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SPEECH

THE BRENNAN LECTURE: MONTESQUIEU ON CRIMINAL JUDGMENTS

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It is a great honor to be at Oklahoma City University School of Law tonight to present the Brennan Lecture. I am extremely grateful for the invitation and for the warmth of my welcome from the faculty and Dean Paula Dalley. I am deeply honored by Professor Andrew Spiropoulos's very generous introduction. As he mentioned, we met as undergraduate students. In fact, we began the study of political theory together. We talked often about the subject; I learned much from Andy as he was smarter and better read than I. I am very fortunate to be able to call him a friend, and I recommend to all students to seek out people who will challenge you in intellect and in achievement as Andy challenged me.

I am here to speak to you about Montesquieu and criminal judgments. I do so with a great deal of humility. I am not a lawyer. I know that you are students of the law. Many of you are practicing lawyers, prosecutors, and defense attorneys. You have an insight into the law and its

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consequences that I do not. I do hope, though, that my comments on Montesquieu's treatment of criminal judgments can offer you a new appreciation of the law.

I would like to say a little about who Montesquieu was. His dates are 1689 to 1755. So, he lived during the Enlightenment. He was a French aristocrat from Bordeaux; he was from the provinces. Although France was Catholic at the time and the Edict of Nantes had been revoked, he married a Protestant. He finally broke into French society with the publication of the *Persian Letters* in 1721. Scholars are celebrating its 300th anniversary this year. Montesquieu's great work, though, is the *Spirit of the Laws*.¹ It was published anonymously in Geneva in 1748.

Many people know about Montesquieu because they have read the *Federalist Papers* carefully. In justifying the United States Constitution, Publius referred frequently to Montesquieu. For example, Madison in *Federalist No. 47* on the separation of powers declares:

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind.²

Montesquieu is the oracle. What Madison is referring to is Montesquieu's very important chapter on the English Constitution in Book 11, chapter 6 of the *Spirit of the Laws*. He examines there how the English Constitution contains a separation of powers and outlines the three famous powers of government: the legislative, the executive, and the judicial. This is an extremely important political influence.

My topic tonight is certainly related to the human significance of the separation of powers, but this particular chapter is a very small part of the work. Again, this discussion occurs in Book 11, but the work contains thirty-one books and hundreds of chapters. Indeed, in his preface, he speaks of "the infinite things in this book."³ Now, you may think that's an exaggeration—and it is, certainly. But there are a lot of things in it. He declares that it is the work of twenty years. He doesn't just examine the English Constitution, or the French monarchy, or European politics. He looks at every society that was available to him through the literature of the day. His commentary reveals his knowledge of ancient and modern

1. MONTESQUIEU, *THE SPIRIT OF THE LAWS* (Cambridge Univ. Press ed., Anne M. Cohler et al. trans., 1989).

2. *THE FEDERALIST NO. 47*, at 298 (James Madison) (Clinton Rossiter ed., 2003).

3. *THE SPIRIT OF THE LAWS*, Preface, xliii.

histories; he draws on the accounts of travelers to the Indies, Africa, China, Turkey, Japan, Persia, Mongolia, Russia, and the Americas; he cites digests of laws—the Justinian code and the Theodosian code, for example—religious treatises, Greek tragedies, and ancient geographical records. And oh, I know I have left out lots of categories of sources. In short, he knows a lot of stuff, and he writes about it. He has a point, therefore, when he refers to the infinite things in the work.

Montesquieu also begins by saying, “If, among, the infinite number of things in this book, there is any that, contrary to my expectations might give offense, at least there is none that has been put here with ill intent.” He continues: “I do not write to censure that which is established in any country whatsoever. Each nation will find here the reasons for its maxims....”

Thus, he seems to seek to justify all practices everywhere. Is Montesquieu, then, merely an observer? He wrote this big book as a catalogue of observations? But then he continues: “...and the consequence will naturally be drawn from them that changes can be proposed only by those who are born fortunate enough to fathom by a stroke of genius the whole of a state’s constitution.” He is here contemplating the possibility of change, although he seems to have set a very high bar, indeed. Those who propose changes need to possess a stroke of genius. One might ask whether in his view he himself was born so fortunate to so fathom a state’s constitution “by a stroke of genius.”⁴ Perhaps he wrote this big book for that very purpose. By the way, at the end of this preface, he points to his own genius! “If this work meets with success, I shall owe much of it to the majesty of my subject; still, I do not believe that I have totally lacked genius.”⁵ In his own estimation, then, he has the capacity to suggest changes. Is that his intention, though? We might conclude from this that he contemplates the possibility that he might propose changes. To wish to change would suggest some amount of criticism precisely because what is, can be improved. The question arrives, then, does he want to observe or does he want to suggest changes. If the latter, then he would have to be some type of genius who can do so while simultaneously averting unintended consequences.

Because of his exhaustive study of the multiplicity of cultures and his avowed desire not to censure and his general tendency to withhold judgement, which we have just seen, he has long been associated with

4. *Id.*, Preface, xlv.

5. *Id.*, Preface, xlv.

social science neutrality. For example, the founders of sociology pointed to his thought as a precursor to their discipline. They emphasized how he observes and documents but seems not to judge. The understanding of Montesquieu as a relativist or as merely as an observer of the multiplicities of human culture is an inadequate understanding of Montesquieu's thought and its effect, I think. Montesquieu is not always neutral, and this comes out, I think, particularly in his treatment of criminal judgments.

On the topic of criminal judgments, Montesquieu quite explicitly contemplates the possibility of change on the basis of universally valid principles. He declares that there are better and worse ways to proceed in criminal judgments; he countenances the possibility of improvement, of development, of progress toward a universal standard. Moreover, he actually offers a form of legislation. That is, he proposes a way to conceptualize criminal judgments and their respective punishments that was not operative anywhere during his time. On this topic, then, he is not a mere observer but rather something of a lawgiver.

For someone with a reputation for neutrality, it is quite remarkable that he offers the following statement: "The knowledge already acquired in some countries and yet to be acquired in others, concerning the surest rules one can observe in criminal judgments, is of more concern to mankind than anything else in the world."⁶ Montesquieu, who is so reluctant to make superlative judgments, to make universal judgments, makes one here. Also, he does not say, for example that this is the most important knowledge related to politics or to political philosophy; he says it is the most important knowledge simply. In addition, he declares that there is a specific knowledge out there to be had. Because he posits a specific knowledge, he is far from affirming as all equally valid the multiplicities of approaches revealed by the vast array of cultures. He declares something far less particular and flexible. He declares a correct and an incorrect way to proceed. There is a specific knowledge out there to be had. Some nations have discovered it and applied it. Others have not done so and others imperfectly.

Why would Montesquieu say that criminal law is the most important knowledge? His answer seems to be something like this: we enter into government to protect ourselves. Our compatriots cannot always be trusted to have our best interests in mind. Our persons and our property are vulnerable in the state of nature. Thus, we establish a government to

6. *Id.*, Book 12, chap. 2, 188.

protect us. We endow that government with significant powers to protect us from foes, foreign and domestic. When it comes to criminal laws, that power that is supposed to protect us can be brought against us to destroy us: it can deprive us of our liberty, our property, and our very lives.

Indeed, Montesquieu's very notion of liberty is directly related to criminal laws. He declares: "Political liberty in a citizen is that tranquility of spirit which comes from the opinion each one has of his security, and in order for him to have this liberty the government must be such that one citizen cannot fear another citizen."⁷ So, only when we are free from arbitrary accusations are we truly free.

Now, let's take a step back for the moment. As students and professors of the law, you know how important law is to society. Many of you will go on to practice criminal law as defense lawyers and prosecutors. Montesquieu, this famous Enlightenment philosopher, violates his usual moderate tone and neutrality to declare that the knowledge of proper criminal procedure is the most important knowledge available to human beings. I hope that these reflections fortify you in your study and your future practice of the law.

Okay, back to Montesquieu. He also maintains here that when it comes to criminal procedure there is a possibility of progress. Human beings can improve. That suggests that he does not approve of all the various practices of the multiplicities of cultures. Indeed, on this issue he becomes quite critical. One sees this when he turns to the use of witnesses during trials and offers examples of specific nations that have not discovered these principles. "The laws that send a man to his death on the deposition of a single witness are fatal to liberty," he judges.⁸ Think about that. His study of all his source material shows him that there were laws that condemn on the basis of one witness. He then points to nations in antiquity that required one additional voice to condemn. In modern times, two additional voices are required, and he says that those are superior. On this topic, then, he makes judgments.

But Montesquieu does more; he legislates, a very basic legal code. This occurs in Book 12, chapter 4 entitled "That liberty is favored by the nature of penalties, and by their proportion." There he declares that there are four sorts of crimes and lists them in this order: first, crimes that "run counter to religion"; second those that run counter to "mores"; third, those that run counter to "tranquility"; and finally, those that run counter "to the

7. *Id.*, Book 11, chap. 6, 157.

8. *Id.*, Book 12, chap. 3, 189.

security of the citizens.” Although he treats the crimes of religion first, suggesting that they are of the highest magnitude, he, in fact, places them beyond the purview of the political authority; he denies the political authority the power to punish them. He specifies that only the religious authority can punish religious crimes. Further, the religious authority, he declares, has no power to order any type of corporeal punishments. These are the possible punishments for “crimes against religion”: “deprivation of all the advantages given by religion” such as “expulsion from the temples; deprivation of the society of the faithful for a time or forever; shunning the presence of the sacrilegious; execration, detestation, and exorcism.” If an individual commits a crime against religion—sacrilege or blasphemy—the only power that the religion has is to punish with religious sanctions. He then examines how political authorities have frequently infringed on this dictum: “For if the magistrate, confusing things, even searches out hidden sacrilege, he brings an inquisition to a kind of action where it is not necessary.” His use of the word inquisition here is important. He is an opponent of the inquisition. The origins of the inquisition were in southern France. He continues that such action on the part of magistrates “destroys the liberty of citizens.”⁹ With this statement, he renders illegitimate the gruesome punishments of the Catholic and Protestant inquisitions. The charred victims of the religious authorities in Europe have been tortured and killed illegitimately—nay, despotically—he judges.

But this critical chapter of Montesquieu accomplishes much more as he here describes the criminal code of no existing state. Thus, rather than describing, he here prescribes—he legislates. And he associates this legislation with no particular form of government—neither a republic, nor a monarchy. Again, Montesquieu is seen as not offering judgment, as being neutral, but he here offers both judgment and legislation.

Montesquieu is so interested in criminal law and punishment that he touches on accusations, judgments, penalties, and punishments at least once in every single one of the thirty-one books of the work except Book 9, which is on the topic of how states defend themselves from foreign attack. The topic of taxes, for example, occasions his reflection that tax fraud should not be punished with “extravagant penalties like those inflicted for the greatest crimes.” He explains that too harsh a response to a minor interaction “removes all proportion in penalties” and thus people “whom one could not consider wicked are punished like scoundrels, which

9. *Id.*, Book 12, chap. 4, 189-90.

is the thing in the world most contrary to the spirit of moderate government.”¹⁰ Montesquieu presents, throughout the work, a vast multitude of perpetrators of violent inhumanity. For example, his text offers the following: the high court of ancient Athens sent a child to death for putting out the eyes of a bird;¹¹ medieval kings of England tortured the Jews of their realm in order to appropriate their wealth;¹² Emperor Tiberius had the executioner rape young girls so as to evade the law that declared that girls who were not nubile could not be put to death;¹³ Japanese officials sought to punish a young woman who participated in a romantic intrigue as well as another who did not reveal the other’s involvement by shutting them both “in a box studded with nails until they died”;¹⁴ magistrates “in the East” “exposed women to elephants trained for an abominable kind of punishment”;¹⁵ and finally, the Portuguese Inquisition in Montesquieu’s own time burned a young Jewish woman for heresy.¹⁶ I will have more to say about that last example in a moment. Because I don’t want to give you the impression that he thinks his own nation is a haven of reason and mildness, I will mention that he notes that French officials break highway robbers on the wheel to no good effect. People still rob as before. “Experience has shown that, in countries where penalties are gentle, the citizen’s spirit is struck by them as it is elsewhere by heavy ones,” he notes.¹⁷ Therefore, Montesquieu draws these examples of cruel acts, most vengeful acts of punishment, from modern as well as ancient times, from the West as well as the East.

But ultimately, I think that his critical project, his hope is for amelioration, is aimed at Europe. Montesquieu very cautiously shows us how ingrained the notion of harsh punishment is in Western, European culture. He says, speaking of an Eastern culture, in the context of the most monstrous types of criminal penalties: “Souls that are everywhere startled and made more atrocious can be guided only by a greater atrocity.”¹⁸ That is a terrible place for a society, and a great challenge for a possible legislator to attempt to transform those souls that have been disfigured by

10. *Id.*, Book 13, chap. 8, 218.

11. *Id.*, Book 5, chap. 19, 71.

12. *Id.*, Book 21, chap. 20, 388.

13. *Id.*, Book 12, chap. 14, 200.

14. *Id.*, Book 12, chap. 17, 202.

15. *Id.*, Book 12, chap. 14, 200.

16. *Id.*, Book 25, chap. 13.

17. *Id.*, Book 6, chap. 12, 84-85.

18. *Id.*, Book 6, chap. 13, 87.

too harsh penalties. I think he suggests that Western culture is replete with harsh punishments to which he would be inclined to apply the term atrocious.

Western culture has two main founts, Classical philosophy that originated in Greece and then in Rome and the Biblical tradition. First Judaism, based on the Old Testament, and then Christianity, focused on the New Testament. I believe that Montesquieu intends to show how ingrained harsh punishments are in Western Culture.

There is no greater representative of the Classical tradition than Plato. If one examines the various mentions that Montesquieu makes of Plato scattered throughout the thirty-one books of the *Spirit of the Laws*, one finds that Montesquieu quite frequently points out that Plato prescribes very harsh punishments. Plato wrote long dialogues, the *Republic* and the *Laws*. He is not a legislator, like Solon for Athens or Lycurgus for Sparta. *But*, Montesquieu insists on treating him as if he were one. So, Montesquieu takes provisions from these cities in speech in the dialogues and refers to them as “Plato’s laws.” In this manner, Montesquieu shows how Plato would punish with death magistrates in a republic who receive gifts.¹⁹ And he shows how Plato would also punish with death citizens of a republic who engage in commerce.²⁰ Similarly, he displays how Plato endeavors to punish those who commit suicide.²¹

In another instance, he states that in “Plato’s *Laws*, those who neglect to alert or aid magistrates are to be punished” and then observes that Plato’s law “would not be suitable today” as modern states have a “party for the public”—that is, a prosecutor—so that the citizens can remain “tranquil.”²² Recall the term tranquil in his definition of liberty. If citizens are not tranquil, then they not free. (By the way, he lets us know here again that progress has been made in criminal procedure.) Finally, and most significantly, I think, Montesquieu quotes Plato from Book 9 of *The Laws*: “If a slave...defends himself and kills a free man, he should be treated as a parricide.” “Montesquieu comments: “This is a civil law that punishes natural defense.”²³ Human beings have a natural right to defend themselves. This dry statement occurs in a chapter entitled “On Civil Laws that Are Contrary to Natural Law.” Here we see Montesquieu speaking of

19. *Id.*, Book 5, chap. 17, 67.

20. *Id.*, Book 4, chap. 8, 40.

21. *Id.*, Book 29, chap. 9, 606; Book 29, chap. 16, 615.

22. *Id.*, Book 6, chap. 8, 82.

23. *Id.*, Book 26, chap. 3, 496.

natural laws. Natural laws, in applying to all of humanity, are universal as opposed to particular. Here he notes how Plato's laws violate natural law. I believe that this is as close as Montesquieu himself comes to calling a law unjust in the entire work, and that opposition is directed at Plato. So this great intellectual fount of Western culture has made us more inured than we should be to harsh punishments, Montesquieu suggests.

Montesquieu also looks hard at the European religious tradition. He must be very circumspect, however. It was not safe to criticize religious authorities. The ruling authority of his time certainly had not implemented the legislation that we saw him suggest in Book 12, chapter 4 (that religious crimes could only be punished with religious penalties). Indeed, even though Montesquieu proceeded so cautiously, the work was condemned as being offensive to religious authorities. The University of Paris, which was a Catholic Institution, voted to censure the work, and the Papacy placed it on the Index of Prohibited Works. He spent the last years of his life defending his work against various accusations. He feared that it would be suppressed. If that happened, the work of twenty years of his life would be lost. To see his view of punishing that derives from the religious tradition, we need to examine a chapter entitled "On revealing conspiracies." Judging from the title, one would readily conclude that it does not have anything to do with religion at all. One really needs to consider the chapter title in its original French: "*De la révélation des conspirations.*" Now, the content of the chapter discusses the extreme earthly punishment that the Old Testament commands that human beings inflict on those who defect from God. As we consider that content, it becomes clear that an alternative chapter title could be "Revelation *on* conspiracies." Montesquieu begins this chapter not with an example of a conspiracy against an earthly ruler, but rather with a turn against a heavenly one by speaking of the punishment of stoning that the thirteenth chapter of Deuteronomy declares family members should themselves inflict on their kin who "entice [them] secretly" to abandon the one true God for other gods. "If thy brother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly saying: 'Let us go to other gods,'" "thou shalt stone him." He provides a note in his text to the thirteenth chapter of Deuteronomy. Thus, Montesquieu's treatment of the revelation of conspiracies encompasses Revelation itself, and he includes in his note the specific reference to chapter and verses. He here condemns this Biblical approach to thwarting conspiracy, pronouncing that "[t]his law of Deuteronomy cannot be a civil

law among most of the peoples that we know because it would open the door to all crimes.”²⁴ He thus states his absolute opposition to this notion of punishing; if it were implemented it would not expunge crime but would perpetuate crime.

For years, this particular chapter troubled me. It seemed to be that this quotation had to be more significant than the injunction of a people thousands of years ago. I did find that this passage was cited in the execution for heresy of two particularly prominent individuals.

Although Montesquieu does not mention the fact here, this particular chapter of Deuteronomy was notorious for justifying the prosecution of heresy and hence of executions in Europe.

For example, Robert Bellarmine, Jesuit Archbishop and Cardinal Inquisitor, who sentenced Giordano Bruno to execution as a heretic in 1600, cited it.

“We, then, will briefly show that incorrigible heretics, and especially recidivists, can and should be expelled by the Church and be punished by the secular powers with temporal punishments and even by death itself. The first proof is from Scripture: The Scripture of the Old Testament (in Deuteronomy XIII, 12) commands most severely that false prophets who encourage the worship of false gods be put to death.”²⁵ “

John Calvin also made use of the passage when he justified the execution for heresy of Michael Servetus in Geneva in 1553. Calvin wrote: “But, now let us hear something of the law God instituted in his church.” “He ordered that a prophet and dreamer of dreams be put to death, who attempted to lead the people away from the right worship of piety.” Now, “we contend to preserve the law set forth by God, so that the stricture of ascertained truth of punishments of the peoples should succeed.”²⁶ Calvin cited Deuteronomy 13 in support of his resolution. Calvin understood God as commanding earthly punishment for religious crimes. Reflection on this passage, therefore, reminds us that not just Catholics, but also Protestants were responsible for intolerance and grave injustices. So, Montesquieu says punishment is very important. He urges gentleness. He condemns this

24. *Id.*, Book 12, chap. 17, 202.

25. Bellarmine, Saint Robert, *De Laicis: Treatise on Civil Government*, trans. Fr. James Goodwin, chap. 21. <https://catholicism.org/de-laicis.html>.

26. John Calvin, *Faithful Exposition of the Errors of Michael Servetus in Opera Quae Supersunt Omnia: Tractatus Theologici Minores*, edited by G. Baum et al. (Brunswick, Germany 1868), 475-76.

particular passage of the Old Testament, which was, in fact, continuing to have an effect on Europe in the 16th and 17th centuries.

Montesquieu also shows that such atrocities were going on in Europe during his time, during the so-called enlightened Europe of the 18th century. His most heart-rending chapter appears in the twenty-fifth book. This chapter focuses on the Portuguese Inquisition's public burning in Lisbon of a female Jewish adolescent for heresy. By definition, the Christian pursuit of heresy did not normally encompass those of other faiths, but the Iberian Peninsula was a special case. Spain and Portugal, originally home to large populations of Jews, expelled them in 1492 and 1496 respectively. Any former Jews who remained had converted to Christianity. But with these conversions came the suspicion that these new Christians were, in fact, crypto-Jews. It was feared that they were committing heresy by practicing their former faith secretly in their homes or in their hearts.

As lapsed Christians, their purported heresies were subject to the Inquisition. In both kingdoms, the crowns ordered the inquisitions and were closely associated with their proceeding.

In offering a sharp rebuke, Montesquieu assumes a new guise, offering his analysis not in his own voice but rather in that of a Jewish man who addresses a "humble remonstrance to the inquisitors of Spain and Portugal," which he claims was written by a Jewish man on the occasion of an "eighteen-year-old Jewess" being "burned in Lisbon at the last auto-da-fe."²⁷

By speaking through his Jewish character, Montesquieu affords himself the ability to assess the behavior of some European Christians from the outside, in the voice of the Other, as it were, and to speak truth to European "men" of "authority" and to all the other Europeans who stand passively by. Although no reader can doubt that Montesquieu is the ultimate author of the letter, the literary device seems also to offer him some measure of distance from the very hard truths he articulates. In Montesquieu's fiction, the spectacle of a young woman being burned moves the letter's author to note that, as cruel as the inquisitors are to the adults among the Jewish population, they are even crueler to the Jewish "children," whom the Inquisition has "burned because they follow the suggestions instilled in them by" their parents — "those whom the natural law and the laws of all the peoples teach them to respect like

27. SPIRIT OF THE LAWS, Book 25, chap. 13, 490.

gods.” He continues: “You want us to be Christians, and you do not want to be Christian yourselves,” he charges. So obviously, he is here pointing to an alternative understanding of Christianity. One that embraces rather than punishes. He means by this that the Inquisitors do not follow the example of Christ — of “the Christ that you tell us took on the human condition in order to give you examples you could follow.”

Here, Montesquieu’s character makes the point that this particular expression of Christianity is not itself Christian. Montesquieu’s letter writer also broaches the divergence of the actions of these religious persecutors from the morality of Christian teachings later in the chapter, and he does so with language and ideas strikingly similar to Montesquieu’s own. Montesquieu’s Jewish character writes: “You live in a century when natural enlightenment is more alive than it has ever been, when philosophy has enlightened spirits, when the morality of your gospel has been better known, when the respective rights of men over each other, the empire that one conscience has over another conscience, are better established.” But in the face of this general knowledge and enlightenment, the crimes of the Inquisition persist. The Jewish man then proceeds to assert that the crimes of the inquisitors in prosecuting religious crimes will serve to indict them: “Therefore, if you do not give up your old prejudices, which, if you do not take care, are your passions, it must be admitted that you are incorrigible, incapable of all enlightenment and of all instruction; and a nation is very unhappy that gives authority to men like you.” Montesquieu concludes the chapter with the Jewish man reiterating the immorality and senseless cruelty of the Inquisition: “We must warn you of one thing; it is that, if someone in the future ever dares to say that the peoples of Europe had a police in the century in which we live, you will be cited to prove that they were barbarians, and the idea one will have about you will be such that it will stigmatize your century and bring hatred on all your contemporaries.”²⁸ Some Europeans of Montesquieu’s own time may appear to be quite sophisticated, but are, in truth, barbarians, Montesquieu judges in the voice of the Jewish man. These barbaric practices of the Christians were, in fact, bringing despotism to Europe, Montesquieu implies.

In short, Montesquieu wants us to get perspective on our own culture—to see how our most esteemed sources may inure us to very harsh punishments. He wants both to get us to think and to feel. He says of his

28. *Id.*, Book 25, chap. 13, 490-92.

own method: “But one must not always so exhaust a subject that one leaves nothing for the reader to do. It is not a question of making him read but of making him think.”²⁹ He is here telling his readers that he is not going to tell them everything directly. They must supply some of the implications of his words and examples.

In addition to attempting to get his readers to think, Montesquieu is also attempting to get them to feel. He provides himself as a model. In a chapter on torture, he notes that “a well police nation”—and in his notes he puts “the English nation”—rejects torture without meeting drawbacks. He then observes that “[s]o many clever people and so many men of genius have written against this practice that I dare not speak after them.” There’s that word “genius,” again. But he does, in fact, speak after this observation, but perhaps in a way different from the prior men of genius. When speaking of how in ancient times, political authorities would torture house slaves in order to induce them to give evidence against their owners, Montesquieu reveals how agonizing it is for him to contemplate their pain: “I was going to say that slaves among the Greeks and Romans....But I hear the voice of nature crying out against me.”³⁰ The thought of the cruelty of these ancient practices stops his pen. He displays himself being moved by empathy for those slaves. He makes writing a performative act as he shows how his nature—his empathic nature—is moved by these thoughts of the suffering of others. Montesquieu encourages us to feel and to think as he shows us very subtly the cruelty around us; he does not want us to become inured to harsh punishments. Criminal punishments are the most important subject, he teaches us.

After the publication of the *Spirit of the Laws*, his thought was quickly amplified by others. On the subject of criminal punishments, Cesare Beccaria was a particularly prominent student of Montesquieu. He authored *On Crimes and Punishments* in 1764 and declared that “the immortal Montesquieu touched hastily on this matter” of crimes and punishments.³¹ (Remember the *Spirit of the Laws* contains infinite things, and thus Montesquieu does not treat any matter exhaustively.) Indivisible truth has compelled me to follow the shining footsteps of the great man.” His is a great work on criminology. He condemned arbitrary judgments and barbaric punishments, and his principles guided reform in Western

29. *Id.*, Book 11, chap. 20, 186.

30. *Id.*, Book 6, chap. 17, 92-93.

31. Cesare Beccaria, *On Crimes and Punishments*, trans. David Young (Indianapolis: Hackett, 1986), p. 6.

Europe and in the American States; the first American translation appeared in 1777. Thus, we see how Montesquieu's thought inspired this type of action with respect to the most important knowledge.