

utility, 30, 93, 127, 139 (see also equality; necessity); principle of, 4, 99, 143, 147, 182n9, 189n47 (see also utilitarianism); public, 92, 124,

182nn6 and 10 (see also sociability); of punishment, 139, 141, 149 (see also death penalty, usefulness of; punishment, necessity of); and Social Contract, 143

Vattel, Emer de, lawyer, 20, 86, 90, 100, 142, 175n14, 181n3

vengeance and revenge, 11–12, 16, 24, 27, 29–30, 37, 41–47, 64, 91–93, 97–99, 175n19, 177n44, 185n41 (see also ends of punishment, revenge; injury); inhuman, 41, 91, 96–97; private, 15, 43, 89, 98, 175n22; public, 26, 43, 64, 98, 175n22; and Talion, 41, 43–44, 47, 97–99; uselessness of, 91–92

Verecundo. See Pelli, as Verecundo

Verri, Alessandro (younger brother of Pietro), Italian author, 52, 127–34, 178n6, 179n21 and 22, 180n30 and 33, 181n4; Protector of Criminals/Prisoners, 130–32

Verri, Pietro, Lord Count (older brother of Alessandro), Italian economist, historian and philosopher, patron and mentor of Beccaria, 51–52, 85, 89, 128–36, 138, 178n3, 6, 7 and 8, 179n15, 17, 21 and 22, 180n26, 28, 30, and 33, 181n4; family, 179n16; founder and leader of the Accademia dei Pugni, 123–24, 127–28; member of the Supreme Economic Council, 135, 179n17; Protector of Criminals, 180n30; as Sulla, 178n6

Vienna, 54–55, 76–81, 122, 124, 136, 178n8

violence, 29, 34, 31, 105–6, 109, 116, 157, 171n64; and punishment, 126, 141

Virginia. See America

Voltaire, French philosopher and historian, 52, 56, 99, 125, 129, 149, 177n46, 178n9 and 11, 180n28, 182n9

war, 110, 117, 124, 160, 171n64, 185n2, (see also death penalty, as an act of war; right, to war); civil, 94, 161; of criminals against the state, 143; Grotius and just war, 20–21, 175n14; prisoner of, 156; as punishment, 20, 23, 77, 175n14; in State of Nature, 20, 37, 44, 90, 98 warfare, 17, 20–21, 26, 175n14; in the State of Nature, 88, 90

Webster, Daniel, United States Secretary of State, 162, 191n65

Winstanley, Gerrard, English radical, 4, 163n4

women, 14, 42, 47, 74, 168n10 (see also hard labour, and women; imprisonment, and women); in Gelopolis, 74, 171n61

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