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DISCIPLINE AND PUNISH

The Birth of the Prison

Translated from the French
by Alan Sheridan



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1. The body of the condemned

On 2 March 1757 Damiens the regicide was condemned 'to make the *amende honorable* before the main door of the Church of Paris', where he was to be 'taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds'; then, 'in the said cart, to the Place de Grève, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds' (*Pièces originales . . .*, 372–4).

'Finally, he was quartered,' recounts the *Gazette d'Amsterdam* of 1 April 1757. 'This last operation was very long, because the horses used were not accustomed to drawing; consequently, instead of four, six were needed; and when that did not suffice, they were forced, in order to cut off the wretch's thighs, to sever the sinews and hack at the joints. . .

'It is said that, though he was always a great swearer, no blasphemy escaped his lips; but the excessive pain made him utter horrible cries, and he often repeated: "My God, have pity on me! Jesus, help me!" The spectators were all edified by the solicitude of the parish priest of St Paul's who despite his great age did not spare himself in offering consolation to the patient.'

Bouton, an officer of the watch, left us his account: 'The sulphur was lit, but the flame was so poor that only the top skin of the hand was burnt, and that only slightly. Then the executioner, his sleeves rolled up, took the steel pincers, which had been especially made

for the occasion, and which were about a foot and a half long, and pulled first at the calf of the right leg, then at the thigh, and from there at the two fleshy parts of the right arm; then at the breasts. Though a strong, sturdy fellow, this executioner found it so difficult to tear away the pieces of flesh that he set about the same spot two or three times, twisting the pincers as he did so, and what he took away formed at each part a wound about the size of a six-pound crown piece.

'After these tearings with the pincers, Damiens, who cried out profusely, though without swearing, raised his head and looked at himself; the same executioner dipped an iron spoon in the pot containing the boiling potion, which he poured liberally over each wound. Then the ropes that were to be harnessed to the horses were attached with cords to the patient's body; the horses were then harnessed and placed alongside the arms and legs, one at each limb.

'Monsieur Le Breton, the clerk of the court, went up to the patient several times and asked him if he had anything to say. He said he had not; at each torment, he cried out, as the damned in hell are supposed to cry out, "Pardon, my God! Pardon, Lord." Despite all this pain, he raised his head from time to time and looked at himself boldly. The cords had been tied so tightly by the men who pulled the ends that they caused him indescribable pain. Monsieur le Breton went up to him again and asked him if he had anything to say; he said no. Several confessors went up to him and spoke to him at length; he willingly kissed the crucifix that was held out to him; he opened his lips and repeated: "Pardon, Lord."

'The horses tugged hard, each pulling straight on a limb, each horse held by an executioner. After a quarter of an hour, the same ceremony was repeated and finally, after several attempts, the direction of the horses had to be changed, thus: those at the arms were made to pull towards the head, those at the thighs towards the arms, which broke the arms at the joints. This was repeated several times without success. He raised his head and looked at himself. Two more horses had to be added to those harnessed to the thighs, which made six horses in all. Without success.

'Finally, the executioner, Samson, said to Monsieur Le Breton that there was no way or hope of succeeding, and told him to ask

their Lordships if they wished him to have the prisoner cut into pieces. Monsieur Le Breton, who had come down from the town, ordered that renewed efforts be made, and this was done; but the horses gave up and one of those harnessed to the thighs fell to the ground. The confessors returned and spoke to him again. He said to them (I heard him): "Kiss me, gentlemen." The parish priest of St Paul's did not dare to, so Monsieur de Marsilly slipped under the rope holding the left arm and kissed him on the forehead. The executioners gathered round and Damiens told them not to swear, to carry out their task and that he did not think ill of them; he begged them to pray to God for him, and asked the parish priest of St Paul's to pray for him at the first mass.

'After two or three attempts, the executioner Samson and he who had used the pincers each drew out a knife from his pocket and cut the body at the thighs instead of severing the legs at the joints; the four horses gave a tug and carried off the two thighs after them, namely, that of the right side first, the other following; then the same was done to the arms, the shoulders, the arm-pits and the four limbs; the flesh had to be cut almost to the bone, the horses pulling hard carried off the right arm first and the other afterwards.

'When the four limbs had been pulled away, the confessors came to speak to him; but his executioner told them that he was dead, though the truth was that I saw the man move, his lower jaw moving from side to side as if he were talking. One of the executioners even said shortly afterwards that when they had lifted the trunk to throw it on the stake, he was still alive. The four limbs were untied from the ropes and thrown on the stake set up in the enclosure in line with the scaffold, then the trunk and the rest were covered with logs and faggots, and fire was put to the straw mixed with this wood.

'. . . In accordance with the decree, the whole was reduced to ashes. The last piece to be found in the embers was still burning at half-past ten in the evening. The pieces of flesh and the trunk had taken about four hours to burn. The officers of whom I was one, as also was my son, and a detachment of archers remained in the square until nearly eleven o'clock.

'There were those who made something of the fact that a dog had lain the day before on the grass where the fire had been, had been chased away several times, and had always returned. But it is

not difficult to understand that an animal found this place warmer than elsewhere' (quoted in Zevaes, 201–14).

Eighty years later, Léon Faucher drew up his rules 'for the House of young prisoners in Paris':

'Art. 17. The prisoners' day will begin at six in the morning in winter and at five in summer. They will work for nine hours a day throughout the year. Two hours a day will be devoted to instruction. Work and the day will end at nine o'clock in winter and at eight in summer.

Art. 18. *Rising.* At the first drum-roll, the prisoners must rise and dress in silence, as the supervisor opens the cell doors. At the second drum-roll, they must be dressed and make their beds. At the third, they must line up and proceed to the chapel for morning prayer. There is a five-minute interval between each drum-roll.

Art. 19. The prayers are conducted by the chaplain and followed by a moral or religious reading. This exercise must not last more than half an hour.

Art. 20. *Work.* At a quarter to six in the summer, a quarter to seven in winter, the prisoners go down into the courtyard where they must wash their hands and faces, and receive their first ration of bread. Immediately afterwards, they form into work-teams and go off to work, which must begin at six in summer and seven in winter.

Art. 21. *Meal.* At ten o'clock the prisoners leave their work and go to the refectory; they wash their hands in their courtyards and assemble in divisions. After the dinner, there is recreation until twenty minutes to eleven.

Art. 22. *School.* At twenty minutes to eleven, at the drum-roll, the prisoners form into ranks, and proceed in divisions to the school. The class lasts two hours and consists alternately of reading, writing, drawing and arithmetic.

Art. 23. At twenty minutes to one, the prisoners leave the school, in divisions, and return to their courtyards for recreation. At five minutes to one, at the drum-roll, they form into work-teams.

Art. 24. At one o'clock they must be back in the workshops: they work until four o'clock.

Art. 25. At four o'clock the prisoners leave their workshops and go into the courtyards where they wash their hands and form into divisions for the refectory.

Art. 26. Supper and the recreation that follows it last until five o'clock: the prisoners then return to the workshops.

Art. 27. At seven o'clock in the summer, at eight in winter, work stops; bread is distributed for the last time in the workshops. For a quarter of an hour one of the prisoners or supervisors reads a passage from some instructive or uplifting work. This is followed by evening prayer.

Art. 28. At half-past seven in summer, half-past eight in winter, the prisoners must be back in their cells after the washing of hands and the inspection of clothes in the courtyard; at the first drum-roll, they must undress, and at the second get into bed. The cell doors are closed and the supervisors go the rounds in the corridors, to ensure order and silence' (Faucher, 274–82).

We have, then, a public execution and a time-table. They do not punish the same crimes or the same type of delinquent. But they each define a certain penal style. Less than a century separates them. It was a time when, in Europe and in the United States, the entire economy of punishment was redistributed. It was a time of great 'scandals' for traditional justice, a time of innumerable projects for reform. It saw a new theory of law and crime, a new moral or political justification of the right to punish; old laws were abolished, old customs died out. 'Modern' codes were planned or drawn up: Russia, 1769; Prussia, 1780; Pennsylvania and Tuscany, 1786; Austria, 1788; France, 1791, Year IV, 1808 and 1810. It was a new age for penal justice.

Among so many changes, I shall consider one: the disappearance of torture as a public spectacle. Today we are rather inclined to ignore it; perhaps, in its time, it gave rise to too much inflated rhetoric; perhaps it has been attributed too readily and too emphatically to a process of 'humanization', thus dispensing with the need for further analysis. And, in any case, how important is such a change, when compared with the great institutional transformations, the formulation of explicit, general codes and unified rules of procedure; with the almost universal adoption of the jury system, the definition of

the essentially corrective character of the penalty and the tendency, which has become increasingly marked since the nineteenth century, to adapt punishment to the individual offender? Punishment of a less immediately physical kind, a certain discretion in the art of inflicting pain, a combination of more subtle, more subdued sufferings, deprived of their visible display, should not all this be treated as a special case, an incidental effect of deeper changes? And yet the fact remains that a few decades saw the disappearance of the tortured, dismembered, amputated body, symbolically branded on face or shoulder, exposed alive or dead to public view. The body as the major target of penal repression disappeared.

By the end of the eighteenth and the beginning of the nineteenth century, the gloomy festival of punishment was dying out, though here and there it flickered momentarily into life. In this transformation, two processes were at work. They did not have quite the same chronology or the same *raison d'être*. The first was the disappearance of punishment as a spectacle. The ceremonial of punishment tended to decline; it survived only as a new legal or administrative practice. The *amende honorable* was first abolished in France in 1791, then again in 1830 after a brief revival; the pillory was abolished in France in 1789 and in England in 1837. The use of prisoners in public works, cleaning city streets or repairing the highways, was practised in Austria, Switzerland and certain of the United States, such as Pennsylvania. These convicts, distinguished by their 'infamous dress' and shaven heads, 'were brought before the public. The sport of the idle and the vicious, they often become incensed, and naturally took violent revenge upon the aggressors. To prevent them from returning injuries which might be inflicted on them, they were encumbered with iron collars and chains to which bombshells were attached, to be dragged along while they performed their degrading service, under the eyes of keepers armed with swords, blunderbusses and other weapons of destruction' (Roberts Vaux, *Notices*, 21, quoted in Teeters, 1937, 24). This practice was abolished practically everywhere at the end of the eighteenth or the beginning of the nineteenth century. The public exhibition of prisoners was maintained in France in 1831, despite violent criticism – 'a disgusting scene', said Réal (cf. Bibliography); it was finally abolished in April 1848. While the chain-gang, which had dragged convicts

across the whole of France, as far as Brest and Toulon, was replaced in 1837 by inconspicuous black-painted cell-carts. Punishment had gradually ceased to be a spectacle. And whatever theatrical elements it still retained were now downgraded, as if the functions of the penal ceremony were gradually ceasing to be understood, as if this rite that 'concluded the crime' was suspected of being in some undesirable way linked with it. It was as if the punishment was thought to equal, if not to exceed, in savagery the crime itself, to accustom the spectators to a ferocity from which one wished to divert them, to show them the frequency of crime, to make the executioner resemble a criminal, judges murderers, to reverse roles at the last moment, to make the tortured criminal an object of pity or admiration. As early as 1764, Beccaria remarked: 'The murder that is depicted as a horrible crime is repeated in cold blood, remorselessly' (Beccaria, 101). The public execution is now seen as a hearth in which violence bursts again into flame.

Punishment, then, will tend to become the most hidden part of the penal process. This has several consequences: it leaves the domain of more or less everyday perception and enters that of abstract consciousness; its effectiveness is seen as resulting from its inevitability, not from its visible intensity; it is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage crime; the exemplary mechanics of punishment changes its mechanisms. As a result, justice no longer takes public responsibility for the violence that is bound up with its practice. If it too strikes, if it too kills, it is not as a glorification of its strength, but as an element of itself that it is obliged to tolerate, that it finds difficult to account for. The apportioning of blame is redistributed: in punishment-as-spectacle a confused horror spread from the scaffold; it enveloped both executioner and condemned; and, although it was always ready to invert the shame inflicted on the victim into pity or glory, it often turned the legal violence of the executioner into shame. Now the scandal and the light are to be distributed differently; it is the conviction itself that marks the offender with the unequivocally negative sign: the publicity has shifted to the trial, and to the sentence; the execution itself is like an additional shame that justice is ashamed to impose on the condemned man; so it keeps its distance from the act, tending always to

entrust it to others, under the seal of secrecy. It is ugly to be punishable, but there is no glory in punishing. Hence that double system of protection that justice has set up between itself and the punishment it imposes. Those who carry out the penalty tend to become an autonomous sector; justice is relieved of responsibility for it by a bureaucratic concealment of the penalty itself. It is typical that in France the administration of the prisons should for so long have been the responsibility of the Ministry of the Interior, while responsibility for the *bagnes*, for penal servitude in the convict ships and penal settlements, lay with the Ministry of the Navy or the Ministry of the Colonies. And beyond this distribution of roles operates a theoretical disavowal: do not imagine that the sentences that we judges pass are activated by a desire to punish; they are intended to correct, reclaim, 'cure'; a technique of improvement represses, in the penalty, the strict expiation of evil-doing, and relieves the magistrates of the demeaning task of punishing. In modern justice and on the part of those who dispense it there is a shame in punishing, which does not always preclude zeal. This sense of shame is constantly growing: the psychologists and the minor civil servants of moral orthopaedics proliferate on the wound it leaves.

The disappearance of public executions marks therefore the decline of the spectacle; but it also marks a slackening of the hold on the body. In 1787, in an address to the Society for Promoting Political Enquiries, Benjamin Rush remarked: 'I can only hope that the time is not far away when gallows, pillory, scaffold, flogging and wheel will, in the history of punishment, be regarded as the marks of the barbarity of centuries and of countries and as proofs of the feeble influence of reason and religion over the human mind' (Teeters, 1935, 30). Indeed, sixty years later, Van Meenen, opening the second penitentiary congress, in Brussels, recalled the time of his childhood as of a past age: 'I have seen the ground strewn with wheels, gibbets, gallows, pillories; I have seen hideously stretched skeletons on wheels' (*Annales de la Charité*, 529–30). Branding had been abolished in England (1834) and in France (1832); in 1820, England no longer dared to apply the full punishment reserved for traitors (Thistlewood was not quartered). Only flogging still remained in a number of penal systems (Russia, England, Prussia). But, generally

speaking, punitive practices had become more reticent. One no longer touched the body, or at least as little as possible, and then only to reach something other than the body itself. It might be objected that imprisonment, confinement, forced labour, penal servitude, prohibition from entering certain areas, deportation – which have occupied so important a place in modern penal systems – are 'physical' penalties: unlike fines, for example, they directly affect the body. But the punishment–body relation is not the same as it was in the torture during public executions. The body now serves as an instrument or intermediary: if one intervenes upon it to imprison it, or to make it work, it is in order to deprive the individual of a liberty that is regarded both as a right and as property. The body, according to this penality, is caught up in a system of constraints and privations, obligations and prohibitions. Physical pain, the pain of the body itself, is no longer the constituent element of the penalty. From being an art of unbearable sensations punishment has become an economy of suspended rights. If it is still necessary for the law to reach and manipulate the body of the convict, it will be at a distance, in the proper way, according to strict rules, and with a much 'higher' aim. As a result of this new restraint, a whole army of technicians took over from the executioner, the immediate anatomist of pain: warders, doctors, chaplains, psychiatrists, psychologists, educationalists; by their very presence near the prisoner, they sing the praises that the law needs: they reassure it that the body and pain are not the ultimate objects of its punitive action. Today a doctor must watch over those condemned to death, right up to the last moment – thus juxtaposing himself as the agent of welfare, as the alleviator of pain, with the official whose task it is to end life. This is worth thinking about. When the moment of execution approaches, the patients are injected with tranquillizers. A utopia of judicial reticence: take away life, but prevent the patient from feeling it; deprive the prisoner of all rights, but do not inflict pain; impose penalties free of all pain. Recourse to psycho-pharmacology and to various physiological 'disconnectors', even if it is temporary, is a logical consequence of this 'non-corporal' penality.

The modern rituals of execution attest to this double process: the disappearance of the spectacle and the elimination of pain. The same movement has affected the various European legal systems, each at

its own rate: the same death for all – the execution no longer bears the specific mark of the crime or the social status of the criminal; a death that lasts only a moment – no torture must be added to it in advance, no further actions performed upon the corpse; an execution that affects life rather than the body. There are no longer any of those long processes in which death was both retarded by calculated interruptions and multiplied by a series of successive attacks. There are no longer any of those combinations of tortures that were organized for the killing of regicides, or of the kind advocated, at the beginning of the eighteenth century, by the anonymous author of *Hanging not Punishment Enough* (1701), by which the condemned man would be broken on the wheel, then flogged until he fainted, then hung up with chains, then finally left to die slowly of hunger. There are no longer any of those executions in which the condemned man was dragged along on a hurdle (to prevent his head smashing against the cobble-stones), in which his belly was opened up, his entrails quickly ripped out, so that he had time to see them, with his own eyes, being thrown on the fire; in which he was finally decapitated and his body quartered.[1] The reduction of these 'thousand deaths' to strict capital punishment defines a whole new morality concerning the act of punishing.

As early as 1760, a hanging machine had been tried out in England (for the execution of Lord Ferrer). It made use of a support, which opened under the feet of the condemned man, thus avoiding slow deaths and the altercations that occurred between victim and executioner. It was improved and finally adopted in 1783, the same year in which the traditional procession from Newgate to Tyburn was abolished, and in which the opportunity offered by the rebuilding of the prison, after the Gordon Riots, was used to set up the scaffolds in Newgate itself (see Hibbert, 85–6). The celebrated article 3 of the French Code of 1791 – 'Every man condemned to death will have his head cut off' – bears this triple signification: an equal death for all ('Crimes of the same kind will be punished by the same kind of punishment, whatever the rank and state of the guilty man may be,' in the words of the motion proposed by Guillotin and passed on 1 December 1789); one death per condemned man, obtained by a single blow, without recourse to those 'long and consequently cruel' methods of execution, such as the gallows,

denounced by Le Peletier; lastly, punishment for the condemned man alone, since decapitation, the capital punishment of the nobility, was the least shaming for the criminal's family (Le Peletier, 720). The guillotine, first used in March 1792, was the perfect vehicle for these principles. Death was reduced to a visible, but instantaneous event. Contact between the law, or those who carry it out, and the body of the criminal, is reduced to a split second. There is no physical confrontation; the executioner need be no more than a meticulous watchmaker. 'Experience and reason demonstrate that the method used in the past to cut off the head of a criminal exposed him to a torture more frightful than the loss of life alone, which is the express intention of the law; the execution should therefore be carried out in a single moment and with a single blow; examples show how difficult it is to achieve this. For the method to work perfectly, it must necessarily depend on invariable mechanical means whose force and effect may also be determined. . . It is an easy enough matter to have such an unfailing machine built; decapitation will be performed in a moment according to the intention of the new law. If this apparatus seems necessary, it will cause no sensation and will be scarcely noticed' (Saint-Edme, 161). The guillotine takes life almost without touching the body, just as prison deprives of liberty or a fine reduces wealth. It is intended to apply the law not so much to a real body capable of feeling pain as to a juridical subject, the possessor, among other rights, of the right to exist. It had to have the abstraction of the law itself.

No doubt something of the old public execution was, for a time, superimposed in France on the sobriety of the new method. Parricides – and the regicides who were regarded as such – were led to the scaffold wearing a black veil; there, until 1832, one of their hands was cut off. Thereafter, nothing remained but the ornamental crêpe. Thus it was in the case of Fieschi, the would-be assassin of Louis-Philippe, in November 1836: 'He will be taken to the place of execution wearing a shirt, barefoot, his head covered with a black veil; he will be exhibited upon a scaffold while an usher reads the sentence to the people, and he will be immediately executed.' We should remember Damiens – and note that the last addition to penal death was a mourning veil. The condemned man was no longer to be seen. Only the reading of the sentence on the scaffold announced

the crime – and that crime must be faceless. (The more monstrous a criminal was, the more he must be deprived of light: he must not see, or be seen. This was a common enough notion at the time. For the parricide one should 'construct an iron cage or dig an impenetrable dungeon that would serve him as an eternal retreat' – De Molène, 275–7.) The last vestige of the great public execution was its annulment: a drapery to hide a body. Benoît, triply infamous (his mother's murderer, a homosexual, an assassin), was the first of the parricides not to have a hand cut off: 'As the sentence was being read, he stood on the scaffold supported by the executioners. It was a horrible sight; wrapped in a large white shroud, his face covered with black crêpe, the parricide escaped the gaze of the silent crowd, and beneath these mysterious and gloomy clothes, life was manifested only by frightful cries, which soon expired under the knife' (*Gazette des tribunaux*, 30 August 1832).

At the beginning of the nineteenth century, then, the great spectacle of physical punishment disappeared; the tortured body was avoided; the theatrical representation of pain was excluded from punishment. The age of sobriety in punishment had begun. By 1830–48, public executions, preceded by torture, had almost entirely disappeared. Of course, this generalization requires some qualification. To begin with, the changes did not come about at once or as part of a single process. There were delays. Paradoxically, England was one of the countries most loath to see the disappearance of the public execution: perhaps because of the role of model that the institution of the jury, public hearings and respect of habeas corpus had given to her criminal law; above all, no doubt, because she did not wish to diminish the rigour of her penal laws during the great social disturbances of the years 1780–1820. For a long time Romilly, Mackintosh and Fowell Buxton failed in their attempts to attenuate the multiplicity and severity of the penalties laid down by English law – that 'horrible butchery', as Rossi described it. Its severity (in fact, the juries regarded the penalties laid down as excessive and were consequently more lenient in their application) had even increased: in 1760, Blackstone had listed 160 capital crimes in English legislation, while by 1819 there were 223. One should also take into account the advances and retreats that the process as a whole underwent between 1760 and 1840; the rapidity of reform

in certain countries such as Austria, Russia, the United States, France under the Constituent Assembly, then the retreat at the time of the counter-revolutions in Europe and the great social fear of the years 1820–48; more or less temporary changes introduced by emergency courts or laws; the gap between the laws and the real practice of the courts (which was by no means a faithful reflection of the state of legislation). All these factors account for the irregularity of the transformation that occurred at the turn of the century.

It should be added that, although most of the changes had been achieved by 1840, although the mechanisms of punishment had by then assumed their new way of functioning, the process was far from complete. The reduction in the use of torture was a tendency that was rooted in the great transformation of the years 1760–1840, but it did not end there; it can be said that the practice of the public execution haunted our penal system for a long time and still haunts it today. In France, the guillotine, that machine for the production of rapid and discreet deaths, represented a new ethic of legal death. But the Revolution had immediately endowed it with a great theatrical ritual. For years it provided a spectacle. It had to be removed to the Barrière Saint-Jacques; the open cart was replaced by a closed carriage; the condemned man was hustled from the vehicle straight to the scaffold; hasty executions were organized at unexpected times. In the end, the guillotine had to be placed inside prison walls and made inaccessible to the public (after the execution of Weidmann in 1939), by blocking the streets leading to the prison in which the scaffold was hidden, and in which the execution would take place in secret (the execution of Buffet and Bontemps at the Santé in 1972). Witnesses who described the scene could even be prosecuted, thereby ensuring that the execution should cease to be a spectacle and remain a strange secret between the law and those it condemns. One has only to point out so many precautions to realize that capital punishment remains fundamentally, even today, a spectacle that must actually be forbidden.

Similarly, the hold on the body did not entirely disappear in the mid-nineteenth century. Punishment had no doubt ceased to be centred on torture as a technique of pain; it assumed as its principal object loss of wealth or rights. But a punishment like forced labour or even imprisonment – mere loss of liberty – has never functioned

without a certain additional element of punishment that certainly concerns the body itself: rationing of food, sexual deprivation, corporal punishment, solitary confinement. Are these the unintentional, but inevitable, consequence of imprisonment? In fact, in its most explicit practices, imprisonment has always involved a certain degree of physical pain. The criticism that was often levelled at the penitentiary system in the early nineteenth century (imprisonment is not a sufficient punishment: prisoners are less hungry, less cold, less deprived in general than many poor people or even workers) suggests a postulate that was never explicitly denied: it is just that a condemned man should suffer physically more than other men. It is difficult to dissociate punishment from additional physical pain. What would a non-corporal punishment be?

There remains, therefore, a trace of 'torture' in the modern mechanisms of criminal justice – a trace that has not been entirely overcome, but which is enveloped, increasingly, by the non-corporal nature of the penal system.

The reduction in penal severity in the last 200 years is a phenomenon with which legal historians are well acquainted. But, for a long time, it has been regarded in an overall way as a quantitative phenomenon: less cruelty, less pain, more kindness, more respect, more 'humanity'. In fact, these changes are accompanied by a displacement in the very object of the punitive operation. Is there a diminution of intensity? Perhaps. There is certainly a change of objective.

If the penality in its most severe forms no longer addresses itself to the body, on what does it lay hold? The answer of the theoreticians – those who, about 1760, opened up a new period that is not yet at an end – is simple, almost obvious. It seems to be contained in the question itself: since it is no longer the body, it must be the soul. The expiation that once rained down upon the body must be replaced by a punishment that acts in depth on the heart, the thoughts, the will, the inclinations. Mably formulated the principle once and for all: 'Punishment, if I may so put it, should strike the soul rather than the body' (Mably, 326).

It was an important moment. The old partners of the spectacle of punishment, the body and the blood, gave way. A new character

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