2. The spectacle of the scaffold

The ordinance of 1670 regulated the general forms of penal practice up to the Revolution. It laid down the following hierarchy of penalties: 'Death, judicial torture pending proof, penal servitude, flogging, amende honorable, banishment.' A high proportion of physical punishment. Customs, the nature of the crimes, the status of the condemned accounted for still more variations. 'Capital punishment comprises many kinds of death: some prisoners may be condemned to be hanged, others to having their hands cut off or their tongues cut out or pierced and then to be hanged; others, for more serious crimes, to be broken alive and to die on the wheel, after having their limbs broken; others to be broken until they die a natural death, others to be strangled and then broken, others to be burnt alive, others to be burnt after first being strangled; others to be drawn by four horses, others to have their heads cut off, and others to have their heads broken' (Soulatges, 169–71). And Soulatges adds, almost in passing, that there are also lighter penalties not mentioned by the ordinance: satisfaction to the injured party, warning, reprimand, a short period of imprisonment, prohibition from entering a certain area and, lastly, pecuniary punishments – fines or confiscation.

But we must not be misled. There was a considerable gap between this arsenal of horrors and everyday penal practice. Public torture and execution was by no means the most frequent form of punishment. To us today the proportion of death sentences in the penal practice of the classical age may seem high: at the Châtelet during the period 1755–85 under 10 per cent of the sentences involved capital punishment: the wheel, the gallows or the stake (Petrovitch, 226ff); the Parlement of Flanders passed thirty-nine death sentences, out of a total of 260 sentences, between 1721 and
1730 (and twenty-six out of 500 between 1781 and 1790 – cf. Dautricourt). But it must not be forgotten that the courts found many ways of relaxing the rigours of the penal system, either by refusing to prosecute offences that were too heavily punished or by modifying the definition of the crime; sometimes too the royal power indicated that some particularly severe ordinance was not to be applied too strictly (which was how Choiseul dealt with the declaration of 3 August 1744 on vagabonds – Choiseul, 128–9).

In any case, the majority of the sentences involved banishment or fines: in a court such as that of the Châtelet (which dealt only with relatively serious offences), banishment represented over half the sentences passed between 1755 and 1785. But many of these non-corporeal penalties were accompanied by additional penalties that involved a degree of torture: public exhibition, pillory, carcan, flogging, branding; this was the case for all sentences to the 'galleys' or to what was the equivalent for women – reclusion in the hospital; banishment was often preceded by public exhibition and branding; fines were sometimes accompanied by flogging. It was not only in the great solemn executions, but also in this additional form of punishment, that torture revealed the significant part it played in penalty: every penalty of a certain seriousness had to involve an element of torture, of supplice.

What is a supplice? ‘Corporal punishment, painful to a more or less horrible degree,’ said Jaucourt in his Encyclopédie article and added: ‘It is an inexplicable phenomenon that the extension of man’s imagination creates out of the barbarous and the cruel.’ Inexplicable, perhaps, but certainly neither irregular nor primitive. Torture is a technique; it is not an extreme expression of lawless rage. To be torture, punishment must obey three principal criteria: first, it must produce a certain degree of pain, which may be measured exactly, or at least calculated, compared and hierarchized; death is a torture in so far as it is not simply a withdrawal of the right to live, but is the occasion and the culmination of a calculated gradation of pain: from decapitation (which reduces all pain to a single gesture, performed in a single moment – the zero degree of torture), through hanging, the stake and the wheel (all of which prolong the agony), to quartering, which carries pain almost to infinity; death-torture is the art of maintaining life in pain, by
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subdividing it into a 'thousand deaths', by achieving before life ceases 'the most exquisite agonies' (cf. Ollyffe). Torture rests on a whole quantitative art of pain. But there is more to it: this production of pain is regulated. Torture correlates the type of corporal effect, the quality, intensity, duration of pain, with the gravity of the crime, the person of the criminal, the rank of his victims. There is a legal code of pain; when it involves torture, punishment does not fall upon the body indiscriminately or equally; it is calculated according to detailed rules: the number of lashes of the whip, the positioning of the branding iron, the duration of the death agony on the stake or the wheel (the court decides whether the criminal is to be strangled at once or allowed to die slowly, and the points at which this gesture of pity must occur), the type of mutilation to be used (hand cut off, lips or tongue pierced). All these various elements multiply the punishments and are combined according to the court and the crime. 'The poetry of Dante put into laws,' was how Rossi described it; a long course in physico-penal knowledge, in any case. Furthermore, torture forms part of a ritual. It is an element in the liturgy of punishment and meets two demands. It must mark the victim: it is intended, either by the scar it leaves on the body, or by the spectacle that accompanies it, to brand the victim with infamy; even if its function is to 'purge' the crime, torture does not reconcile; it traces around or, rather, on the very body of the condemned man signs that must not be effaced; in any case, men will remember public exhibition, the pillory, torture and pain duly observed. And, from the point of view of the law that imposes it, public torture and execution must be spectacular, it must be seen by all almost as its triumph. The very excess of the violence employed is one of the elements of its glory: the fact that the guilty man should moan and cry out under the blows is not a shameful side-effect, it is the very ceremonial of justice being expressed in all its force. Hence no doubt those tortures that take place even after death: corpses burnt, ashes thrown to the winds, bodies dragged on hurdles and exhibited at the roadside. Justice pursues the body beyond all possible pain.

The term 'penal torture' does not cover any corporal punishment: it is a differentiated production of pain, an organized ritual for the marking of victims and the expression of the power that punishes; not the expression of a legal system driven to exasperation and,
The spectacle of the scaffold

forgetting its principles, losing all restraint. In the 'excesses' of torture, a whole economy of power is invested.

The tortured body is first inscribed in the legal ceremonial that must produce, open for all to see, the truth of the crime.

In France, as in most European countries, with the notable exception of England, the entire criminal procedure, right up to the sentence, remained secret: that is to say, opaque, not only to the public but also to the accused himself. It took place without him, or at least without his having any knowledge either of the charges or of the evidence. In the order of criminal justice, knowledge was the absolute privilege of the prosecution. The preliminary investigation was carried out 'as diligently and secretly as may be', as the edict of 1498 put it. According to the ordinance of 1670, which confirmed and, on certain points, reinforced the severity of the preceding period, it was impossible for the accused to have access to the documents of the case, impossible to know the identity of his accusers, impossible to know the nature of the evidence before objecting to witnesses, impossible to make use, until the last moments of the trial, of the documents in proof, impossible to have a lawyer, either to ensure the proper conduct of the case, or to take part, on the main issue, in the defence. The magistrate, for his part, had the right to accept anonymous denunciations, to conceal from the accused the nature of the action, to question him with a view to catching him out, to use insinuations. (Up to the eighteenth century, lengthy arguments took place as to whether, in the course of 'captious' questioning, it was lawful for the judge to use false promises, lies, words with double meaning - a whole casuistry of legal bad faith.) The magistrate constituted, in solitary omnipotence, a truth by which he invested the accused; and the judges received this truth ready made, in the form of documents and written statements; for them, these factors alone were proof; they met the accused only once in order to question him before passing sentence. The secret and written form of the procedure reflects the principle that in criminal matters the establishment of truth was the absolute right and the exclusive power of the sovereign and his judges. Ayrault supposed that this procedure (which was more or less established by the sixteenth century) originated in 'the fear of the
up roar, shouting and cheering that the people usually indulge in, the fear that there would be disorder, violence, and outbursts against the parties, or even against the judges; the king wished to show in this that the 'sovereign power' from which the right to punish derived could in no case belong to the 'multitude' (cf. Ayrault, LIII, chapters LXXII and LXIX). Before the justice of the sovereign, all voices must be still.

Yet, despite the use of secrecy, certain rules had to be obeyed in establishing the truth. Secrecy itself required that a rigorous model of penal truth be defined. A whole tradition dating from the Middle Ages and considerably developed by the great lawyers of the Renaissance laid down what the nature and the use of evidence might be. Even in the eighteenth century, it was still common to meet distinctions like the following: true, direct, or legitimate proof (that provided by witnesses, for example) and indirect, conjectural, artificial proof (obtained by argument); or, again, manifest proof, considerable proof, imperfect or slight (Jousse, 660); or, again, 'urgent or necessary' proof that did not allow one to doubt the truth of the deed (this was 'full' proof: thus two irreprouachable witnesses affirming that they saw the accused, carrying an unsheathed and bloody sword, leave the place where, some time later, the body of the dead man was found with stab wounds); approximate or semi-full proof, which may be regarded as true as long as the accused does not destroy it with evidence to the contrary (the evidence of a single eye-witness or death threats preceding a murder); lastly, distant or 'adminicule' clues, which consisted only of opinion (rumour, the flight of the suspect, his manner when questioned, etc. – Muyart de Vouglans, 1757, 345-7). Now, these distinctions are not simply theoretical subtleties. They have an operational function. First, because each of these kinds of evidence, taken in isolation, may have a particular type of judicial effect: 'full' proof may lead to any sentence; 'semi-full' proof may lead to any of the 'peines afflictives', or heavy penalties, except death; imperfect and slight clues are enough for the suspect to have a writ issued against him, to have the case deferred for further inquiry or to have a fine imposed on him. Secondly, because they are combined according to precise arithmetical rules: two 'semi-full' proofs may make a complete proof; 'adminicules', providing there are several of them and they concur,
may be combined to form a semi-proof; but, however many there may be of them, they can never, of themselves, constitute a complete proof. We have, then, a penal arithmetic that is meticulous on many points, but which still leaves a margin for a good deal of argument: in order for a capital sentence to be passed, is a single full proof enough or must it be accompanied by other slighter clues? Are two approximate proofs always equivalent to a full proof? Should not three be required or two plus distant clues? Are there elements that may be regarded as clues only for certain crimes, in certain circumstances and in relation to certain persons (thus evidence is disregarded if it comes from a vagabond; it is reinforced, on the contrary, if it is provided by 'a considerable person' or by a master in the case of a domestic offence). It is an arithmetic modulated by casuistry, whose function is to define how a legal proof is to be constructed. On the one hand, this system of 'legal proofs' makes truth in the penal domain the result of a complex art; it obeys rules known only to specialists, and, consequently, it reinforces the principle of secrecy. 'It is not enough that the judge should have the conviction that any reasonable man may have... Nothing is more incorrect than this way of judging, which, in truth, is no other than a more or less well-founded opinion.' But, on the other hand, it is a severe constraint for the magistrate; in the absence of this regularity, 'every sentence would be reckless, and in a sense it may be said that it is unjust even when, in truth, the accused is guilty' (Poullain du Parc, 112–13 – see also Esmein, 260–83 and Mittermaier, 15–19). The day will come when the singularity of this judicial truth will appear scandalous: as if the law did not have to obey the rules of common truth. 'What would be said of a semi-proof in the sciences capable of demonstration? What would a geometrical or algebraic semi-proof amount to?' (Seigneux de Correvon, 63). But it should not be forgotten that these formal constraints on legal proof were a mode of regulation internal to absolute power and exclusive of knowledge.

Written, secret, subjected, in order to construct its proofs, to rigorous rules, the penal investigation was a machine that might produce the truth in the absence of the accused. And by this very fact, though the law strictly speaking did not require it, this procedure was to tend necessarily to the confession. And for two reasons: first, because the confession constituted so strong a proof
that there was scarcely any need to add others, or to enter the difficult and dubious combinatory of clues; the confession, provided it was obtained in the correct manner, almost discharged the prosecution of the obligation to provide further evidence (in any case, the most difficult evidence). Secondly, the only way that this procedure might use all its unequivocal authority, and become a real victory over the accused, the only way in which the truth might exert all its power, was for the criminal to accept responsibility for his own crime and himself sign what had been skilfully and obscurely constructed by the preliminary investigation. 'It is not enough', as Ayrault, who did not care for these secret procedures, remarked, 'that wrong-doers be justly punished. They must if possible judge and condemn themselves' (Ayrault, I. I, chapter 14). Within the crime reconstituted by writing, the criminal who confessed came to play the role of living truth. The confession, an act of the criminal, responsible and speaking subject, was the complement to the written, secret preliminary investigation. Hence the importance that all this procedure of an inquisitorial type accorded to the confession.

Hence, too, the ambiguities of its role. On the one hand, an attempt was made to introduce it into the general arithmetic of evidence; it was stressed that it was no more than one proof among many. It was not the evidentia rei; nor was it the strongest of the proofs, it was not in itself enough to bring conviction, it had to be accompanied by additional, circumstantial evidence; for it is a well-known fact that the accused sometimes declare themselves to be guilty of crimes that they have not committed; the examining magistrate had therefore to carry out additional investigations if he possessed no more than the confession of the accused. But, on the other hand, the confession had priority over any other kind of evidence. To a certain extent, it transcended all other evidence; an element in the calculation of the truth, it was also the act by which the accused accepted the charge and recognized its truth; it transformed an investigation carried out without him into a voluntary affirmation. Through the confession, the accused himself took part in the ritual of producing penal truth. As medieval law put it, the confession 'renders the thing notorious and manifest'. To this first ambiguity was added a second: as a particularly strong proof, requiring for a conviction only a few additional clues, thus reducing
to the minimum the work of investigation and the mechanics of demonstration, the confession was therefore highly valued; every possible coercion would be used to obtain it. But, although it had to be, in the procedure, the living and oral counterpart of the written preliminary investigation, although it had to be its reply, its authentication, as it were, on the part of the accused, it had to be surrounded by guarantees and formalities. It preserved something of a transaction: that is why it had to be 'spontaneous', why it had to be formulated before the competent court, why it had to be made in full consciousness, why it should not concern impossible things, etc. Through the confession, the accused committed himself to the procedure; he signed the truth of the preliminary investigation.

This double ambiguity of the confession (an element of proof and the counterpart of preliminary investigation; the effect of constraint and a semi-voluntary transaction) explains the two great means used by classical criminal law to obtain it: the oath that the accused was asked to make before his interrogatory (and therefore under threat of perjury before both human and divine justice; and, at the same time, a ritual act of commitment); judicial torture (physical violence to obtain truth, which, in any case, had then to be repeated before the judges, as a 'spontaneous' confession, if it were to constitute proof). At the end of the eighteenth century, torture was to be denounced as a survival of the barbarities of another age: the mark of a savagery that was denounced as 'Gothic'. It is true that the practice of torture is of ancient origin: it goes back at least as far as the Inquisition, of course, and probably to the torture of slaves. But it did not figure in classical law as a survival or defect. It occupied a strict place in a complex penal mechanism, in which the procedure of an inquisitorial type was reinforced with elements of the accusatory system; in which the written demonstration required an oral correlative; in which the techniques of proof administered by the magistrates were mingled with the methods of the ordeal to which the accused was challenged; in which he was called upon – if necessary by the most violent persuasion – to play the role of voluntary partner in the procedure; in which it was a question, in short, of producing truth by a mechanism consisting of two elements – that of the investigation carried out in secret by the judicial authority and that of the act ritually performed by the accused. The
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body of the accused, the speaking and, if necessary, suffering body, assured the interlocking of these two mechanisms; that is why, until the classical system of punishment was re-examined from top to bottom, there were so few radical criticisms of torture (the most famous being Nicolas's *Si la torture est un moyen à vérifier les crimes* of 1682). Much more frequent were simple recommendations of prudence: 'Judicial torture is a dangerous means of arriving at knowledge of the truth; that is why judges must not resort to it without due consideration. Nothing is more equivocal. There are guilty men who have enough firmness to hide a true crime... and innocent victims who are made to confess crimes of which they were not guilty' (Ferrière, 612).

On this basis one may see the functioning of judicial torture, or interrogation under torture, as a torture of the truth. To begin with, judicial torture was not a way of obtaining the truth at all costs; it was not the unrestrained torture of modern interrogations; it was certainly cruel, but it was not savage. It was a regulated practice, obeying a well-defined procedure; the various stages, their duration, the instruments used, the length of ropes and the heaviness of the weights used, the number of interventions made by the interrogating magistrate, all this was, according to the different local practices, carefully codified (In 1729, Aguesseau ordered an investigation into the means and rules of torture used in France. For a summary of the findings, cf. Joly de Fleury, 322-8.) Torture was a strict judicial game. And, as such, it was linked to the old tests or trials - ordeals, judicial duels, judgements of God - that were practised in accusatory procedures long before the techniques of the Inquisition. Something of the joust survived, between the judge who ordered the judicial torture and the suspect who was tortured; the 'patient' - this is the term used to designate the victim - was subjected to a series of trials, graduated in severity, in which he succeeded if he 'held out', or failed if he confessed. (The first degree of torture was the sight of the instruments. In the case of children or of persons over the age of seventy, one did not go beyond this stage.) But the examining magistrate did not employ torture without himself taking certain risks (apart, that is, from the danger of causing the suspect's death); he had a stake in the game, namely, the evidence that he had already collected; for the rule was that if the accused 'held out' and did not
confess, the magistrate was forced to drop the charges. The tortured man had then won. Hence the custom, which had been introduced for the most serious cases, of imposing judicial torture 'pending proof': in this case the magistrate could continue with his investigation after the torture had failed; the suspect was not declared innocent by his resistance; but at least his victory saved him from being condemned to death. The judge kept all his cards, except the principal one. *Omnia citra mortem.* Hence the recommendation often made to magistrates, in the case of the most serious crimes, not to subject to judicial torture a suspect against whom the evidence was sufficiently convincing for, if he managed to resist the torture, the magistrate would no longer have the right to pass the death sentence, which he nevertheless deserved; in such a joust, justice would be the loser: if the evidence was sufficient 'to condemn such a guilty person to death', one should not 'leave the conviction to chance and to the outcome of a provisional interrogation that often leads to nothing; for it is in the interest of public safety to make examples of grave, horrible and capital crimes' (Rousseaud de la Combe, 503).

Beneath an apparently determined, impatient search for truth, one finds in classical torture the regulated mechanism of an ordeal: a physical challenge that must define the truth; if the patient is guilty, the pains that it imposes are not unjust; but it is also a mark of exculpation if he is innocent. In the practice of torture, pain, confrontation and truth were bound together: they worked together on the patient's body. The search for truth through judicial torture was certainly a way of obtaining evidence, the most serious of all—the confession of the guilty person; but it was also the battle, and this victory of one adversary over the other, that 'produced' truth according to a ritual. In torture employed to extract a confession, there was an element of the investigation; there also was an element of the duel.

It is as if investigation and punishment had become mixed. And this is not the least paradoxical thing about it. Judicial torture was indeed defined as a way of complementing the demonstration when 'there are not sufficient penalties in the trial'. For it was included among the penalties; it was a penalty so grave that, in the hierarchy of punishments, the ordinance of 1760 placed it immediately after
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dea.

How can a penalty be used as a means? one was later to ask. How can one treat as a punishment what ought to be a method of demonstration? The reason is to be found in the way in which criminal justice, in the classical period, operated the production of truth. The different pieces of evidence did not constitute so many neutral elements, until such time as they could be gathered together into a single body of evidence that would bring the final certainty of guilt. Each piece of evidence aroused a particular degree of abomination. Guilt did not begin when all the evidence was gathered together; piece by piece, it was constituted by each of the elements that made it possible to recognize a guilty person. Thus a semi-proof did not leave the suspect innocent until such time as it was completed; it made him semi-guilty; slight evidence of a serious crime marked someone as slightly criminal. In short, penal demonstration did not obey a dualistic system: true or false; but a principle of continuous gradation; a degree reached in the demonstration already formed a degree of guilt and consequently involved a degree of punishment. The suspect, as such, always deserved a certain punishment; one could not be the object of suspicion and be completely innocent. Suspicion implied an element of demonstration as regards the judge, the mark of a certain degree of guilt as regards the suspect and a limited form of penalty as regards punishment. A suspect, who remained a suspect, was not for all that declared innocent, but was partially punished. When one reached a certain degree of presumption, one could then legitimately bring into play a practice that had a dual role: to begin the punishment in pursuance of the information already collected and to make use of this first stage of punishment in order to extort the truth that was still missing. In the eighteenth century, judicial torture functioned in that strange economy in which the ritual that produced the truth went side by side with the ritual that imposed the punishment. The body interrogated in torture constituted the point of application of the punishment and the locus of extortion of the truth. And just as presumption was inseparably an element in the investigation and a fragment of guilt, the regulated pain involved in judicial torture was a means both of punishment and of investigation.

Now, curiously enough, this interlocking of the two rituals
The spectacle of the scaffold through the body continued, evidence having been confirmed and sentence passed, in the actual carrying out of the penalty; and the body of the condemned man was once again an essential element in the ceremonial of public punishment. It was the task of the guilty man to bear openly his condemnation and the truth of the crime that he had committed. His body, displayed, exhibited in procession, tortured, served as the public support of a procedure that had hitherto remained in the shade; in him, on him, the sentence had to be legible for all. This immediate, striking manifestation of the truth in the public implementation of penalties assumed, in the eighteenth century, several aspects.

1. It made the guilty man the herald of his own condemnation. He was given the task, in a sense, of proclaiming it and thus attesting to the truth of what he had been charged with: the procession through the streets, the placard attached to his back, chest or head as a reminder of the sentence; the halts at various crossroads, the reading of the sentence, the amende honorable performed at the doors of churches, in which the condemned man solemnly acknowledged his crime: ‘Barefoot, wearing a shirt, carrying a torch, kneeling, to say and to declare that wickedly, horribly, treacherously, he has committed the most detestable crime, etc.’; exhibition at a stake where his deeds and the sentence were read out; yet another reading of the sentence at the foot of the scaffold; whether he was to go simply to the pillory or to the stake and the wheel, the condemned man published his crime and the justice that had been meted out to him by bearing them physically on his body.

2. It took up once again the scene of the confession. It duplicated the forced proclamation of the amende honorable with a spontaneous, public acknowledgement. It established the public execution as the moment of truth. These last moments, when the guilty man no longer has anything to lose, are won for the full light of truth. After the passing of the sentence, the court could decide on some new torture to obtain the names of possible accomplices. It was also recognized that at the very moment he mounted the scaffold the condemned man could ask for a respite in order to make new revelations. The public expected this new turn in the course of truth. Many made use of it in order to gain time, as did Michel Barbier, found guilty of armed assault: ‘He stared impudently at the
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scaffold and said that it had certainly not been set up for him, since he was innocent; he first asked to return to the chamber, where he beat about the bush for half an hour, still trying to justify himself; then, when he was sent back to execution, he ascended the scaffold with a purposeful air, but, when he saw himself undressed and tied to the cross before being stretched, he asked to go back to the chamber a second time and there made a full confession of his crimes and even declared that he was guilty of another murder’ (Hardy, IV, 80). The function of the public torture and execution was to reveal the truth; and in this respect it continued, in the public eye, the work of the judicial torture conducted in private. It added to the conviction the signature of the convicted man. A successful public execution justified justice, in that it published the truth of the crime in the very body of the man to be executed. An example of the good condemned man was François Billiard, a senior postal official, who murdered his wife in 1772. The executioner wanted to hide his face to spare him the insults of the crowd: ‘“This punishment, which I have merited, has not been inflicted upon me,” he said, “so that I should not be seen by the public. . .”’ He was still wearing mourning dress in honour of his wife. . . He was wearing new shoes, his hair had been recently curled and powdered, and he had a countenance so modest and so dignified that those present who found themselves observing him more closely said that he must be the most perfect Christian or the greatest of all hypocrites. The placard that he was wearing on his chest had gone askew, and it was noticed that he had straightened it himself, no doubt so that people could read it the more easily’ (Hardy, I, 327). If each of the participants played his role well, the penal ceremony had the effectiveness of a long public confession.

3. It pinned the public torture on to the crime itself; it established from one to the other a series of decipherable relations. It was an exhibition of the corpse of the condemned man at the scene of his crime, or at one of the near-by crossroads. The execution was often carried out at the very place where the crime had been committed – as in the case of the student who, in 1723, had killed several persons and for whom the presidial court of Nantes decided to set up a scaffold in front of the inn where he had committed his murders (Nantes, F.F. 124; cf. Parfouru, XXV). There was the use of
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‘symbolic’ torture in which the forms of the execution referred to
the nature of the crime: the tongues of blasphemers were pierced, the
impure were burnt, the right hand of murderers was cut off; some­
times the condemned man was made to carry the instrument of his
crime – thus Damiens was made to hold in his guilty right hand the
famous dagger with which he had committed the crime, hand and
dagger being smeared with sulphur and burnt together. As Vico
remarked, this old jurisprudence was ‘an entire poetics’.

There were even some cases of an almost theatrical reproduction
of the crime in the execution of the guilty man – with the same
instruments, the same gestures. Thus justice had the crime re­
enacted before the eyes of all, publishing it in its truth and at the
same time annulling it in the death of the guilty man. Even as late
in the eighteenth century as 1772, one finds sentences like the follow­
ing: a servant girl at Cambrai, having killed her mistress, was con­demned to be taken to the place of her execution in a cart ‘used to
collect rubbish at the crossroads’; there a gibbet was to be set up
‘at the foot of which will be placed the same chair in which the said
Laleu, her mistress, was sitting at the time of the murder; and having
seated the criminal there, the executioner of the High Court of
Justice will cut off her right hand, throw it in her presence into the
fire, and, immediately afterwards, will strike her four blows with
the cleaver with which she murdered the said Laleu, the first and
second being on the head, the third on the left forearm and the
fourth on the chest; this done, she will be hung and strangled on the
said gibbet until she be dead; and when two hours have elapsed her
dead body will be removed and the head separated from it at the
foot of the said gibbet on the said scaffold, with the same cleaver
she used to murder her mistress, and the same head exhibited
on a pole twenty feet high outside the gates of the said Cambrai,
within reach of the road that leads to Douai, and the rest of the body
put in a sack, and buried near the said pole at a depth of ten feet’
(quoted in Dautricourt, 269–70).

4. Lastly, the slowness of the process of torture and execution,
its sudden dramatic moments, the cries and sufferings of the con­
demned man serve as an ultimate proof at the end of the judicial
ritual. Every death agony expresses a certain truth: but, when it
takes place on the scaffold, it does so with more intensity, in that it
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is hastened by pain; with more rigour, because it occurs exactly at the juncture between the judgement of men and the judgement of God; with more ostentation, because it takes place in public. The sufferings of the condemned man are an extension of those of the judicial torture that precedes them; in the judicial torture, however, the game was not yet over and one could still save one's life; now one will die, without any doubt, and it is one's soul that one must save. The eternal game has already begun: the torture of the execution anticipates the punishments of the beyond; it shows what they are; it is the theatre of hell; the cries of the condemned man, his struggles, his blasphemies, already signify his irremediable destiny. But the pains here below may also be counted as penitence and so alleviate the punishments of the beyond: God will not fail to take such a martyrdom into account, providing it is borne with resignation. The cruelty of the earthly punishment will be deducted from the punishment to come: in it is glimpsed the promise of forgiveness. But, it might be said, are not such terrible sufferings a sign that God has abandoned the guilty man to the mercy of his fellow creatures? And, far from securing future absolution, do they not prefigure imminent damnation; so that, if the condemned man dies quickly, without a prolonged agony, is it not proof that God wishes to protect him and to prevent him from falling into despair? There is, therefore, an ambiguity in this suffering that may signify equally well the truth of the crime or the error of the judges, the goodness or the evil of the criminal, the coincidence or the divergence between the judgement of men and that of God. Hence the insatiable curiosity that drove the spectators to the scaffold to witness the spectacle of sufferings truly endured; there one could decipher crime and innocence, the past and the future, the here below and the eternal. It was a moment of truth that all the spectators questioned: each word, each cry, the duration of the agony, the resisting body, the life that clung desperately to it, all this constituted a sign. There was the man who survived 'six hours on the wheel, and did not want the executioner, who consoled and heartened him no doubt as best he could, to leave him for a moment'; there was the man who died 'with true Christian feeling, and who manifested the most sincere repentance'; the man who 'expired on the wheel an hour after being put there; it is said that the spectators of his torture were moved by the outward signs
of religion and repentance that he gave'; the man who had shown the most marked signs of contrition throughout the journey to the scaffold, but who, when placed alive on the wheel, 'did not cease to let forth the most horrible cries'; or again the woman who 'had preserved her calm up to the moment when the sentence was read, but whose wits then began to turn; she was quite mad by the time she was hanged' (Hardy, I, 13; IV, 42; V, 134).

We have come full circle: from the judicial torture to the execution, the body has produced and reproduced the truth of the crime—or rather it constitutes the element which, through a whole set of rituals and trials, confesses that the crime took place, admits that the accused did indeed commit it, shows that he bore it inscribed in himself and on himself, supports the operation of punishment and manifests its effects in the most striking way. The body, several times tortured, provides the synthesis of the reality of the deeds and the truth of the investigation, of the documents of the case and the statements of the criminal, of the crime and the punishment. It is an essential element, therefore, in a penal liturgy, in which it must serve as the partner of a procedure ordered around the formidable rights of the sovereign, the prosecution and secrecy.

The public execution is to be understood not only as a judicial, but also as a political ritual. It belongs, even in minor cases, to the ceremonies by which power is manifested.

An offence, according to the law of the classical age, quite apart from the damage it may produce, apart even from the rule that it breaks, offends the rectitude of those who abide by the law: 'If one commits something that the law forbids, even if there is neither harm nor injury to the individual, it is an offence that demands reparation, because the right of the superior man is violated and because it offends the dignity of his character' (Risi, 9). Besides its immediate victim, the crime attacks the sovereign: it attacks him personally, since the law represents the will of the sovereign; it attacks him physically, since the force of the law is the force of the prince. 'For a law to be in force in this kingdom, it must necessarily have emanated directly from the sovereign, or at least been confirmed by the seal of his authority' (Muyart de Vouglans, xxxiv). The intervention of the sovereign is not, therefore, an arbitration between
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twq adversaries; it is much more, even, than an action to enforce respect for the rights of the individual; it is a direct reply to the person who has offended him. There can be no doubt that 'the exercise of the sovereign power in the punishment of crime is one of the essential parts of the administration of justice' (Jousse, vii). Punishment, therefore, cannot be identified with or even measured by the redress of the injury; in punishment, there must always be a portion that belongs to the prince, and, even when it is combined with the redress laid down, it constitutes the most important element in the penal liquidation of the crime. Now, this portion belonging to the prince is not in itself simple: on the one hand, it requires redress for the injury that has been done to his kingdom (as an element of disorder and as an example given to others, this considerable injury is out of all proportion to that which has been committed upon a private individual); but it also requires that the king take revenge for an affront to his very person.

The right to punish, therefore, is an aspect of the sovereign's right to make war on his enemies: to punish belongs to 'that absolute power of life and death which Roman law calls merum imperium, a right by virtue of which the prince sees that his law is respected by ordering the punishment of crime' (Muyart de Vouglans, xxxiv). But punishment is also a way of exacting retribution that is both personal and public, since the physico-political force of the sovereign is in a sense present in the law: 'One sees by the very definition of the law that it tends not only to prohibit, but also to avenge contempt for its authority by the punishment of those who violate its prohibitions' (Muyart de Vouglans, xxxiv). In the execution of the most ordinary penalty, in the most punctilious respect of legal forms, reign the active forces of revenge.

The public execution, then, has a juridico-political function. It is a ceremonial by which a momentarily injured sovereignty is reconstituted. It restores that sovereignty by manifesting it at its most spectacular. The public execution, however hasty and everyday, belongs to a whole series of great rituals in which power is eclipsed and restored (coronation, entry of the king into a conquered city, the submission of rebellious subjects); over and above the crime that has placed the sovereign in contempt, it deploys before all eyes an invincible force. Its aim is not so much to re-establish a balance
as to bring into play, as its extreme point, the dissymmetry between the subject who has dared to violate the law and the all-powerful sovereign who displays his strength. Although redress of the private injury occasioned by the offence must be proportionate, although the sentence must be equitable, the punishment is carried out in such a way as to give a spectacle not of measure, but of imbalance and excess; in this liturgy of punishment, there must be an emphatic affirmation of power and of its intrinsic superiority. And this superiority is not simply that of right, but that of the physical strength of the sovereign beating down upon the body of his adversary and mastering it: by breaking the law, the offender has touched the very person of the prince; and it is the prince – or at least those to whom he has delegated his force – who seizes upon the body of the condemned man and displays it marked, beaten, broken. The ceremony of punishment, then, is an exercise of ‘terror’. When the jurists of the eighteenth century began their polemic with the reformers, they offered a restrictive, ‘modernist’ interpretation of the physical cruelty of the penalties imposed by the law: if severe penalties are required, it is because their example must be deeply inscribed in the hearts of men. Yet, in fact, what had hitherto maintained this practice of torture was not an economy of example, in the sense in which it was to be understood at the time of the ideologues (that the representation of the penalty should be greater than the interest of the crime), but a policy of terror: to make everyone aware, through the body of the criminal, of the unrestrained presence of the sovereign. The public execution did not re-establish justice; it reactivated power. In the seventeenth century, and even in the early eighteenth century, it was not, therefore, with all its theatre of terror, a lingering hang-over from an earlier age. Its ruthlessness, its spectacle, its physical violence, its unbalanced play of forces, its meticulous ceremonial, its entire apparatus were inscribed in the political functioning of the penal system.

This enables us to understand some of the characteristics of the liturgy of torture and execution – above all, the importance of a ritual that was to deploy its pomp in public. Nothing was to be hidden of this triumph of the law. Its episodes were traditionally the same and yet the sentences never failed to list them, so important were they in the penal mechanism: processions, halts at crossroads
and church doors, the public reading of the sentence, kneeling, declarations of repentance for the offence to God and to the king. Sometimes questions of precedence and ceremonial were settled by the court itself: 'The officers will ride according to the following order: namely, at the head two police sergeants; then the patient; after the patient, Bonfort and Le Corre on his left will walk together, followed by the clerk of the court and in this manner shall go to the market square at which place the judgement shall be carried out' (quoted in Corre, 7). Now, this meticulous ceremonial was not only legal, but quite explicitly military. The justice of the king was shown to be an armed justice. The sword that punished the guilty was also the sword that destroyed enemies. A whole military machine surrounded the scaffold: cavalry of the watch, archers, guardsmen, soldiers. This was intended, of course, to prevent any escape or show of force; it was also to prevent any outburst of sympathy or anger on the part of the people, any attempt to save the condemned or to have them immediately put to death; but it was also a reminder that every crime constituted as it were a rebellion against the law and that the criminal was an enemy of the prince. All these reasons—whether a matter of precaution in particular circumstances or a functional element in the performance of the ritual—made the public execution more than an act of justice; it was a manifestation of force; or rather, it was justice as the physical, material and awesome force of the sovereign deployed there. The ceremony of the public torture and execution displayed for all to see the power relation that gave his force to the law.

As a ritual of armed law, in which the prince showed himself, indissociably, both as head of justice and head of war, the public execution had two aspects: one of victory, the other of struggle. It brought to a solemn end a war, the outcome of which was decided in advance, between the criminal and the sovereign; it had to manifest the disproportion of power of the sovereign over those whom he had reduced to impotence. The dissymmetry, the irreversible imbalance of forces were an essential element in the public execution. A body effaced, reduced to dust and thrown to the winds, a body destroyed piece by piece by the infinite power of the sovereign constituted not only the ideal, but the real limit of punishment. Take the celebrated torture and execution of Massola, which took
place at Avignon and which was one of the first to arouse the indignation of contemporaries. This was an apparently paradoxical ceremony, since it took place almost entirely after death, and since justice did little more than deploy its magnificent theatre, the ritual praise of its force, on a corpse. The condemned man was blindfolded and tied to a stake; all around, on the scaffold, were stakes with iron hooks. ‘The confessor whispered in the patient’s ear and, after he had given him the blessing, the executioner, who had an iron bludgeon of the kind used in slaughter houses, delivered a blow with all his might on the temple of the wretch, who fell dead: the mortis exactor, who had a large knife, then cut his throat, which spattered him with blood; it was a horrible sight to see; he severed the sinews near the two heels, and then opened up the belly from which he drew the heart, liver, spleen and lungs, which he stuck on an iron hook, and cut and dissected into pieces, which he then stuck on the other hooks as he cut them, as one does with an animal. Look who can at such a sight’ (Bruneau, 259). In the explicit reference to the butcher’s trade, the infinitesimal destruction of the body is linked here with spectacle: each piece is placed on display.

The execution was accompanied by a whole ceremonial of triumph; but it also included, as a dramatic nucleus in its monotonous progress, a scene of confrontation: this was the immediate, direct action of the executioner on the body of the ‘patient’. It was a coded action, of course, since custom and, often quite explicitly, the sentence prescribed its principal episodes. Nevertheless, it did preserve something of the battle. The executioner not only implemented the law, he also deployed the force; he was the agent of a violence applied, in order to master it, to the violence of the crime. Materially, physically, he was the adversary of this crime: an adversary who could show pity or ruthlessness. Damhoudère complained, with many of his contemporaries, that the executioners exercised ‘every cruelty with regard to the evil-doing patients, treating them, buffeting and killing them as if they had a beast in their hands’ (Damhoudère, 219). And for a long time the habit did not die out.³ There was still an element of challenge and of jousting in the ceremony of public execution. If the executioner triumphed, if he managed to cut off the head with a single blow, he ‘showed it to the people, put it down on the ground and then waved to the public who greatly applauded his skill by
Torture clapping'. (A scene observed by T. S. Gueulette, at the execution of Montigny in 1737 – cf. Anchel, 62–9.) Conversely, if he failed, if he did not succeed in killing the ‘patient’ as required, he was liable to punishment. This was the case of Damiens’s executioner who, being unable to quarter his patient according to the rules, had to cut him up with a knife; as a result, Damiens’s hair, which had been promised to him, was confiscated and the money obtained from the sale given to the poor. Some years later, an executioner at Avignon caused excessive pain to three bandits, who were nevertheless formidable characters, whom he had to hang; the spectators became angry; they denounced him; in order to punish him and also to protect him from mob violence, he was put into prison (Duhamel, 24). And, behind this punishment of the unskilful executioner, stands a tradition, which is still close to us, according to which the condemned man should be pardoned if the execution happened to fail. It was a custom clearly established in certain countries: in Burgundy, for instance (cf. Chassanée, 55). The people often expected it to be applied, and would sometimes protect a condemned man who had escaped death in this way. In order to abolish both custom and expectation, they had to revive the adage, ‘the gibbet does not lose its prey’, to introduce explicit instructions in capital sentences, such as ‘hanged by the neck until he be dead’. And jurists like Serpillon or Blackstone were insisting in the middle of the eighteenth century that a failure on the part of the executioner did not mean that the condemned man’s life was spared (Serpillon, III, 1100). In his Commentaries on the Laws of England, Blackstone remarks: ‘It is clear, that if, upon judgement to be hanged by the neck till he is dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again. For the former hanging was no execution of the sentence; and, if a false tenderness were to be indulged in such cases, a multitude of collusions might ensue’ (Blackstone, 199). There was something of the ordeal and something of God’s judgement that was still indecipherable in the ceremony of execution. In his confrontation with the condemned man, the executioner was a little like the king’s champion. Yet he was an unacknowledgeable and unacknowledged champion: the tradition was, it seems, that when the executioner’s letters were sealed, they were not placed on the table, but thrown on the ground. The various prohibitions
surrounding this 'very necessary' yet 'unnatural' office are well known (Loyseau, 80–81). The executioner may have been, in a sense, the king's sword, but he shared the infamy of his adversary. The sovereign power that enjoined him to kill, and which through him did kill, was not present in him; it was not identified with his own ruthlessness. And it never appeared with more spectacular effect than when it interrupted the executioner's gesture with a letter of pardon. The short time that usually elapsed between sentence and execution (often a few hours) meant that the pardon usually arrived at the very last moment. But the ceremony, by the very slowness of its progress, was no doubt arranged to leave room for this eventuality. (Cf. Hardy, 30 January 1769, I, 125 and 14 December 1779, IV, 229; Anchel, 162–3, tells the story of Antoine Boulleteix, who was already at the foot of the scaffold when a horseman arrived carrying the celebrated parchment. Shouts of 'God save the King' arose and Boulleteix was taken to the tavern, while the clerk of the court made a collection on his behalf.) The condemned always hoped for a pardon and, in order to drag things out, they would pretend, even at the foot of the scaffold, that they had further revelations to make. When the people wanted a pardon they called for it aloud and tried to postpone the last moment, looking out for the arrival of the messenger bearing the letter with the green wax seal and if necessary claiming that he was on his way (this happened during the execution of those condemned for the uprising against child abduction on 3 August 1750). The sovereign was present at the execution not only as the power exacting the vengeance of the law, but as the power that could suspend both law and vengeance. He alone must remain master, he alone could wash away the offences committed on his person; although it is true that he delegated to the courts the task of exercising his power to dispense justice, he had not transferred it; he retained it in its entirety and he could suspend the sentence or increase it at will.

We must regard the public execution, as it was still ritualized in the eighteenth century, as a political operation. It was logically inscribed in a system of punishment, in which the sovereign, directly or indirectly, demanded, decided and carried out punishments, in so far as it was he who, through the law, had been injured by the crime. In every offence there was a crimen majestatis and in the least
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criminal a potential regicide. And the regicide, in turn, was neither more nor less, than the total, absolute criminal since, instead of attacking, like any offender, a particular decision or wish of the sovereign power, he attacked the very principle and physical person of the prince. The ideal punishment of the regicide had to constitute the *summum* of all possible tortures. It would be an expression of infinite vengeance: French law, in any case, made provisions for no fixed penalties for this sort of monstrosity. For the execution of Ravaillac the form of the ceremony had to be invented, by combining all the cruellerst tortures then practised in France. For Damiens, an attempt was made to think up still more atrocious tortures. Suggestions were made, but they were considered to be less perfect. So the form of Ravaillac's execution was repeated. And it must be admitted that it was relatively modest if one thinks how in 1584 the assassin of William of Orange was abandoned to what seems like an infinity of vengeance. 'On the first day, he was taken to the square where he found a cauldron of boiling water, in which was submerged the arm with which he had committed the crime. The next day the arm was cut off, and, since it fell at his feet, he was constantly kicking it up and down the scaffold; on the third day, red-hot pincers were applied to his breasts and the front of his arm; on the fourth day, the pincers were applied similarly on the back of his arm and on his buttocks; and thus, consecutively, this man was tortured for eighteen days.' On the last day, he was put to the wheel and *mailloté* [beaten with a wooden club]. After six hours, he was still asking for water, which was not given him. 'Finally the police magistrate was begged to put an end to him by strangling, so that his soul should not despair and be lost' (Brantôme, II, 191–2).

There can be no doubt that the existence of public tortures and executions were connected with something quite other than this internal organization. Rusche and Kirchheimer are right to see it as the effect of a system of production in which labour power, and therefore the human body, has neither the utility nor the commercial value that are conferred on them in an economy of an industrial type. Moreover, this 'contempt' for the body is certainly related to a general attitude to death; and, in such an attitude, one can detect not only the values proper to Christianity, but a demographical,
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in a sense biological, situation: the ravages of disease and hunger, the periodic massacres of the epidemics, the formidable child mortality rate, the precariousness of the bio-economic balances— all this made death familiar and gave rise to rituals intended to integrate it, to make it acceptable and to give a meaning to its permanent aggression. But in analysing why the public executions survived for so long, one must also refer to the historical conjuncture; it must not be forgotten that the ordinance of 1670 that regulated criminal justice almost up to the Revolution had even increased in certain respects the rigour of the old edicts; Pussort, who, among the commissioners entrusted with the task of drawing up the documents, represented the intentions of the king, was responsible for this, despite the views of such magistrates as Lamoignon; the number of uprisings at the very height of the classical age, the rumbling close at hand of civil war, the king’s desire to assert his power at the expense of the parlements go a long way to explain the survival of so severe a penal system.

In accounting for a penal system involving so much torture, these are general and in a sense external reasons; they explain not only the possibility and the long survival of physical punishments, but also the weakness and the rather sporadic nature of the opposition to them. Against this general background we must bring out their precise function. If torture was so strongly embedded in legal practice, it was because it revealed truth and showed the operation of power. It assured the articulation of the written on the oral, the secret on the public, the procedure of investigation on the operation of the confession; it made it possible to reproduce the crime on the visible body of the criminal; in the same horror, the crime had to be manifested and annulled. It also made the body of the condemned man the place where the vengeance of the sovereign was applied, the anchoring point for a manifestation of power, an opportunity of affirming the dissymmetry of forces. We shall see later that the truth-power relation remains at the heart of all mechanisms of punishment and that it is still to be found in contemporary penal practice—but in a quite different form and with very different effects. The Enlightenment was soon to condemn public torture and execution as an ‘atrocity’—a term that was often used to describe it, but without any critical intention, by jurists themselves. Perhaps the
The notion of ‘atrocity’ is one of those that best designates the economy of the public execution in the old penal practice. To begin with, atrocity is a characteristic of some of the great crimes: it refers to the number of natural or positive, divine or human laws that they attack, to the scandalous openness or, on the contrary, to the secret cunning with which they have been committed, to the rank and status of those who are their authors and victims, to the disorder that they presuppose or bring with them, to the horror they arouse. In so far as it must bring the crime before everyone’s eyes, in all its severity, the punishment must take responsibility for this atrocity: it must bring it to light by confessions, statements, inscriptions that make it public; it must reproduce it in ceremonies that apply it to the body of the guilty person in the form of humiliation and pain. Atrocity is that part of the crime that the punishment turns back as torture in order to display it in the full light of day: it is a figure inherent in the mechanism that produces the visible truth of the crime at the very heart of the punishment itself. The public execution formed part of the procedure that established the reality of what one punished. Furthermore, the atrocity of a crime was also the violence of the challenge flung at the sovereign; it was that which would move him to make a reply whose function was to go further than this atrocity, to master it, to overcome it by an excess: that annulled it. The atrocity that haunted the public execution played, therefore, a double role: it was the principle of the communication between the crime and the punishment, it was also the exacerbation of the punishment in relation to the crime. It provided the spectacle with both truth and power; it was the culmination of the ritual of the investigation and the ceremony in which the sovereign triumphed. And it joined both together in the tortured body. The punitive practice of the nineteenth century was to strive to put as much distance as possible between the ‘serene’ search for truth and the violence that cannot be entirely effaced from punishment. It set out to mark the heterogeneity that separates the crime that is to be punished and the punishment imposed by the public power. Between truth and punishment, there should no longer be any other relation than one of legitimate consequence. The punishing power should not soil its hands with a crime greater than the one it wished to punish. It should remain innocent of the penalty
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that it inflicts. ‘Let us hasten to proscribe such tortures. They were worthy only of the crowned monsters who governed the Romans’ (Pastoret, on the subject of the punishment of regicides, II, 61). But, according to the penal practice of the preceding period, the proximity in the public execution of the sovereign and the crime, the mixture that was produced in it of ‘demonstration’ and punishment, were not the result of a barbarous confusion; what joined them together was the mechanism of atrocity and its necessary concatenations. The atrocity of the expiation organized the ritual destruction of infamy by omnipotence.

The fact that the crime and the punishment were related and bound up in the form of atrocity was not the result of some obscurely accepted law of retaliation. It was the effect, in the rites of punishment, of a certain mechanism of power: of a power that not only did not hesitate to exert itself directly on bodies, but was exalted and strengthened by its visible manifestations; of a power that asserted itself as an armed power whose functions of maintaining order were not entirely unconnected with the functions of war; of a power that presented rules and obligations as personal bonds, a breach of which constituted an offence and called for vengeance; of a power for which disobedience was an act of hostility, the first sign of rebellion, which is not in principle different from civil war; of a power that had to demonstrate not why it enforced its laws, but who were its enemies, and what unleashing of force threatened them; of a power which, in the absence of continual supervision, sought a renewal of its effect in the spectacle of its individual manifestations; of a power that was recharged in the ritual display of its reality as ‘super-power’.

Of all the reasons why punishment that was not in the least ashamed of being ‘atrocious’ was replaced by punishment that was to claim the honour of being ‘humane’ there is one that must be analysed at once, for it is internal to the public execution itself: at once an element of its functioning and the principle of its perpetual disorder.

In the ceremonies of the public execution, the main character was the people, whose real and immediate presence was required for the performance. An execution that was known to be taking place, but
which did so in secret, would scarcely have had any meaning. The aim was to make an example, not only by making people aware that the slightest offence was likely to be punished, but by arousing feelings of terror by the spectacle of power letting its anger fall upon the guilty person: 'In criminal matters, the most difficult point is the imposition of the penalty: it is the aim and the end of the procedure, and its only fruit, by example and terror, when it is well applied to the guilty person' (Bruneau, unnumbered preface to the first part).

But, in this scene of terror, the role of the people was an ambiguous one. People were summoned as spectators: they were assembled to observe public exhibitions and *amendes honorables*; pillories, gallows and scaffolds were erected in public squares or by the roadside; sometimes the corpses of the executed persons were displayed for several days near the scenes of their crimes. Not only must people know, they must see with their own eyes. Because they must be made to be afraid; but also because they must be the witnesses, the guarantors, of the punishment, and because they must to a certain extent take part in it. The right to be witnesses was one that they possessed and claimed; a hidden execution was a privileged execution, and in such cases it was often suspected that it had not taken place with all its customary severity. There were protests when at the last moment the victim was taken away out of sight. The senior postal official who had been put on public exhibition for killing his wife was later taken away from the crowd. 'He was put into a hired coach; it was thought that if he had not been well escorted, it would have been difficult to protect him from being ill-treated by the populace, who yelled and jeered at him' (Hardy, I, 328). When the woman Lescombat was hanged, care was taken to hide her face; she had 'a kerchief over her neck and head, which made the public murmur and say that it was not Lescombat' (Anchel, 70–71). The people claimed the right to observe the execution and to see who was being executed. The first time the guillotine was used the *Chronique de Paris* reported that people complained that they could not see anything and chanted, 'Give us back our gallows' (Lawrence, 71ff). The people also had a right to take part. The condemned man, carried in procession, exhibited, humiliated, with the horror of his crime recalled in innumerable ways, was
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offered to the insults, sometimes to the attacks of the spectators. The vengeance of the people was called upon to become an unobtrusive part of the vengeance of the sovereign. Not that it was in any way fundamental, or that the king had to express in his own way the people's revenge; it was rather that the people had to bring its assistance to the king when the king undertook 'to be avenged on his enemies', especially when those enemies were to be found among the people. It was rather like a 'scaffold service' that the people owed the king's vengeance. This 'service' had been specified in the old ordinances; the edict of 1347 concerning blasphemers stipulated that they would be exhibited at the pillory 'from the hour of prime, to that of their deaths. And mud and other refuse, though no stone or anything injurious, could be thrown at their faces... The second time, in case of relapse, it is our will that he be put in the pillory on a solemn market day, and that his upper lip be split so that the teeth appear.' No doubt, at the classical period, this form of participation in the torture was no more than tolerated and attempts were made to limit it: because of the barbarities that it gave rise to and the usurpation it involved of the power to punish. But it belonged too closely to the general economy of the public execution for it to be eliminated altogether. Even in the eighteenth century, there were scenes like the one that accompanied the execution of Montigny in 1737; as the executioner was carrying out the execution, the local fish-wives walked in procession, holding aloft an effigy of the condemned man, and then cut off its head (Anchel, 63). And very often, as they moved slowly in procession through it, criminals had to be 'protected' from the crowd – both as an example and as a target, a possible threat and a 'prey', promised but also forbidden. In calling on the crowd to manifest its power, the sovereign tolerated for a moment acts of violence, which he accepted as a sign of allegiance, but which were strictly limited by the sovereign's own privileges.

Now it was on this point that the people, drawn to the spectacle intended to terrorize it, could express its rejection of the punitive power and sometimes revolt. Preventing an execution that was regarded as unjust, snatching a condemned man from the hands of the executioner, obtaining his pardon by force, possibly pursuing and assaulting the executioners, in any case abusing the judges and
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calling an uproar against the sentence – all this formed part of the popular practices that invested, traversed and often overturned the ritual of the public execution. This often happened, of course, in the case of those condemned for rioting: there were the disturbances that followed a famous case of child abduction, when the crowd wanted to prevent the execution of three supposed rioters, who were to be hanged at the cemetery of Saint-Jean, ‘because there were fewer entrances and processions to guard’; the terrified executioner cut down one of the condemned men; the archers let fly their arrows. It occurred again after the corn riots of 1775; and again in 1786, when the day-labourers marched on Versailles and set about freeing their arrested comrades. But apart from these cases, when the process of agitation had been triggered off previously and for reasons that did not concern some measure of penal justice, one finds many examples when the agitation was provoked directly by a verdict and an execution: small, but innumerable ‘disturbances around the scaffold’.

In their most elementary forms, these disturbances began with the shouts of encouragement, sometimes the cheering, that accompanied the condemned man to his execution. Throughout the long procession, he was sustained by ‘the compassion of the meek and tender-hearted, and with the applause, admiration and envy of all the bold and hardened’ (Fielding, 449). If the crowd gathered round the scaffold, it was not simply to witness the sufferings of the condemned man or to excite the anger of the executioner: it was also to hear an individual who had nothing more to lose curse the judges, the laws, the government and religion. The public execution allowed the luxury of these momentary saturnalia, when nothing remained to prohibit or to punish. Under the protection of imminent death, the criminal could say everything and the crowd cheered. ‘If there were annals in which the last words of the tortured and executed were scrupulously recorded, and if one had the courage to read through them, even if one did no more than question the vile populace that gathers around the scaffolds out of cruel curiosity, one would be told that no one who had died on the wheel did not accuse heaven for the misery that brought him to the crime, reproach his judges for their barbarity, curse the minister of the altars who accompanies them and blaspheme against the God whose organ he is’ (Boucher
d'Argis, 128-9). In these executions, which ought to show only the terrorizing power of the prince, there was a whole aspect of the carnival, in which rules were inverted, authority mocked and criminals transformed into heroes. The shame was turned round; the courage, like the tears and the cries of the condemned, caused offence only to the law. Fielding notes with regret: 'To unite the ideas of death and shame is not so easy as may be imagined ... I will appeal to any man who hath seen an execution, or a procession to an execution; let him tell me. When he hath beheld a poor wretch, bound in a cart, just on the verge of eternity, all pale and trembling with his approaching fate, whether the idea of shame hath ever intruded on his mind? much less will the bold daring rogue, who glories in his present condition, inspire the beholder with any such sensation' (Fielding, 450). For the people who are there and observe, there is always, even in the most extreme vengeance of the sovereign a pretext for revenge.

This was especially the case if the conviction was regarded as unjust — or if one saw a man of the people put to death, for a crime that would have merited, for someone better born or richer, a comparatively light penalty. It would seem that certain practices of penal justice were no longer supported in the eighteenth century — and perhaps for longer — by the lower strata of the population. This would explain why executions could easily lead to the beginnings of social disturbances. Since the poorest — it was a magistrate who made the observation (Dupaty, 1786, 247) — could not be heard in the courts of law, it was where the law was manifested publicly, where they were called upon to act as witnesses and almost as coadjutors of this law, that they could intervene, physically: enter by force into the punitive mechanism and redistribute its effects; take up in another sense the violence of the punitive rituals. There was agitation against the difference in penalties according to social class: in 1781, the parish priest of Champré had been killed by the lord of the manor, and an attempt was made to declare the murderer insane; 'the peasants, who were extremely attached to their pastor, were furious and had at first seemed ready to lay violent hands upon their lord and to set fire to the castle... Everyone protested, and rightly, against the indulgence of the minister who deprived justice of the means of punishing so abominable a crime' (Hardy, IV, 394).
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There was agitation, too, against the excessive sentences passed on certain common offences that were not regarded as serious (such as house-breaking); or against punishments for certain offences connected with social conditions such as petty larceny; the death penalty for this crime aroused a great deal of discontent, because there were many domestic servants in a single household and it was difficult for them, in such a case, to prove their innocence, and also because they could easily be victims of their employers' spite and because the indulgence of certain masters who shut their eyes to such behaviour made the fate of servants accused, condemned and hanged even more iniquitous. The execution of such servants often gave rise to protests (cf. Hardy, I, 319, 367; III, 227–8; IV, 180). There was a small riot in Paris in 1761 in favour of a servant woman who had stolen a piece of cloth from her master. Despite the fact that the woman admitted her guilt, handed back the material and begged for mercy, the master refused to withdraw his complaint; on the day of the execution, the local people prevented the hanging, invaded the merchant's shop and looted it; in the end, the servant was pardoned, but a woman, who attempted, unsuccessfully, to stick a needle into the wicked master, was banished for three years (Anchel, 226).

One remembers the great legal affairs of the eighteenth century, when enlightened opinion intervened in the persons of the philosophs and certain magistrates: Calas, Sirven and the Chevalier de La Barre, for instance. But less attention is given to the popular agitations caused by punitive practice. Indeed, they seldom spread beyond a town, or even a district. Yet they did have a real importance. Sometimes these movements, which originated from below, spread and attracted the attention of more highly placed persons who, taking them up, gave them a new dimension (in the years preceding the Revolution, the affair of Catherine Espinas, falsely convicted of parricide in 1785, or the case of the three men of Chaumont, condemned to the wheel, for whom Dupaty, in 1786, wrote his celebrated memoir, or that of Marie Françoise Salmon, whom the parlement of Rouen in 1782 had condemned to the stake, for poisoning, but who in 1786 had still not been executed). More usually, those disturbances had maintained around penal justice and its manifestations, which ought to have been exemplary, a state of permanent unrest. How often had it proved necessary, in order to
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ensure order around the scaffolds, to take steps that were ‘distressing to the people’ and ‘humiliating for the authorities’ (Argenson, 241)?

It was evident that the great spectacle of punishment ran the risk of being rejected by the very people to whom it was addressed. In fact, the terror of the public execution created centres of illegality: on execution days, work stopped, the taverns were full, the authorities were abused, insults or stones were thrown at the executioner, the guards and the soldiers; attempts were made to seize the condemned man, either to save him or to kill him more surely; fights broke out, and there was no better prey for thieves than the curious throng around the scaffold. (Hardy recounts a number of cases like the important theft that was committed in the very house in which the police magistrate was lodging – IV, 56.) But above all – and this was why these disadvantages became a political danger – the people never felt closer to those who paid the penalty than in those rituals intended to show the horror of the crime and the invincibility of power; never did the people feel more threatened, like them, by a legal violence exercised without moderation or restraint. The solidarity of a whole section of the population with those we would call petty offenders – vagrants, false beggars, the indigent poor, pickpockets, receivers and dealers in stolen goods – was constantly expressed: resistance to police searches, the pursuit of informers, attacks on the watch or inspectors provide abundant evidence of this (cf. Richet, 118–19). And it was the breaking up of this solidarity that was becoming the aim of penal and police repression. Yet out of the ceremony of the public execution, out of that uncertain festival in which violence was instantaneously reversible, it was this solidarity much more than the sovereign power that was likely to emerge with redoubled strength. The reformers of the eighteenth and nineteenth centuries were not to forget that, in the last resort, the executions did not, in fact, frighten the people. One of their first cries was to demand their abolition.

To clarify the political problem posed by the intervention of the people in the spectacle of the executions, one need only cite two events. The first took place at Avignon at the end of the seventeenth century. It contained all the principal elements of the theatre of horror: the physical confrontation between the executioner and the condemned man, the reversal of the duel, the executioner pursued
by the people, the condemned man saved by the ensuing riot and the violent inversion of the penal machinery. A murderer by the name of Pierre du Fort was to be hanged; several times he had caught his feet in the steps and had not been able to swing freely. 'Seeing this, the executioner had pulled his jerkin up over his face and struck him below the knees, on the stomach and on the belly. When the people saw that the executioner was causing him too much pain, and even believing that he was killing him down there with a bayonet ... moved by compassion for the patient and fury at the executioner, they threw stones at the scaffold just as the executioner knocked away the two ladders and threw the patient down and leaped on to his shoulders and kicked him, while the wife of the said executioner pulled at his feet from under the gallows. In doing so, they made blood come from his mouth. But the hail of stones came thicker – one stone even struck the hanged man on the head – which forced the executioner to dash to the ladder, which he descended so rapidly that half-way down he fell from it, and struck his head on the ground. Then a crowd of people fell upon him. He got to his feet, bayonet in hand, threatening to kill anyone who came near him; after falling several times, he finally got to his feet, only to be beaten by the crowd, rolled in the mud and nearly drowned in the stream, then dragged by the excited and enraged crowd to the University and to the Cordeliers Cemetery. His servant was also beaten and, with bruises on his head and body, was taken to the hospital where he died some days later. However, some strangers and unknown people mounted the ladder and cut the rope while others caught the hanged man from below after he had been hanging there longer than it took to say a full Miserere. The crowd then smashed the gallows and broke the executioner's ladder into pieces. . . Children carried off the gallows and threw it into the Rhône.' The condemned man was then taken to a cemetery 'so that he should not be recaptured by the law and from there to the church of Sainte-Antoine'. The archbishop gave him his pardon, had him taken to the hospital and asked that particular care be taken of him. Lastly, adds the writer of the account, 'we had a new suit, two pairs of stockings and shoes made for him. We dressed him in new clothes from head to toe. Our colleagues gave him shirts, breeches and a wig' (Duhamel, 5–6; scenes of this kind were still taking
place in the nineteenth century – cf. Lawrence, 56 and 195–8).

The other event took place in Paris, a century later. It was in 1775, shortly after the corn riot. Because of the state of extreme tension among the people, the authorities wanted the execution to take place without interruption. Between the scaffold and the public, kept at a safe distance, two ranks of soldiers stood on guard, one facing the execution that was about to take place, the other facing the people in case of riot. Contact was broken: it was a public execution, but one in which the element of spectacle was neutralized, or rather reduced to abstract intimidation. Protected by force of arms, on an empty square, justice quietly did its work. If it showed the death that it had dealt, it was from high and far: 'The two gallows, which were eighteen feet high, no doubt by way of an example, were not set up until three o'clock in the afternoon. From two o'clock, the Place de Grève and all the surrounding streets had been filled with detachments of different troops, some on foot, some on horse; the Swiss and the French guards continued to patrol the adjacent streets. No one was allowed on to the Grève during the execution, and all around one could see a double row of soldiers, bayonets at the ready, standing back to back, so that some looked outwards and some into the square; the two wretches ... cried out all the way that they were innocent and continued to protest in like manner as they mounted the ladder' (Hardy, III, 67). Whatever the part played by feelings of humanity for the condemned in the abandonment of the liturgy of the public executions, there was, in any case, on the part of the state power, a political fear of the effects of these ambiguous rituals.

Such an equivocal attitude appeared clearly in what might be called the 'gallows speeches'. The rite of execution was so arranged that the condemned man would himself proclaim his guilt by the *amende honorable* that he spoke, by the placard that he displayed and also by the statements that he was no doubt forced to make. Furthermore, at the moment of the execution, it seems that he was given another opportunity to speak, not to proclaim his innocence, but to acknowledge his crime and the justice of his conviction. The chronicles relate a good many speeches of this kind. Were they actually delivered? In a number of cases, certainly. Or were they
fictional speeches that were later circulated by way of example and exhortation? This, no doubt, was more often the case. What credit are we to accord, for example, to the account of the death of Marion Le Goff, who had been a famous bandit leader in Brittany in the mid-eighteenth century? She is supposed to have cried out from the scaffold: ‘Fathers and mothers who hear me now, watch over your children and teach them well; in my childhood I was a liar and good-for-nothing; I began by stealing a small six-liard knife... Then I robbed pedlars and cattle dealers; finally, I led a robber band and that is why I am here. Tell all this to your children and let it be an example to them’ (Corre, 257). Such a speech is too close, even in its turn of phrase, to the morality traditionally to be found in the broadsheets and pamphlets for it not to be apocryphal. But the existence of the ‘last words of a condemned man’ genre is in itself significant. The law required that its victim should authenticate in some sense the tortures that he had undergone. The criminal was asked to consecrate his own punishment by proclaiming the blackness of his crimes; he was made to say, as was Jean-Dominique Langlade, three times a murderer: ‘Listen to my horrible, infamous and lamentable deed, committed in the city of Avignon, where the memory of me is execrable, for having inhumanly violated the sacred rites of friendship’ (Duhamel, 32). In one sense, the broadsheet and the death song were the sequel to the trial; or rather they pursued that mechanism by which the public execution transferred the secret, written truth of the procedure to the body, gesture and speech of the criminal. Justice required these apocrypha in order to be grounded in truth. Its decisions were thus surrounded by all these posthumous ‘proofs’. Sometimes, too, accounts of crimes and infamous lives were published, simply as propaganda, before any trial had taken place, in order to force the hand of a court that was suspected of being too tolerant. In order to discredit smugglers, the Compagnie des Fermes published ‘bulletins’ recounting their crimes: in 1768, it distributed broadsheets against a certain Montagne, the leader of a gang, of whom the writer himself says: ‘Some thefts have been ascribed to him the truth of which is somewhat uncertain...; Montagne has been depicted as a wild beast, a second hyena to be hunted down; given the hotheads of the Auvergne, this idea has caught on’ (cf. Juillard, 24).
But the effect, like the use, of this literature was equivocal. The condemned man found himself transformed into a hero by the sheer extent of his widely advertised crimes, and sometimes the affirmation of his belated repentance. Against the law, against the rich, the powerful, the magistrates, the constabulary or the watch, against taxes and their collectors, he appeared to have waged a struggle with which one all too easily identified. The proclamation of these crimes blew up to epic proportions the tiny struggle that passed unperceived in everyday life. If the condemned man was shown to be repentant, accepting the verdict, asking both God and man for forgiveness for his crimes, it was as if he had come through some process of purification: he died, in his own way, like a saint. But indomitability was an alternative claim to greatness: by not giving in under torture, he gave proof of a strength that no power had succeeded in bending: 'On the day of the execution – this will seem scarcely credible – I showed no trace of emotion, as I performed my amende honorable, and when I finally lay down on the cross I showed no fear' (the Complaine of J.-D. Langlade, executed at Avignon 12 April 1768). Black hero or reconciled criminal, defender of the true right or an indomitable force, the criminal of the broadsheets, pamphlets, almanacs and adventure stories brought with him beneath the apparent morality of the example not to be followed, a whole memory of struggles and confrontations. A convicted criminal could become after his death a sort of saint, his memory honoured and his grave respected. (This was the case of Tanguy, executed in Brittany about 1740. Before being convicted, it is true, he had begun a long penitence ordered by his confessor. Was this a conflict between civil justice and religious penitence? Cf. Corre, 21.) The criminal has been almost entirely transformed into a positive hero. There were those for whom glory and abomination were not dissociated, but coexisted in a reversible figure. Perhaps we should see this literature of crime, which proliferated around a few exemplary figures, neither as a spontaneous form of 'popular expression', nor as a concerted programme of propaganda and moralization from above; it was a locus in which two investments of penal practice met – a sort of battleground around the crime, its punishment and its memory. If these accounts were allowed to be printed and circulated, it was because they were expected to have the effect of an
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ideological control – the printing and the distribution of these almanacs, broadsheets, etc. was in principle subject to strict control. But if these true stories of everyday history were received so avidly, if they formed part of the basic reading of the lower classes, it was because people found in them not only memories, but also precedents; the interest of 'curiosity' is also a political interest. Thus these texts may be read as two-sided discourses, in the facts that they relate, in the effects they give to these facts and in the glory they confer on those 'illustrious' criminals, and no doubt in the very words they use (one should study the use of such categories as 'misfortune' or 'abomination' or such epithets as 'famous' or 'lamentable' in accounts such as The History of the Life, Great Robberies and Tricks of Guilleri and his Companions and of their Lamentable and Unhappy End.

Perhaps we should compare this literature with the 'disturbances around the scaffold' in which, through the tortured body of the criminal, the power that condemned confronted the people that was the witness, the participant, the possible and indirect victim of this execution. In the wake of a ceremony that inadequately channelled the power relations it sought to ritualize, a whole mass of discourses appeared pursuing the same confrontation; the posthumous proclamation of the crimes justified justice, but also glorified the criminal. That was why the reformers of the penal system were soon demanding suppression of these broadsheets. That was why the people showed so lively an interest in what served more or less as the minor, everyday epic of illegalities. That was why the broadsheets lost their importance as the political function of popular illegality altered.

And they disappeared as a whole new literature of crime developed: a literature in which crime is glorified, because it is one of the fine arts, because it can be the work only of exceptional natures, because it reveals the monstrousness of the strong and powerful, because villainy is yet another mode of privilege: from the adventure story to de Quincey, or from the Castle of Otranto to Baudelaire, there is a whole aesthetic rewriting of crime, which is also the appropriation of criminality in acceptable forms. In appearance, it is the discovery of the beauty and greatness of crime; in fact, it is the affirmation that greatness too has a right to crime and that it even
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becomes the exclusive privilege of those who are really great. The
great murders are not for the pedlars of petty crime. While, from
Gaboriau onwards, the literature of crime follows this first shift: by
his cunning, his tricks, his sharp-wittedness, the criminal represented
in this literature has made himself impervious to suspicion; and the
struggle between two pure minds – the murderer and the detective –
will constitute the essential form of the confrontation. We are far
removed indeed from those accounts of the life and misdeeds of the
criminal in which he admitted his crimes, and which recounted in
detail the tortures of his execution: we have moved from the
exposition of the facts or the confession to the slow process of
discovery; from the execution to the investigation; from the phy­sical confrontation to the intellectual struggle between criminal and
investigator. It was not only the broadsheets that disappeared with
the birth of a literature of crime; the glory of the rustic malefactor
and his sombre transformation into a hero by the process of torture
and execution went with them. The man of the people was now
too simple to be the protagonist of subtle truths. In this new genre,
there were no more popular heroes or great executions; the criminal
was wicked, of course, but he was also intelligent; and although he
was punished, he did not have to suffer. The literature of crime
transposes to another social class the spectacle that had surrounded
the criminal. Meanwhile the newspapers took over the task of
recounting the grey, unheroic details of everyday crime and punish­ment. The split was complete; the people was robbed of its old
pride in its crimes; the great murders had become the quiet game of
the well behaved.