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Cesare Beccaria and the cruelty of liberalism

An essay on liberalism of fear and its limits

Abstract   In this paper I outline and criticize Judith Shklar’s and Richard Rorty’s ‘liberalism of fear’. Both political thinkers believe liberalism to be characterized by a fundamental opposition to cruelty, which they regard as the least liberal of the features that may distinguish any given human community. In order to demonstrate the limits of the Shklar–Rorty thesis, I make use, in the first place, of John Kekes’s critique of liberalism as to show that liberalism allows for cruelty in so far as it grants wider margins of agency to the members of the community. In the second place, I make use of Cesare Beccaria’s reflections on the cruelty implied by liberalism as such, in so far as this political doctrine endorses the institutions of penal justice and private property.

Key words Cesare Beccaria · cruelty · ethics · fear · justice · John Kekes · liberalism · politics · property · punishment · Richard Rorty · Judith Shklar

Introduction

I shall begin this paper by outlining the main features of Judith Shklar’s and Richard Rorty’s ‘liberalism of fear’. Both of them believe liberalism to be characterized by a fundamental opposition to cruelty, which they regard as the least liberal of the features that may distinguish any given human community. There has been little disagreement on this ethical characterization of liberalism, or on the ‘democratic capitalism’ that it presupposes. An exception is the contemporary conservative thinker
John Kekes, whose critique of ‘liberalism of fear’ and, more broadly, of liberalism as such, is going to be the starting-point of my counter-argument to the Shklar–Rorty thesis. Subsequently, as a second and more poignant moment of my counter-argument, I shall refer to the 18th-century Italian philosopher Cesare Beccaria. Specifically, I shall make use of a few passages contained in his most famous work (On Crimes and Punishments), which is widely recognized as a central text in the history of the liberal transformation of western penal justice. From such passages I shall determine how Beccaria conceived ‘cruelty’ to be pertaining to the liberal organization of society. Moreover, I shall highlight how this was the case not only at the juridical level, but also and above all at the economic level. Finally, on the basis of Kekes’s and Beccaria’s points, I shall demonstrate Shklar’s and Rorty’s ‘liberalism of fear’ to be conceptually weak and historically short-sighted.

Liberalism on cruelty

‘Liberalism of fear’ labels the philosophical understanding of liberalism as aversion to cruelty, that is to say, the rejection of cruelty as the worst of human vices. As Richard Rorty affirms: ‘liberals are the people who think that cruelty is the worst thing we do’. Cruelty, which is defined by Shklar as ‘the wilful inflicting of physical pain on a weaker being in order to cause anguish and fear’, is ‘horrible’, as it ‘repels instantly’ because it is ‘ugly’, and ‘disfigures human character’. Moreover, it feeds on fear, and ‘fear destroys freedom’, namely one of the core-values of the liberal tradition. Cruelty is also an utter failure for any committed political and moral being, for it breaks down all sorts of authentic inter-subjective coexistence, both at a public and at a private level. Liberalism, which intends to direct collective decision-making, is therefore crucially concerned with the use of cruelty that may have place in the political sphere.

Indeed, for both Judith Shklar and Richard Rorty, that which informs, characterizes, and defines diverse political systems is when, how, and by whom cruelty is turned into an instrument of social determination. ‘Liberalism of fear’, in other words, individuates an ultimate dichotomy ‘between cruel military and moral repression and violence, and a self-restraining tolerance that fences in the powerful to protect the freedom and safety of every citizen’. Freedom and safety are the two pillars upon which change, debate, and peaceful confrontation can develop. It is therefore of paramount importance that, as Shklar writes, we ‘put cruelty first’. This is the essential step towards the defence of any other crucial value embedded in the liberal tradition.

According to this view, in fact, all ‘liberal rights’ and ‘bourgeois
freedoms’ boil down to the possibility of ‘avert[ing] the worst political evil’. In Shklar’s words: ‘the first right is to be protected against the fear of cruelty. People have rights as a shield against this greatest of human vices. This is the evil, the threat to be avoided at all costs. Justice itself is only a web of legal arrangements required to keep cruelty in check.’

A society where cruelty dominates is an atomized society of lonely victims and paranoid sadists, a society where rules are set arbitrarily and the citizen must simply obey. No room for ‘dialogue’ is left. No room for personal expression, growth, and fulfilment is possible. No authentic individuality can be formed, since on the one hand there are impotent victims, while on the other there are omnipotent tyrants, who spend their existence making it sure that their position is not at risk. Frozen as it is, the cruel State becomes, to use a metaphor, the Glacial Age of political interaction, the collective stability of which recalls the stillness of death – life is action, though. Instability is a price that the liberal is ready to pay in the name of freedom. The ‘liberal character’, in fact, does not desire the achievement of an unchangeable status quo, but rather aims at leaving space to ‘contradiction, complexity, diversity, and the risks of freedom’. The liberal does not dream of the State as a work of art, but of the State as a bazaar.

John Kekes

Much success has accompanied the reflections of Shklar and Rorty. In truth, even among their opponents, the aversion to cruelty that is so dear to the ‘liberalism of fear’ has hardly ever been questioned. After all, who would ever argue in favour of cruelty?

John Kekes, in his poignant ‘Cruelty & Liberalism’, decided to criticize both Judith Shklar and Richard Rorty just on this perilous terrain, i.e. the relation between cruelty and liberal politics. He has two main criticisms:

1. The definition of liberalism as aversion to cruelty is a simple ‘slogan . . . mere verbiage that cannot withstand the most elementary questioning’. As Kekes states: ‘Why is cruelty the worst thing we do? Why not genocide, terrorism, betrayal, exploitation, humiliation, brutalisation, tyranny, and so forth?’ Moreover, ‘If it is said in reply that all serious evils are forms of cruelty, then the liberal becomes one who believes that serious evil is the worst thing we do . . . [and] who would disagree with that?’

2. The definition of liberalism as aversion to cruelty is a case of ‘specious moralism’. As Kekes states, their position ‘insinuates that nonliberals are less opposed to cruelty than liberals and that those who
are appropriately outraged by cruelty have willy-nilly joined the ranks of liberals\textsuperscript{20}

Kekes does not want to be regarded as a liberal just because he may oppose cruelty. Indeed, he does oppose cruelty, and recognizes that he has ‘sympathy for the slogan’, in so far as this appeals to ‘deeply held moral attitudes’. Yet, he has to add, he does not want to be a liberal, for liberalism is not the best political solution, if one really wants to oppose cruelty. As he claims: ‘someone really committed to this view would tend to be a conservative rather than a liberal’.\textsuperscript{21}

It is Kekes’s conviction, in fact, that liberalism in general, and not only ‘liberalism of fear’, may too easily foster cruelty, rather than oppose it. Specifically, by granting wider and wider margins of liberty, liberals create more and more conditions for the expression of human agency. Surely, such agency may produce commodities or works of art, but it may also manifest itself as crime, violence, and abuse. Liberalism, by defending and promoting freedom as the fundamental value, digs the grave for peaceful coexistence, and, in fact, allows for more open spaces in which cruelty can occur.\textsuperscript{22}

Kekes’s criticism of ‘liberalism of fear’ develops out of a larger attack against the uncritical acceptance of liberal politics among his colleagues in the universities of the western world.\textsuperscript{23} Also, it connects with his studies on the presence of evil in the human character, which he sees as impossible to eradicate.\textsuperscript{24} That which Kekes has in mind, in fact, is the construction of a theory of conservatism, which may be able to support a non-liberal political model relying on tradition, suspicion to change, and moderate extension of civil liberties.\textsuperscript{25}

Cesare Beccaria

As only few of the ‘fathers’ of liberalism were able to do, Beccaria also managed to envisage the ‘dark’ side of liberalism, but from a standpoint internal to liberalism. In his view, cruelty is inextricably interwoven with the ‘glowing’ side of liberalism. Although he favoured liberal principles as the way to follow, he did not deny that ‘cruelty’ could survive and prosper inside the reformed, liberal(ized) State. In \textit{On Crimes and Punishments} there are two contexts inside which he saw cruelty persist within liberalism, if not even blossom: the juridical sphere and the economic sphere.

With regard to the former sphere: Beccaria is well known as a reformer of penal justice. Indeed, it could be argued that most penal systems in the western world have been revisited precisely along the lines of Beccaria’s reflections, especially with respect to the issue of capital punishment. Yet, despite the fact that he thought, for instance, that
punishment had to be removed completely from the hands of the Church and left in those of the secular legislator alone, or that aristocratic privileges had to be definitively abolished, or that torture was a useless instrument for the recovery of information, he did not think that the institution of punishment could be purified from cruelty. More rational methods had to be implemented, he contended, unnecessary cruelty could be avoided by means of these methods, yet the nature of punishment remained, in his view, quintessentially cruel. 

As Beccaria writes, 'punishments' are 'atrocious'; their 'public and solemn cruelty' can only be lessened by making them 'useful . . . necessary . . . fair' and consistent with 'the goal of the laws'. Beccaria does not deny that punishments entail cruelty, but, as long as they are rationally grounded in the beneficial spirit of the laws, their cruelty remains tolerable. Society must protect itself, in fact, and this can involve cruelty, for the hatred and the fear of crime are sufficient motives to apply cruel measures of prevention and/or correction. The inner logic of this mechanism is that 'man is only cruel in proportion to his own interest, to the hatred or fear he conceives of'. Significantly, if Beccaria opposes 'the right [of men] . . . to slaughter their kin', i.e. by capital punishment, it is because it hardens the souls of the citizens, hence nullifying the effect of deterrence that punishments should possess. The alternative he proposes for the worst crimes, namely lifelong imprisonment, is not selected for its kindness, but because it constitutes 'the long and sorrowful example of a man deprived of his freedom, who, turned into a beast of burden, pays back the offended society with his services, which is the most powerful impediment to crimes'.

With regard to the sphere of economics, Beccaria’s recognition of the cruelty inherent to the free market that he defends can be found in the chapter devoted to the crime of theft:

[T]his is generally the crime of misery and despair, the crime of that unhappy part of men to whom (the terrible, and perhaps unnecessary right to) property has allowed nothing but a bare existence, [and since fines only increase the number of criminals above the original number of crimes, and take bread from the innocent in order to take it from the villains] the most fitting punishment shall be the only sort of slavery that can be called just, namely the temporary enslavement of the labour and person of the criminal to society, so that he may redress his unjust despotism against the social contract by a period of complete personal subjection.

Spelling out the relevant *quid* that lurks behind this passage, Beccaria can be seen as being capable of recognizing that the liberal conception of economy is the agent responsible for the conditions of misery that make this particular crime emerge. The right to property, ‘terrible’ and ‘perhaps unnecessary’, which lies at the core of the liberal paradigm of self-affirming contract-stipulating individuals, is the source of...
pauperism.35 In turn, pauperism is the source of theft; and theft, which is indeed a crime, has to be repressed by means of ‘temporary’ slavery, i.e. one of the ‘atrocious punishments’ that a State can use.36

It may sound surprising that Beccaria could speak so loudly of the horrors of property, but it is often forgotten that 18th-century liberals had often a drier and more candid perception of things than most of their contemporary heirs, who still retain the original faith in the appropriateness of penal justice and of private property for the flourishing of society, but tend to couch it in anodyne terms, or, like Shklar and Rorty, purport liberalism’s repudiation of them. The horrors of property were not a new discovery: Jesus of Nazareth and John Milton had already warned humankind about the temptations of material wealth – Mammon was a demon from Hell. Yet, the liberal society of Locke, Voltaire, and Beccaria had placed in Mammon its trust, allowing for the right to property to sit beside the rights to free speech, conscience, religion, fair trial, and integrity. ‘Property’, spelled with the capital ‘P’, became the companion of equally capitalized ‘Liberty’ and ‘Justice’ in 18th- and 19th-century law-books. Indeed, even 20th-century liberal constitutions regard the sanctity of the right to own property as one of their central tenets. Beccaria, when reflecting on theft, is simply working out the consequences of this judgment.37

Conclusion

John Kekes and Cesare Beccaria present two different perspectives through which cruelty can be seen as unavoidably present within liberalism. Kekes does so by pointing out how the freedom defended by the liberal is not bound to bring forth kindness alone – cruelty remains an option for the free agent. Beccaria does so by pointing out how the institutions of penal justice and the right to property cannot but foster cruelty: the former by adopting it instrumentally, the latter by creating circumstances in which the former must be applied.38

In other words, Kekes’s critical views are ‘external’, i.e. moving from a non-liberal stance, and ‘individual’, i.e. linking the presence of cruelty in the political arena to the autonomous deliberation of a person as to bring about suffering, harm, or damage. Cesare Beccaria’s critical views, on the other hand, are ‘internal’, i.e. moving from a liberal stance, and ‘institutional’, i.e. linking the presence of cruelty in the political arena to the specific organization of the arena itself. In both cases, cruelty remains within the domain of liberal politics.

Interestingly, Beccaria is more decisive on the connection between liberalism and cruelty. In his view, liberalism does not grant merely ‘space for’ cruelty: liberalism entails cruelty. Judith Shklar and Richard
Rorty would therefore be wrong in considering the aversion to cruelty as the most peculiar trait of liberalism. Indeed, certain forms of cruelty may be seen as rejected by liberalism, such as the institutionalized abuses by the clergy and the aristocracy, or the violent threats to one’s belongings by the less affluent, but others seem to be part of the liberal frame of understanding of social interactions. In truth, as Beccaria’s points imply, liberalism itself generates the conditions that are necessary for cruelty to be the case.

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Notes


2 The paternity of ‘liberalism of fear’ is to be ascribed to Judith Shklar, although it is thanks to Richard Rorty that this understanding of liberalism has become famous (direct references to Shklar are in Richard Rorty, *Contingency, Irony, and Solidarity* [Cambridge: Cambridge University Press, 1989], pp. 89, n. 9 and 146, n. 6). Indeed, since the publication of Rorty’s *Contingency, Irony, and Solidarity*, several thinkers have expressed enthusiastic support to this characterization of the liberal ideal, among whom are: Timothy P. Jackson, ‘The Disconsolation of Theology: Irony, Cruelty, and Putting Charity First’, *Journal of Religious Ethics* 20(1) (1992): 1–36; German Vargas-Guillen, ‘Eliminar la crueldad!: Un horizonte liberal para construir la justicia’, *Franciscanum* 38(113–14) (1996): 239–67; Charley D. Hardwick and Donald A. Crosby, eds, *Pragmatism, Neo-Pragmatism, and Religion* (New York: Lang, 1997); and Dianne Rothleder, *The Work of Friendship: Rorty, His Critics, and the
Project of Solidarity (Albany: SUNY Press, 1999). These philosophers favour also Rorty’s reliance for political aims on ‘hope’, ‘faith’, and ‘love’, rather than on ‘knowledge’ and ‘reason’ – a reliance that could be arguably individuated in Judith Shklar herself. Controversially, they also maintain, with the sole exception of Rothleder, that a quasi-religious approach to politics is the quid that colours positively Rorty’s enterprise. Analogous points on liberalism, yet devoid of the quasi-religious element and more eloquently put, can be found in Annette Baier, ‘Moralism and Cruelty: Reflections on Hume and Kant’, Ethics 103(3) (1993): 436–57. Baier defends and defines the approach of Shklar and Rorty as a ‘Humean’ one, i.e. based on feelings and opposed to a ‘Kantian’ one, which is based on reason. A clear exposition of this approach, and of the controversial claim made by the aforementioned authors, is in Rorty’s Contingency, Irony and Solidarity, pp. xv–xvi, where we read: ‘[T]here is no answer to the question “Why not be cruel?” – no noncircular theoretical backup for the belief that cruelty is horrible. Nor is there an answer to the question “How do you decide when to struggle against injustice and when to devote yourself to private projects of self-creation?” . . . Anybody who thinks that there are well-grounded theoretical answers to this sort of question – algorithms for resolving moral dilemmas of this sort – is still, in his heart, a theologian or a metaphysician. . . . [And a] postmetaphysical culture seems to me no more impossible than a postreligious one, and equally desirable’.

ibid.


5 ibid., p. 9.

6 ibid., p. 2.

7 A more detailed definition of cruelty is in Judith Shklar, ‘The Liberalism of Fear’, in Liberalism and the Moral Life, ed. Nancy L. Rosenbaum (Cambridge, MA: Harvard University Press, 1989), p. 29: ‘[C]ruelty is the deliberate infliction of physical, and secondarily emotional, pain upon a weaker person or group by stronger ones in order to achieve some end, tangible or intangible, of the latter’.

8 Rorty clearly follows Shklar on this point, by stating that ‘socialization, to repeat, goes all the way down, and who gets to do the socializing is often a matter of who manages to kill whom first’: Rorty, Contingency, Irony and Solidarity, p. 185.

9 Shklar, Ordinary Vices, p. 237.

10 ibid., p. 2.


12 Shklar, Ordinary Vices, p. 237.

13 ibid., p. 5.


15 No liberal thinker has ever praised cruelty; few other thinkers have done so. Among major political philosophers, Machiavelli defended cruelty in the
context of the ideal rule of a princedom – but never in that of a republic. Sade and Nietzsche, instead, glorified cruelty as a talent of the superior man’s, whose diversity from the common man allows him to pursue ruthlessly his elitist goal of aesthetic self-affirmation.


17 ibid. In truth, it could be said that Kekes is just enumerating instances of cruelty.

18 ibid. Kekes claims that Shklar’s definitions are too broad, for they can include cases of necessary and/or justified imposition of pain, such as surgery, physical education, and legal imprisonment, to which he would never refer as cruel. On this point, I strongly disagree with Kekes. All such cases can indeed be cruel and are often perceived as such, as the most recent research in social psychology would suggest; see S. Kemp, S. L. Brodsky and A. A. Caputo, ‘How Cruel Is a Cat Playing with a Mouse? A Study of People’s Assessment of Cruelty’, *New Zealand Journal of Psychology* 26(2) (1997): 19–24; and A. A. Caputo, S. L. Brodsky, and S. Kemp, ‘Understanding and Experiences of Cruelty: An Exploratory Report’, *The Journal of Social Psychology* 140(5) (2000): 649–60. If we allow for these practices, it is not because we do not recognize the element of cruelty that they may carry with themselves, but because we may consider this element acceptable, probably in view of something else that we want and/or need. Thinking of labelling all such cases as not ‘really’ cruel is facetious, if not even hypocritical – history is made of cases of formerly ‘necessary’ and ‘justified’ impositions of pain that were subsequently rejected as cruel. Does Kekes believe that, at our stage of civilization, we are finally immune from error? Prudence would therefore suggest the endorsement of a ‘maximalist’ conception of cruelty, rather than of a ‘minimalist’ one, and the prompting of a warning signal whenever cruelty may be the case. Of course, this would be the most prudent attitude if one does not want to defend cruelty, and John Kekes, as seen, does not want to.

19 The exact definition of cruelty constitutes an interesting part of Kekes’s article (‘Cruelty & Liberalism’, pp. 836–8). However, I am not going to explore this issue in this paper, for no liberal theorist has ever tried to produce an articulated analysis of this concept. The anti-liberal John Kekes is, in this sense, unique. In the existing literature by liberals on liberalism (another vague concept!) the best that can be found is, possibly, the pair of sketchy definitions offered by Judith Shklar (and cited in this article) and the insightful remarks provided by Philip P. Hallie in his writings on violent human cruelty, which Kekes briefly mentions in his work (and which are indebted to those of the French dramatist Antonin Artaud; see Philip P. Hallie, *The Paradox of Cruelty* [Middletown, CT: Wesleyan University Press, 1969]; Philip P. Hallie, ‘From Cruelty to Goodness’, *Hastings Center Reports* 11 [1981]: 23–8; and Philip P. Hallie, *Lest Innocent Blood Be Shed: the Story of the Village of Le Chambon, and How Goodness Happened There* [New York: Harper & Row, 1985]).


21 ibid.

22 Rephrasing the typical conservative accusation of pathetic optimism with
respect to the human faculties, Kekes reminds the reader that more freedom
does not imply more goodness.


25 Significant, in this sense, is Kekes, *A Case for Conservatism*.

26 Beccaria is not alone in considering penal justice an evil; so did Aquinas and Thomas Hobbes, for instance. In this sense it is not liberalism itself to be cruel, but penal justice as such. Yet, liberalism, whether it be of Rawlsian or Nozickian inspiration, does not renounce penal justice. On the contrary, its reformation in accordance with liberal principles has been one of the main moments in the historical affirmation of liberalism, which has always recognized a fundamental role of guidance and progress in the institutions of the State, particularly the legislative and the judiciary. Beccaria is not attacking penal justice *per se*, in fact, but the illiberal penal justice of his times.


28 ibid., p. 30.

29 ibid., pp. 30–1. The grounds for Beccaria’s influence on Jeremy Bentham could not be more evident.

30 In Hallie, *The Paradox of Cruelty*, penal justice is referred to as collective ‘reactive cruelty’ that operates against the criminal’s ‘active cruelty’. In other words, no matter how justified the use of penal justice may be (viz. on retributive grounds), penal justice is cruel. In Christie, *Limits to Pain*, it is argued that penal justice is doubly cruel because it does not take in consideration the alternatives available (viz. treatment, conciliatory debate, forgiveness) and it ignores the result of decades of studies in criminology showing that penal justice has never attained the desired result, i.e. social order.

31 Beccaria, *Dei delitti e delle pene*, p. 31.

32 ibid., p. 48.

33 ibid., p. 42.


35 Naturally, ‘property’ is intended hereby as ‘private property’.

36 It is interesting to notice the twist of the argument, which, although it recognizes the unnecessary and dramatic nature of property, states that property must be defended by means of the only just form of subjection, i.e. imprisonment. No alternative (viz. property abolition, restriction, redistribution) is offered.

37 Beccaria was not unambiguous on this issue. In his later essay ‘On Luxury’, for instance (an English translation, which I have used to double-check my own, is available in Cesare Beccaria, *On Crimes & Punishments and Other Writings*, trans. Richard Davis [Cambridge: Cambridge University Press, 1995]), he seems to anticipate the (rather simplistic) libertarian trickle-down theory, which is still widely utilized by marketers as to justify the existing unequal accumulations of wealth (i.e. the separation between the market’s winners and losers). In *On Crimes & Punishments*, instead, Beccaria clearly sees the right to property as the origin of economic inequality, pauperism, and theft. Indeed, it is because of this line of reasoning that Beccaria’s 19th-century commentator Facchini decided to use the word ‘socialist’ to better connote Beccaria’s concerns: it was the first time that this word was used in the recorded history of Italian literature.

38 I did not clearly distinguish between liberal theory and actual liberal politics, since these two dimensions are historically and logically intermingled, and so are treated by the liberal authors mentioned in my work. Therefore, it is not relevant to try to separate analytical and moral claims, for they are meant to be interwoven.

39 Of course, it might be argued that the ‘cruelty’ to which Kekes and Beccaria refer is not that of Shklar’s definitions, which is circumscribed and delimited by stipulation. Such a critical claim would not stand deeper scrutiny, however. In fact, Kekes’s wider margins of free agency would allow also for this kind of cruelty. Similarly, Beccaria’s penal justice and its use against thieves would also involve the use of this specific kind of cruelty.

40 Were ‘liberalism of fear’ under-representative of contemporary liberalism, still Beccaria’s reflections would be relevant to the liberal (both the Rawlsian and the Nozickian, I believe). Specifically, Beccaria’s understanding of the negative implications of penal justice and of the right to property goes beyond the sole definitional issue of liberalism as aversion to cruelty, Beccaria furnishes two capital critical interrogatives upon whether, when, and how cruelty should be allowed within the liberal scheme of political action. In this sense, Nils Christie’s project of minimization of penal justice and John McMurtry’s reformulation of economic equations from money-sequences into life-sequences are contemporary, fascinating answers directed to the solution of such conundrums.