

uproar, 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 irreproachable 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

death. 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

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