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“BONE OF
THEIR BONE”

Abolishing Torture

IN 1762, THE SAME YEAR that Rousseau introduced the term “rights of man,” a court in the southern French city of Toulouse convicted a sixty-four-year-old French Protestant named Jean Calas of murdering his son to prevent him from converting to Catholicism. The judges sentenced Jean to death by breaking on the wheel. Before execution, Calas first had to endure judicially supervised torture known as the “preliminary question,” which was designed to get those already convicted to name their accomplices. With his wrists tied tightly to a bar behind him, Calas was stretched by a system of cranks and pulleys that steadily drew his arms up while an iron weight kept his feet in place. (Figure 3) When Calas refused to provide names after two applications, he was tied to a bench and pitchers of water were forced down his throat while his mouth was held open by two



FIGURE 3. *Judicial Torture*

Representations of judicially sanctioned torture are almost impossible to find. This sixteenth-century full-page woodcut (21.6 cm x 14.4 cm) purports to show a method employed in Toulouse which resembles that endured by Jean Calas two centuries later. It is a version of the most commonly used judicial torture in Europe, called the *strappado*, derived from the Italian word for a sharp pull or tear.

small sticks. (Figure 4) Pressed again to name names, he reportedly responded, "Where there is no crime, there cannot be any accomplices."

Death did not follow promptly nor was it meant to do so. Breaking on the wheel, reserved to men convicted of homicide or highway robbery, took place in two stages. First, the executioner tied the condemned man to an X-shaped cross and systematically crushed the bones in his forearms, legs, thighs, and arms by striking each one with two sharp blows. Using a winch fastened to the halter around the condemned man's neck, an assistant under the scaffold then dislocated the vertebrae of the neck with violent tugs on the halter. Meanwhile, the executioner struck the mid-section with three hard blows of the iron rod. Then the executioner took down the broken body and fastened it, limbs bent excruciatingly backward, to a carriage wheel on top of a ten-foot pole. There the condemned man remained long after death, concluding "a most dreadful spectacle." In a secret instruction, the court granted Calas the grace of being strangled to death after two hours of torment, before his body was attached to the wheel. Calas died still protesting his innocence.¹

The Calas "affair" galvanized attention when the case was taken up by Voltaire a few months after the execution. Voltaire raised money for the family, wrote letters in the name of various Calas family members purporting to give their firsthand views of events, and then published a pamphlet and a book based on the case. The most famous of these was his *Treatise on Tolerance on the Occasion of the Death of Jean Calas*, in which he first used the expression "human right"; the gist of his argument was that intolerance could not be a human right (he did not make the positive argument that freedom of religion was a human right). Voltaire did not initially protest against either



FIGURE 4. *Water Torture*

This sixteenth-century woodcut (21.6 cm x 14.4 cm) shows a French method of water torture. It is not exactly the same as the one Calas endured but is close enough to convey the general idea.

torture or breaking on the wheel. What enraged him was the religious bigotry that he concluded had motivated the police and the judges: "It is impossible to see, how, following this principle [human right] one man could say to another, 'believe what I believe and what you cannot believe or you will die.' That's how they talk in Portugal, Spain, and Goa [countries infamous for their inquisitions]."²

As public Calvinist worship had been banned in France since 1685, it was apparently not too much of a stretch for the authorities to believe that Calas had killed his son to prevent his conversion to Catholicism. After dinner one night, the family had found Marc-Antoine hanging from a doorway to a rear store-room, an apparent suicide. In order to avoid scandal, they claimed to have discovered him on the floor, presumably a victim of murder. Suicide was punishable under the law in France; a person who committed suicide could not be buried in consecrated ground, and if found guilty at a hearing, the body could be exhumed, dragged through town, then hung by the feet and thrown in the garbage dump.

The police seized upon the inconsistencies in the family's testimony and promptly arrested the father, mother, and brother along with their servant and a visitor and charged them all with murder. A local court sentenced the father, mother, and brother to torture in order to elicit confessions of guilt (called the "preparatory question"), but on appeal the Parlement of Toulouse overruled the local court, refused to apply torture before conviction, and found only the father guilty, hoping that he would name the others when tortured just before his execution. Voltaire's unrelenting publicity about the affair paid off for the rest of the family, which had not yet been cleared. The Royal Council first set aside the verdicts on tech-

nical grounds in 1763 and 1764 and then in 1765 voted for acquittal of everyone involved and the return of the family's confiscated goods.

During the storm over the Calas Affair, Voltaire's focus of attention began to shift, and increasingly the criminal justice system itself, and especially its use of torture and cruelty, came under fire. In his initial writings about Calas in 1762-63, Voltaire never once used the general term "torture" (employing instead the legal euphemism "the question"). He denounced judicial torture for the first time in 1766 and thereafter linked Calas and torture together frequently. Natural compassion makes everyone detest the cruelty of judicial torture, insisted Voltaire, though he himself had not said so earlier. "Torture has been abolished in other countries, and with success; the question therefore is decided." So much did Voltaire's views shift that in 1769 he felt compelled to add an article on "Torture" to his *Philosophical Dictionary*, first published in 1764 and already on the papal Index of Forbidden Books. In the article, Voltaire uses his habitual alternation of ridicule and fulmination to condemn French practices as uncivilized; foreigners judge France by its plays, novels, verses, and beautiful actresses without knowing that there is no nation crueler than the French. A civilized nation, Voltaire concludes, can no longer follow "atrocious old customs." What had long seemed acceptable to him and many others now came into doubt.³

As with human rights more generally, new attitudes about both torture and humane punishment first crystallized in the 1760s, not only in France but elsewhere in Europe and in the American colonies. Voltaire's friend, Frederick the Great of Prussia, had already abolished judicial torture in his lands in 1754.

Others followed in the next decades: Sweden in 1772, and Austria and Bohemia in 1776. In 1780, the French monarchy eliminated the use of torture to extract confessions of guilt before sentencing, and in 1788, it provisionally abolished the use of torture just prior to execution to produce the names of accomplices. In 1783, the British government discontinued the public procession to Tyburn, where executions had become a major popular entertainment, and introduced the regular use of "the drop," a raised stage dropped by the executioner in order to ensure quicker and more humane hangings. In 1789, the French revolutionary government renounced all forms of judicial torture, and in 1792 it introduced the guillotine, which was meant to make the execution of the death penalty uniform and as painless as possible. By the end of the eighteenth century, public opinion seemed to demand an end to judicial torture and to the many indignities visited on the bodies of the condemned. As the American physician Benjamin Rush insisted in 1787, we should not forget that even criminals "possess souls and bodies composed of the same materials as those of our friends and relations. They are bone of their bone."⁴

Torture and Cruelty

Judicially supervised torture to extract confessions had been introduced or reintroduced in most European countries in the thirteenth century as a consequence of the revival of Roman law and the example of the Catholic Inquisition. In the sixteenth, seventeenth, and eighteenth centuries, many of Europe's finest legal minds devoted themselves to codifying and regularizing the use of judicial torture in order to prevent abuses of it by overly

zealous or sadistic judges. Great Britain had supposedly replaced judicial torture with juries in the thirteenth century, yet torture still took place there in the sixteenth and seventeenth centuries in cases of sedition and witchcraft. Against witches, for example, the more severe Scottish magistrates used pricking, sleep deprivation, and torture by "boots" (crushing legs), burning with hot irons, and other methods. Torture to obtain the names of accomplices was allowed under Massachusetts colonial law, but apparently never ordered.⁵

Brutal forms of punishment upon conviction were ubiquitous in Europe and the Americas. Although the British Bill of Rights of 1689 expressly prohibited cruel punishment, judges still sentenced criminals to the whipping post, ducking stool, stocks, pillory, branding, and execution by drawing and quartering (dismemberment by horses) or, for women, drawing and quartering and burning at the stake. What constituted "cruel" punishment clearly depended on cultural expectations. Only in 1790 did Parliament forbid burning women at the stake. Previously, however, it had dramatically increased the number of capital offenses, which by some estimates tripled in the eighteenth century, and in 1752 it had acted to make punishments for murder yet more horrible in order to increase their deterrence. It ordered that all murderers' bodies be given to surgeons for dissection—at this time viewed as ignominious—and it gave judges the discretionary authority to order that any male murderer's body be hung in chains after execution. Despite growing discomfort with this gibbeting of the corpses of murderers, the practice was not finally abolished until 1834.⁶

Punishment in the colonies not surprisingly followed the patterns established in the imperial center. Thus, one third of all sentences in the Massachusetts Superior Court even in the last

half of the eighteenth century called for public humiliations ranging from wearing signs to cutting off an ear, branding, and whipping. A contemporary in Boston described how “women were taken from a huge cage, in which they were dragged on wheels from prison, and tied to the post with bare backs, on which thirty or forty lashes were bestowed amid the scream of the culprits and the uproar of the mob.” The British Bill of Rights did not protect slaves because they were not viewed as persons with legal rights. Virginia and North Carolina expressly permitted the castration of slaves for heinous offenses, and in Maryland, in cases of petty treason or arson by a slave, the right hand was cut off and the slave then hanged, the head cut off, the body quartered, and the dismembered parts displayed in public. As late as the 1740s, slaves in New York could be burnt to death in agonizingly slow fashion, broken on the wheel, or hung in chains until death by starvation.⁷

Most sentences mandated by the French courts in the last half of the eighteenth century still included some form of public corporal punishment such as branding, whipping, or wearing the iron collar (which was attached to a pole or to the pillory—Figure 5). In the same year that Calas was executed, the Parlement of Paris rendered appellate penal judgments against 235 men and women first tried by the Châtelet court (a lower court) of Paris: 82 were sentenced to banishment and branding, usually combined with whipping; 9 to the same combination along with the iron collar; 19 to branding and imprisonment; 20 to confinement in the General Hospital after branding and/or the iron collar; 12 to hanging; 3 to breaking on the wheel; and 1 to burning at the stake. If all the other courts of Paris were included in the count, the number of public humiliations and mutilations would climb to 500 or 600, with some 18 executions—in just one year in one jurisdiction.⁸



FIGURE 5. *The Iron Collar*

The point of this punishment was public humiliation. This print by an unknown artist shows a man convicted of fraud and libel in 1760. According to the caption, he was first attached to the iron collar for three days, then branded and sent to the galleys for life.

The death penalty could be imposed in five different ways in France: decapitation for nobles; hanging for common criminals; drawing and quartering for offenses against the sovereign known as *lèse-majesté*; burning at the stake for heresy, magic, arson, poisoning, bestiality, and sodomy; and breaking on the wheel for murder or highway robbery. Judges ordered drawing and quartering and burning at the stake infrequently in the eighteenth century, but breaking on the wheel was quite common; in the southern French jurisdiction of the Parlement of Aix-en-Provence, for example, nearly half the fifty-three death sentences imposed between 1760 and 1762 called for breaking on the wheel.⁹

Yet from the 1760s onward, campaigns of various sorts led to the abolition of state-sanctioned torture and a growing moderation of punishment (even for slaves). The reformers credited their accomplishments to the spread of Enlightenment humanitarianism. In 1786, the English reformer Samuel Romilly looked back and confidently asserted that "in proportion as men have reflected and reasoned upon this important subject, the absurd and barbarous notions of justice, which prevailed for ages, have been exploded, and human and rational principles have been adopted in their stead." Much of the immediate impetus for reasoning on the subject came from the short, punchy *Essay on Crimes and Punishments*, published in 1764 by a twenty-five-year-old Italian aristocrat, Cesare Beccaria. Promoted by the circles around Diderot, quickly translated into French and English, and eagerly read by Voltaire in the midst of the Calas Affair, Beccaria's little book trained the spotlight on every nation's criminal justice system. The Italian upstart rejected not only torture and cruel punishment but also—in a move remarkable for the time—the death penalty itself. Against the absolute power of

rulers, religious orthodoxy, and the privileges of the titled, Beccaria held forth a democratic standard of justice: "the greatest happiness of the greatest number." Virtually every reformer thereafter, from Philadelphia to Moscow, cited him.¹⁰

Beccaria helped valorize the new language of sentiment. For him, the death penalty could only be "pernicious to society, from the example of barbarity it affords," and when objecting to "torments and useless cruelty" in punishment, he derided them as "the instrument of furious fanaticism." Moreover, in justifying his intervention, he expressed his hope that if "I shall contribute to save from the agonies of death one unfortunate victim of tyranny, or of ignorance, equally fatal; his blessing and tears of transport, will be a sufficient consolation to me for the contempt of all mankind." After reading Beccaria, the English jurist William Blackstone made the connection that would become characteristic ever after of the Enlightenment view: the criminal law, affirmed Blackstone, should always be "conformable to the dictates of truth and justice, the feelings of humanity, and the indelible rights of mankind."¹¹

Yet, as the example of Voltaire shows, the educated elite, and even many of the leading reformers, did not immediately grasp the connection between the emerging rights language and torture and cruel punishment. Voltaire railed against the miscarriage of justice in the Calas case, but he did not originally object to the fact that the old man had been tortured or broken on the wheel. If natural compassion makes everyone detest the cruelty of judicial torture, as Voltaire said later, then why was this not obvious before the 1760s, even to him? Evidently some kind of blinder had operated to inhibit the operation of empathy before then.¹²

Once Enlightenment writers and legal reformers began to

question torture and cruel punishment, an almost complete turnabout in attitudes took place over a couple of decades. The discovery of fellow feeling was part of this change, but only part. What was needed in addition to empathy—indeed, in this case a necessary precondition for empathy with the judicially condemned—was a new concern for the human body. Once sacred only within a religiously defined order, in which individual bodies could be mutilated or tortured for the greater good, the body became sacred on its own in a secular order that rested on the autonomy and inviolability of individuals. There are two parts to this development. Bodies gained a more positive value as they became more separate, more self-possessed, and more individualized over the course of the eighteenth century, while violations of them increasingly aroused negative reactions.

The Self-Contained Person

Although it might seem that bodies are always inherently separate from each other, at least after birth, boundaries between bodies became more sharply defined after the fourteenth century. Individuals became more self-contained as they increasingly felt the need to keep their bodily excretions to themselves. The threshold of shame lowered, while pressure for self-control rose. Defecation and urination in public became increasingly repellent. People began to use handkerchiefs rather than blowing their noses into their hands. Spitting, eating out of a common bowl, and sleeping in a bed with a stranger became disgusting or at least unpleasant. Violent outbursts of emotion and aggressive behavior became socially unacceptable. These changes in attitudes toward the body were the surface indications of an under-

lying transformation. They all signaled the advent of the self-enclosed individual, whose boundaries had to be respected in social interaction. Self-possession and autonomy required increasing self-discipline.¹³

Eighteenth-century changes in musical and theatrical performances, domestic architecture, and portraiture built upon these longer-term alterations in attitudes. Moreover, these new experiences proved to be crucial to the emergence of sensibility itself. In the decades after 1750, operagoers began to listen in silence to the music rather than walking about to visit and converse with their friends, allowing them to feel strong individual emotions in response to the music. One woman recounted her reaction to Gluck's opera *Alceste*, which premiered in Paris in 1776: "I listened to this new work with profound attention. . . . From the first measures I was seized by such a strong feeling of awe, and felt within me so intensely that religious impulse . . . that without even knowing it I fell to my knees in my box and stayed in this position, suppliant and with my hands clasped, until the end of the piece." This woman's reaction is especially striking because she (the letter is signed Pauline de R***) draws an explicit parallel to religious experience. The ground of all authority was shifting from a transcendental religious framework to an inner human one; but this shift could only make sense to people if it was experienced in a personal, even intimate, fashion.¹⁴

Theater patrons displayed more of a penchant for rowdiness during performances than music lovers, but even in the theater new practices heralded a different future in which plays would be performed in something akin to religious silence. Through much of the eighteenth century, Parisian spectators coordinated coughing, spitting, sneezing, and farting to disrupt performances

they disliked, and public displays of drunkenness and fighting often interrupted the performers' lines. To put spectators at a greater distance and thus make disruption more difficult, sitting on the stage was eliminated in France in 1759. In 1782, efforts to establish order in the pit or *parterre* culminated in the installation of benches at the Comédie Française; before then, spectators in the pit roamed freely and sometimes acted more like a mob than an audience. Although the benches were hotly contested in the press of the time and seen by some as a dangerous attack on the freedom and frankness of the pit, the direction of developments had become clear: collective outbursts were to give way to individual and quieter inner experiences.¹⁵

Home architecture reinforced this sense of individual separateness. The "chamber" (*chambre*) in French houses increasingly became more specialized in the second half of the eighteenth century. The once general purpose room became the "bedroom," and in better-off families children would have bedrooms separate from their parents. Two thirds of Parisian houses had bedrooms by the second half of the eighteenth century, whereas only one in seven had dedicated dining rooms. The elite of Parisian society began to insist on a variety of rooms for private use ranging from *boudoirs* (which comes from the French *bouder* for "pouting"—a room for pouting in private) to toilet and bathing cabinets. Still, the move toward individual privacy should not be exaggerated, at least in France. English travelers complained incessantly about the French practice of sleeping three or four strangers to a room in an inn (albeit in separate beds), the use of commodes in common view, urinating in the fireplace, and throwing the contents of chamberpots out of windows into the street. Their complaints testify, however, to an ongoing process in both

countries. In England, one notable new example was the circuit-walk garden developed on country estates between the 1740s and 1760s; the closed loop with its carefully chosen vistas and monuments was designed to intensify private contemplation and remembrance.¹⁶

Bodies had always been central to European painting, but before the seventeenth century, these had most often been the bodies of the Holy Family and Catholic saints or rulers and their courtiers. In the seventeenth and especially the eighteenth century, more ordinary people began to order paintings of themselves and their families. After 1750, regular public exhibitions—themselves a new feature of social life—showed increasing numbers of portraits of ordinary people in London and Paris, even though history painting still ranked officially as the premier genre.

In the British North American colonies, portraiture dominated the visual arts, in part because European ecclesiastical and political traditions weighed less heavily. Portraits only gained importance in the eighteenth-century colonies: four times as many portraits were painted in the colonies between 1750 and 1776 as were painted between 1700 and 1750, and many of these depicted ordinary townspeople and landowners. (Figure 6) When history painting gained new prominence in France under the Revolution and the Napoleonic Empire, portraits still made up some 40 percent of the paintings shown in the Salons. The prices commanded by portrait painters rose in the last decades of the eighteenth century, and prints brought portraits to a wide audience beyond the original sitters and their families. The most famous English painter of the age, Sir Joshua Reynolds, made his reputation as a portraitist and, according to Horace Walpole, "ransomed portrait-painting from insipidity."¹⁷

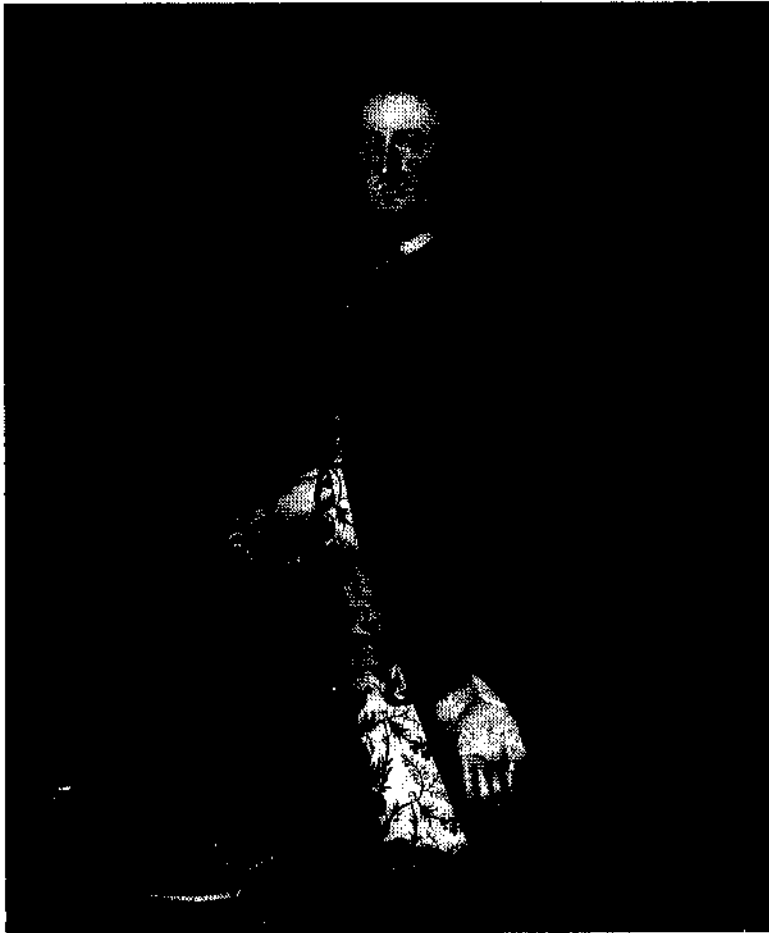


FIGURE 6. *Portrait of Captain John Pigott by Joseph Blackburn*
 Like many artists active in the American colonies, Joseph Blackburn was born and most likely trained in England before going to Bermuda in 1752 and the following year to Newport, Rhode Island. After painting scores of portraits in Newport, Boston, and Portsmouth, New Hampshire, he returned to England in 1764. This oil painting from the late 1750s or early 1760s (127 cm x 101.6 cm) forms a companion piece with the portrait of Pigott's wife. Blackburn was known for his close attention to lace and other clothing details.

One contemporary viewer expressed his disdain upon seeing the number of portraits in the French exhibition of 1769:

The multitude of portraits, Sir, which strikes me everywhere, forces me in spite of myself to speak of this subject now and to treat of this arid and monotonous matter which I had reserved for the end. In vain has the public long since complained of the multitude of obscure bourgeois which it must incessantly pass by in review. . . . The facility of the genre, its utility and the vanity of all these petty personages encourages our emerging artists. . . . Thanks to the unhappy taste of the century, the Salon is becoming nothing more than a gallery of portraits.

The century's "unhappy taste" emanated from England, according to the French, and it signaled for many the impending victory of commerce over true art. In his article "Portrait" for Diderot's multivolume *Encyclopédie*, chevalier Louis de Jaucourt concluded that "the genre of painting that is most followed and most sought after in England is that of the portrait." Later in the century, the writer Louis-Sébastien Mercier tried to sound a reassuring note: "the English excell in portraits, and nothing surpasses the portraits of *Regnols* [sic], of which the principal examples are full-length, life-size, and on a par with history paintings." (Figure 7) In his usual astute fashion, Mercier had seized on the critical element—in England, portraits were comparable to the leading genre in the French Academy of Fine Arts, history paintings. The ordinary person could now be heroic merely by virtue of his individuality. The ordinary body now had distinction.¹⁸



FIGURE 7. Portrait of Lady Charlotte Fitz-William, mezzotint by James MacArdell of painting by Sir Joshua Reynolds, 1754

Reynolds gained fame by painting portraits of leading figures in British society. He often painted only the faces and hands of his sitters, farming out the drapery and costumes to specialists or assistants. Charlotte was only eight at the time of this portrait, but her hairdressing and pearl earrings and brooch give her an older look. Prints such as this one spread Reynolds's fame even further. James MacArdell did mezzotints of many Reynolds portraits. The caption reads: "J. Reynolds pinxt. J. McArdell fecit. Lady Charlotte Fitz-William. Publish'd by J. Reynolds according to Act of Parliament 1754."

True, portraits could convey something quite different from individuality. As commercial wealth grew by leaps and bounds in Great Britain, France, and their colonies, commissioning portraits as a mark of status and gentility reflected a more general rise of consumerism. Likeness did not always take pride of place in these commissions. Ordinary people did not wish to look ordinary in their portraits, and some portrait painters gained reputations for their ability to render laces, silks, and satins more than faces. Yet, though portraits sometimes focused on representations of types or on allegories of virtues or wealth, in the second half of the eighteenth century such portraits declined in significance as artists and their clients began to prefer more natural-looking renderings of psychological and physiognomical individuality. Moreover, the very proliferation of individual likenesses itself encouraged the view that each person was an individual—that is, single, separate, distinctive, and original, and therefore should be depicted as such.¹⁹

Women played a sometimes surprising role in this development. The rage for novels like *Clarissa*, which focused on ordinary women with rich inner lives, made allegorical paintings of female subjects with masklike faces seem irrelevant or simply decorative. Yet, as painters increasingly sought forthrightness and psychological intimacy in their portraits, the relationship between painter and sitter became more fraught with overt sexual tension, especially when women painted men. In 1775, James Boswell recorded Samuel Johnson's strictures against women portraitists: "He [Johnson] thought portrait-painting an improper employment for a woman. 'Public practice of any art, and staring in men's faces, is very indelicate in a female.'" Several women portrait painters nonetheless became veritable celebrities in the last half of the eighteenth century. Denis

Diderot had his portrait painted by one of them, the German artist Anna Therbusch. In his review of the Salon of 1767, where the painting appeared, Diderot felt he had to defend himself against the suggestion that he had slept with her, "a woman who is not pretty." Yet he also had to admit that his daughter was so struck by the likeness of Therbusch's portrait that she had to keep herself from kissing it a hundred times in her father's absence for fear of ruining it.²⁰

Thus, though likeness in portraits might have been judged by some critics to be secondary to aesthetic value, resemblance was obviously highly regarded by many clients and an increasing number of critics. In his self-revelatory *Journal to Eliza*, written in 1767, Laurence Sterne refers repeatedly to "your sweet sentimental Picture"—the portrait of Eliza, probably by Richard Cosway, that is all he has of his absent love. "Your Picture is Yourself—all Sentiment, Softness, and Truth. . . . Dearest Original! How like unto thee does it seem—and will seem—till thou makest it vanish, by thy presence." As with the epistolary novel, so too in portrait painting, women played a highly charged role in the process of empathy. Even while most men, in theory, wanted women to maintain the roles of modesty and virtue, in practice women inevitably stood for and thus evoked sentiment, a feeling that always threatened to overflow its boundaries.²¹

So valued was likeness, eventually, that in 1786 the French musician and engraver Gilles-Louis Chrétien invented a machine called the physionotrace, which produced profile portraits mechanically (see Figure 8). The original life-size profile was then reduced and engraved on copperplate. Among the hundreds produced by Chrétien, first in collaboration with Edmé Quenedey, a miniaturist, and then in rivalry with him, was one of Thomas Jefferson taken in April 1789. A French émigré intro-

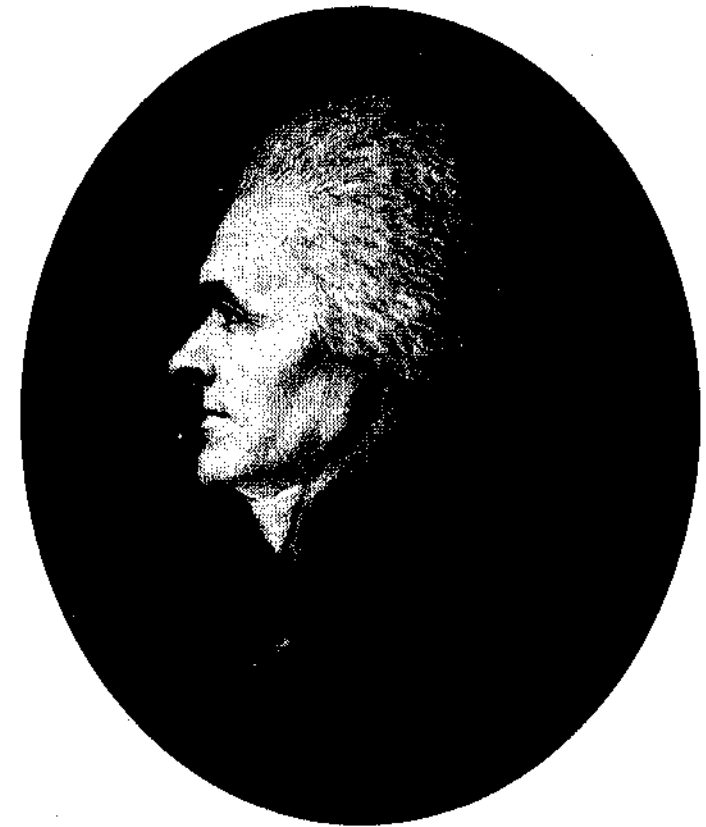


FIGURE 8. *Physionotrace of Jefferson*

The caption reads, "Quenedey del. ad vivum et sculpt." (Drawn from life and engraved by Quenedey.)

duced the process to the United States, and Jefferson had another done in 1804. Now a historical curiosity long obscured by the appearance of photography, physionotrace is yet another indicator of the interest in representing ordinary people—Jefferson aside—and in capturing the smallest differences between each person. Moreover, as Sterne's comments suggest, the portrait, especially in miniature, often served as a memory trigger and an occasion for recapturing a fond emotion.²²

The Public Spectacle of Pain

Garden walks, listening to music in silence, using a handkerchief, and viewing portraits all seem to go along with the image of the empathetic reader, and they seem utterly incongruous alongside the torture and execution of Jean Calas. Yet the same judges and legislators who upheld the traditional legal system and even defended its harshness no doubt listened quietly to music, commissioned portraits, and owned houses with bedrooms, though they may not have read novels because of their association with seduction and debauchery. Magistrates endorsed the traditional system of crime and punishment because they believed that those guilty of crime could only be controlled by an external force. In the traditional view, ordinary people could not regulate their own passions. They had to be led, prodded to do good, and deterred from following their baser instincts. This tendency toward evil in mankind resulted from original sin, the Christian doctrine that all people have been innately predisposed to sin ever since Adam and Eve fell from God's grace in the Garden of Eden.

The writings of Pierre-François Muyart de Vouglans give us

rare insight into the traditionalist position because he was one of the very few jurists who rushed to take up Beccaria's gauntlet and defend the old ways in print. In addition to his many works on the criminal law, Muyart also wrote at least two pamphlets defending Christianity and attacking its modern critics, especially Voltaire. In 1767, he published a point-by-point refutation of Beccaria. He objected in the strongest terms to Beccaria's attempt to found his system on "the ineffable sentiments of the heart." "I pride myself on having as much sensibility as anyone else," he insisted, "but no doubt I do not have an organization of fibers [nerve endings] as loose as that of our modern criminalists, for I did not feel that gentle shuddering of which they speak." Muyart instead felt surprise, not to say shock, when he saw that Beccaria built his system on the ruins of all received wisdom.²³

Muyart derided Beccaria's rationalist approach. "Sitting in his study, [the author] undertakes to trace the laws of all the nations and make us see that until now we have never had an exact or solid thought on this crucial subject." The reason it was so difficult to reform criminal law, according to Muyart, was that it was based on positive law and depended less on reasoning than on experience and practice. What experience taught was the need to control the unruly, not coddle their sensibilities: "Who does not know in fact that because men are shaped by their passions, most often their temper dominates over their sentiments?" Men must be judged as they are, not as they should be, he insisted, and only the awe-inspiring power of an avenging justice could rein in those tempers.²⁴

The pageantry of pain at the scaffold was designed to instill terror in observers and in this way served as a deterrence. Those present—and the crowds were frequently immense—were meant to identify with the condemned person's pain and through it to

feel the overpowering majesty of the law, the state, and ultimately God. Muyart therefore found it revolting that Beccaria tried to justify his arguments by reference to "the sensitivity to pain of the guilty." That sensitivity made the traditional system work. "Precisely because each man identified with what happened to another and because he had a natural horror of pain, it was necessary to prefer, in the choice of punishments, that which was the cruelest for the body of the guilty."²⁵

Under the traditional understanding, the pains of the body did not belong entirely to the individual condemned person. Those pains had the higher religious and political purposes of redemption and reparation of the community. Bodies could be mutilated in the interest of inscribing authority, and broken or burned in the interest of restoring the moral, political, and religious order. In other words, the offender served as a kind of sacrificial victim whose suffering would restore wholeness to the community and order to the state. The sacrificial nature of the rite in France was underlined by the inclusion in many French sentences of a formal act of penitence (the *amende honorable*), in which the condemned criminal carried a burning torch and stopped in front of a church to demand forgiveness on the way to the scaffold.²⁶

Because punishment was a sacrificial rite, festivity inevitably accompanied and sometimes overshadowed the fear. Public executions brought thousands of people together to celebrate the community's recovery from crime's injury. Executions in Paris took place in the same square—the Place de Grève—where fireworks celebrated births and marriages in the royal family. As observers frequently recounted, however, such festivity had an unpredictable quality about it. The English educated classes increasingly expressed their disapproval of the "most amazing

scenes of drunkenness and debauchery" that accompanied every execution at Tyburn. (Figure 9) Letter writers bemoaned the crowd's ridiculing of the clergy sent in attendance on the prisoners, the fights between surgeons' apprentices and the friends of the executed over the dead bodies, and just generally the expression of a "kind of Mirth, as if the Spectacle they had beheld had afforded Pleasure instead of Pain." Reporting on a hanging in the winter of 1776, the *Morning Post* of London complained that the "remorseless multitude behaved with the most inhuman indecency—shouting, laughing, throwing snowballs at each other, particularly at those few who had a proper compassion for the misfortunes of their fellow creatures."²⁷

Even when the crowd was more subdued, something about its sheer size could be disturbing. A British visitor to Paris reported on an execution by breaking on the wheel in 1787: "The noise of the multitude was like the hoarse murmur caused by the waves of the sea breaking along a rocky shore: For a moment it subsided; and in an awful silence the multitude beheld the executioner take up an iron bar, and begin the tragedy, by striking his victim on the fore arm." Most troubling to this and many other observers was the large number of women watching: "It is amazing, how the more delicate part of the creation, whose feelings are so exquisitely tender and refined, should come in crowds to see so bloody a spectacle: Yet without doubt, it is the pity, the kind compassion which they feel, that makes them so anxious about the tortures inflicted on our fellow creatures." Needless to say, it is not "without doubt" that this was the predominant emotion of the women. The crowd no longer felt the emotions the spectacle had been designed to elicit.²⁸

Pain, punishment, and the public spectacle of suffering all gradually lost their religious moorings in the second half of the



FIGURE 9. *Procession to Tyburn* by William Hogarth, 1747
The Idle Prentice executed at Tyburn is Plate 11 of Hogarth's series *Industry and Idleness*, which compares the fates of two apprentices. This one represents the sorry end of Thomas Idle, the idle apprentice. The gallows can be seen back right of center next to the grandstand for the crowd. A Methodist preacher is haranguing the prisoner, who is probably reading his Bible while being transported by cart along with his coffin. A man sells cakes in the right foreground. His basket is ringed by four candles because he has been there since dawn serving people who came early to get good places. An urchin is picking his pocket. Behind the woman hawking the confession of Thomas Idle is another selling gin from the basket at her waist. In front of her a woman punches a man, while another man standing near her prepares to throw a dog at the preacher. Hogarth captures all the unruliness of the execution crowd. The caption reads: "Design'd & Engrav'd by Wm Hogarth Publish'd according to Act of Parliamt Sep. 30. 1747."

eighteenth century, but the process did not happen all at once, and it was not very well understood at the time. Even Beccaria failed to see all the consequences of the new thinking he did so much to crystallize. He wanted to put the law on a Rousseauian rather than religious footing; laws "ought to be conventions between men in a state of freedom," he maintained. Yet, though he argued for a moderation of punishment—it should be "the least possible in the case given" and "proportioned to the crime"—he still insisted that it should be public. For him, public exposure guaranteed the transparency of the law.²⁹

In the emerging individualistic and secular view, pains belonged only to the sufferer in the here-and-now. The attitude toward pain did not change because of medical improvement in the treatment of pain. Medical practitioners certainly tried to alleviate pain at the time, but the real breakthroughs in anesthesia only came in the mid-nineteenth century with the use of ether and chloroform. Instead, the change in attitude came about as a consequence of the reevaluation of the individual body and its pains. Since pain and the body itself now belonged only to the individual, rather than to the community, the individual could no longer be sacrificed to the good of the community or to a higher religious purpose. As the English reformer Henry Dagge insisted, "the good of society is best promoted by a regard for individuals." Rather than expiating sin, punishment should be viewed as repaying a "debt" to society, and clearly no payment could be forthcoming from a mutilated body. Where pain had served as the symbol of reparation under the old regime, now pain seemed an obstacle to any meaningful quittance. In one example of this change of views, many judges in the British North American colonies began to impose fines for property offenses rather than whipping.³⁰

In the new view, consequently, cruel punishment exacted in a public setting constituted an assault on society rather than a reaffirmation of it. Pain brutalized the individual—and by identification, the spectators—rather than opening the door to salvation through repentance. The English lawyer William Eden therefore denounced the exposure of corpses: “we leave each other to rot like scare-crows in the hedges, and our gibbets are crowded with human carcasses. May it not be doubted, whether a forced familiarity with such objects can have any other effect, than to blunt the sentiments, and destroy the benevolent prejudices of the people?” By 1787, Benjamin Rush could brush aside even the last doubts. “The reformation of a criminal can never be effected by a public punishment,” he flatly asserted. Public punishment destroys any sense of shame, produces no changes in attitude, and instead of working as a deterrence has the opposite effect on the spectators. Although agreeing with Beccaria in opposing the death penalty, Dr. Rush parted company when he argued that punishment should be private, administered behind the walls of a prison, and oriented toward rehabilitation, that is, the restoration of a criminal to society and to his personal liberty, “so dear to all men.”³¹

Torture's Last Throes

The conversion of elites to the new views of pain and punishment took place in stages between the early 1760s and the end of the 1780s. Many lawyers published briefs in the 1760s denouncing the injustice of the Calas conviction, for example, but like Voltaire, none of them opposed the use of judicial torture or breaking on the wheel. They too focused on the religious

fanaticism which they were convinced had motivated both the common people and the judges in Toulouse. The briefs lingered on the moment of Jean Calas's torture and death, but without challenging their legitimacy as penal instruments.

In fact, the briefs in favor of Calas essentially upheld the assumptions that lay behind torture and cruel punishment. Defenders of Calas assumed that the body in pain would tell the truth; Calas proved his innocence when he maintained it even in pain and suffering. (Figure 10) In language typical of the pro-Calas side, Alexandre-Jérôme Loyseau de Mauléon insisted that “Calas withstood the question [torture] with that heroic resignation that only belongs to innocence.” As his bones were being crushed one by one, Calas uttered “these affecting words”: “I die innocent; Jesus-Christ, innocence itself, fervently wished to die by an even crueller suffering. God punishes in me the sin of that unfortunate one [Calas's son] who did himself in . . . God is just, and I adore his punishments.” Loyseau argued, moreover, that the “majestic perseverance” of old Calas marked the turning point in the sentiments of the populace. Seeing him repeatedly affirm his innocence during his torments, the people of Toulouse began to feel compassion and to repent of their earlier unreasoning suspicion of the Calvinist. Each blow of the iron rod “sounded in the bottom of the souls” of those witnessing the execution, and “torrents of tears were unleashed, too late, from all the eyes present.” The “torrents of tears” would always be “too late” as long as the assumptions behind torture and cruel punishment remained unchallenged.³²

Chief among those assumptions was that torture could prod the body to speak the truth even when the individual mind resisted. A long physiognomic tradition in Europe had held that character could be read from body marks or signs. In the late



FIGURE 10. *Sentimentalizing the Calas Affair*

The most widely circulated print of the Calas Affair was this large-size one [originally 34 cm x 45 cm] by the German artist and printmaker Daniel Chodowiecki, which he engraved after his own oil painting of the scene. The etching established his reputation and kept alive the outrage caused far and wide by Calas's punishment. Chodowiecki had married into a French Protestant refugee family in Berlin just three years before he produced this print.

sixteenth and seventeenth centuries, various works on "metoposcopy" had been published, promising to teach readers how to read a person's character or fortune from lines, wrinkles, or blemishes on the face. Typical of such titles was that of Richard Saunders's *Physiognomie, and Chiromancie, Metoposcopie, The Symmetrical Proportions and Signal Moles of the Body, Fully and Accurately Explained; with Their Natural-Predictive Significations Both to Men and Women*, published in 1653. Without having to endorse the more extreme variants of this tradition, many Europeans believed that bodies could reveal the inner person in an involuntary fashion. Although remnants of such thinking could be still found in the late eighteenth and early nineteenth centuries, in the form, for example, of phrenology, most scientists and physicians turned against it after 1750. They argued that the exterior appearance of the body had no relationship to the inner soul or character. Thus, the criminal could dissimulate, and the innocent person might well confess to a crime he or she did not commit. As Beccaria insisted when arguing against torture, "the robust will escape, and the feeble be condemned." Pain, in Beccaria's analysis, could not be "the test of truth, as if truth resided in the muscles and fibres of a wretch in torture." Pain was merely a sensation without connection to moral sentiment.³³

The lawyers' accounts said relatively little about Calas's reaction to torture because "the question" took place in private, away from the eyes of observers. The private administration of torture made it especially repugnant in Beccaria's eyes. It meant that the accused lost his "public protection" even before being found guilty and that any deterrent value of punishment was lost as well. French judges evidently also began to feel some doubts, especially about torture to gain confessions

of guilt. After 1750, the French parlements (regional courts of appeal) began to intervene to prevent the use of torture before judgment of the case ("preparatory torture"), as the Parlement of Toulouse did in the Calas case. They also decreed the death penalty less frequently, and more often ordered that the condemned be strangled before being burnt at the stake or placed on the wheel.³⁴

But the judges did not give up on torture altogether, and they would not have agreed with Beccaria's contempt for the religious framing of torture. The Italian reformer summarily denounced "another ridiculous motive for torture, namely, to *purge a man from infamy*." This "absurdity" could only be explained as "the offspring of religion." Since torture rendered the victim infamous in the first place, it could hardly wash away the stain. Muyart de Vouglans defended torture against Beccaria's arguments. The example of one innocent falsely convicted paled in comparison to the "million others" who were guilty but could never have been convicted without the use of torture. Not only was judicial torture therefore useful, it could also be justified by the antiquity and universality of its use. The frequently cited exceptions only proved the rule, Muyart insisted, which should be sought in the history of France itself and the Holy Roman Empire. According to Muyart, Beccaria's system contradicted canon law, civil law, international law, and the "experience of all the centuries."³⁵

Beccaria himself did not stress the connection between his views on torture and nascent rights language. But others were prepared to do so on his behalf. His French translator, abbé André Morellet, modified the order of Beccaria's presentation to draw attention to the link to the "rights of man." Morellet took Beccaria's only reference to his aim of supporting the "rights of

man" (*i diritti degli uomini*) out of the end of chapter 11 in the original Italian edition of 1764 and moved it into the introduction of the 1766 French translation. Defending the rights of man now appeared to be Beccaria's chief aim, and those rights were affirmed as the essential bulwark against individual suffering. Morellet's rearrangement was adopted in many subsequent translations and even later Italian editions.³⁶

Muyart's best efforts notwithstanding, the tide turned against torture in the 1760s. Although attacks on torture had been published before, the trickle of publications now became a stream. Leading the charge were the many translations, reprintings, and re-editions of Beccaria. Some twenty-eight Italian editions, many with false imprints, and nine French ones came out before 1800, even though the book appeared on the papal Index of Forbidden Books in 1766. An English translation was published in London in 1767, and was followed by editions from Glasgow, Dublin, Edinburgh, Charleston, and Philadelphia. German, Dutch, Polish, and Spanish translations followed soon after. The London translator of Beccaria captured the changing mood of the times: "penal laws . . . are still so imperfect, and are attended with so many unnecessary circumstances of cruelty in all nations, that an attempt to reduce them to the standard of reason must be interesting to all of mankind."³⁷

So dramatic was Beccaria's growing influence that opponents of the Enlightenment claimed to have seen the hand of conspiracy at work. Was it a coincidence that the Calas Affair should have been followed by the defining tract on penal reform? Penned, moreover, by an otherwise unknown Italian with only a cursory knowledge of the law? In 1779, the always inflammatory journalist Simon-Nicolas-Henri Linguet reported that a witness had laid it all out for him:

Shortly after the Calas Affair, the Encyclopédists, armed with his torments and profiting from propitious circumstances, though without compromising themselves directly, as is their wont, wrote Reverend Father Barnabite in Milan, their Italian banker and a well-known mathematician. They told him that it was the moment to unleash a declamation against the rigor of punishments and intolerance; that Italian philosophy should furnish the artillery, and they would secretly make use of it in Paris.

Linguet complained that Beccaria's tract was widely viewed as an indirect brief in favor of Calas and other recent sufferers of injustice.³⁸

Beccaria's influence helped galvanize the campaign against torture, but it proceeded only slowly at first. Two articles on torture in Diderot's *Encyclopédie*, both published in 1765, capture the ambiguity. In the first article, on the jurisprudence of torture, Antoine-Gaspard Boucher d'Argis matter-of-factly refers to the "violent torments" to which the accused is subjected, but with no judgment on their merit. In the next article, however, which considered torture as part of criminal procedure, chevalier de Jaucourt hammers away at its use, deploying all the available arguments from "the voice of humanity" to the defects of torture in providing sure evidence of guilt or innocence. During the second half of the 1760s, five new books appeared advocating criminal law reform. In the 1780s, in contrast, thirty-nine such books were published.³⁹

During the 1770s and 1780s, the campaign for the abolition of torture and for the moderation of punishment gained momentum, as learned societies in the Italian states, the Swiss cantons,

and France offered prizes for the best essays on penal reform. The French government found the rising pitch of criticism so worrisome that it ordered the academy of Châlons-sur-Marne to stop printing copies of the essay by its 1780 winner, Jacques-Pierre Brissot de Warville. Brissot's vituperative rhetoric, rather than any new proposals, set off alarms:

These sacred rights that man holds from nature, which society violates so often with its judicial apparatus, still require the suppression of a portion of our mutilating punishments and the softening of those which we must preserve. It is inconceivable that a gentle [*douce*] nation, living in a temperate climate under a moderate government, could combine an amiable character and peaceful customs with the atrocity of cannibals. For our judicial punishments breathe only blood and death and tend only to inspire rage and despair in the heart of the accused.

The French government did not like to see itself compared to cannibals, but by the 1780s the barbarism of judicial torture and cruel punishment had become a reform mantra. In 1781, Joseph-Michel-Antoine Servan, a longtime advocate of penal reform, applauded Louis XVI's recent abolition of torture to get a confession of guilt, "this infamous torture which for so many centuries usurped the temple of justice itself and made it into a school of suffering, where the executioners professed the refinement of pain." Judicial torture was for him "a kind of sphinx . . . an absurd monster barely worthy of finding an asylum with savage peoples."⁴⁰

Encouraged by other reformers despite his youth and lack of

experience, Brissot then undertook to publish a ten-volume *Philosophical Library of the Legislator, Politician, and Jurist* (1782–85), which had to be printed in Switzerland and smuggled into France. It brought together Brissot's own and other reform writings. Although only a synthesizer, Brissot clearly linked torture to the rights of man: "Is one too young when it is a question of defending the outraged rights of humanity?" The term "humanity" ("the spectacle of suffering humanity," for example) appeared again and again in his pages. In 1788, Brissot founded the Society of the Friends of Blacks, the first French society for the abolition of slavery. The campaign for penal reform thus became ever more closely associated with the general defense of human rights.⁴¹

Brissot deployed the same rhetorical strategies as the lawyers writing briefs in the various French *causes célèbres* of the 1780s; they not only defended their wrongly accused clients but also increasingly indicted the legal system as a whole. Those writing briefs usually adopted the first-person voice of their clients to develop melodramatic novelistic narratives that drove home their point. This rhetorical strategy culminated in two briefs written by one of Brissot's correspondents, Charles-Marguerite Dupaty, a magistrate from Bordeaux living in Paris, who intervened on behalf of three men condemned to be broken on the wheel for aggravated theft. Dupaty's first brief of 1786, 251 pages long, not only denounced every misstep in the judicial process but also included a detailed account of his meeting with the three men in prison. In it, Dupaty cleverly shifts from his first-person view of the scene to the prisoners' own: "And me, Bradier [one of the condemned] then said, half of my body was swollen for six months. And me, Lardoise [another of the condemned] said, thanks to God I was able to resist [the epidemic

illness in the prison]; however, the pressure of my irons [I [i.e., Dupaty] can well believe it, thirty months in irons!] so injured my leg that gangrene set in; they almost had to cut it off." The scene concludes with Dupaty in tears. In this way the lawyer makes the most of his fellow feeling with the prisoners.⁴²

Dupaty then switches perspective again, this time addressing the judges directly: "Judges of Chaumont, Magistrates, Criminalists, do you hear it? . . . Here is the cry of reason, truth, justice and the Law." Finally, Dupaty calls directly on the king to intervene. He begs the monarch to listen to the blood of the innocent, from Calas to his own three accused thieves: "deign, from the height of your Throne, deign to take a look at all the bloody pitfalls of your criminal Legislation, where we have perished, where every day innocent people perish!" The brief then concludes with several pages imploring Louis XVI to reform criminal legislation in the line with reason and humanity.⁴³

Dupaty's brief so aroused public opinion in favor of the accused and against the legal system that the Parlement of Paris voted to have it publicly burned. The court's spokesman denounced the novelistic style of the brief; Dupaty "sees beside him humanity trembling and reaching out to him, a dishevelled fatherland showing him its wounds, the whole nation taking on his voice and commanding him to speak in its name." But the court proved powerless in holding back the swelling tide of opinion. Jean Caritat, marquis de Condorcet, soon to be the French Revolution's most consistent and far-reaching defender of human rights, published two pamphlets in favor of Dupaty in late 1786. Though not himself a lawyer, Condorcet attacked the court's "scorn for man" and the continuing "manifest violation of natural law" that had been shown in the Calas case and other unfair judgments rendered since then.⁴⁴

By 1788, the French crown itself had signed on to many of the new attitudes. In the decree provisionally abolishing torture before execution to get names of accomplices, Louis XVI's government spoke of "reassuring innocence . . . removing any excess of severity from punishment . . . [and] punishing evildoers with all the moderation that humanity demands." In his 1780 treatise about French criminal law, Muyart recognized that in defending the validity of confessions won through torture, "I do not at all ignore the fact that I must combat a system that has more than ever gained credence in recent times." But he refused to enter into the debate, insisting his opponents were simply polemicists and that he had the force of the past behind his position. So successful was the campaign for penal reform in France that in 1789 correction of abuses in the criminal code ranked as one of the most frequently cited issues in the grievance lists prepared for the forthcoming Estates-General.⁴⁵

The Passions and the Person

In the course of this increasingly one-sided debate, the new meanings assigned to the body had become more fully evident. The broken body of Calas, or even the gangrenous leg of Dupaty's accused thief Lardoise, gained a new dignity. In the back-and-forth on torture and cruel punishment, this dignity first emerged in negative reactions to the judicial assaults on it. But over time it became the subject, as was evident in Dupaty's briefs, of positive feelings of empathy. Only toward the end of the eighteenth century did the assumptions of the new model become explicit. In his short yet illuminating eighteen-page pamphlet of 1787, Dr. Benjamin Rush linked the defects of pub-

lic punishment to the new notion of the autonomous yet sympathetic individual. As a physician, Rush would admit some use for bodily pain in punishment, though he clearly preferred "labour, watchfulness, solitude, and silence," an acknowledgment of the criminal's individuality and potential usefulness. Public punishment proved most objectionable, in his view, for its tendency to destroy sympathy, "the vice-regent of the divine benevolence in our world." These were the key words: sympathy—or what we now call empathy—provided the grounds for morality, the spark of the divine in human life, "in our world."

"Sensibility is the sentinel of the moral faculty," Rush affirmed. He likened that sensibility to "a sudden sense of right," a kind of learned reflex for the moral good. Public punishment short-circuited sympathy: "as the distress which the criminals suffer, is the effect of a law of the state, which cannot be resisted, the sympathy of the spectator is rendered abortive, and returns empty to the bosom in which it was awakened." Public punishment thus undermined social feelings by making spectators increasingly callous; spectators lost their feelings of "universal love" and the sense that criminals had bodies and souls like their own.⁴⁶

Although Rush certainly counted himself a good Christian, his model of the person differed in almost every respect from the one put forth by Muyart de Vouglans in his defense of torture and traditional corporal punishments. For Muyart, original sin explained the inability of humans to control their passions. True, passions provided the motivating force to life, but their inherent turbulence, even rebelliousness, had to be brought under control by reason, community pressures, the church, and failing that, in the case of crime, the state. In Muyart's view, the sources of crime (vice) were the passions desire and fear, "the

desire of acquiring things that one does not have, and the fear of losing those that one has." These passions suffocated the sentiments of honor and justice engraved by natural law on the human heart. Divine Providence gave kings supreme authority over the life of men which they delegated to judges, reserving for themselves the right to pardon. The chief purpose, therefore, of criminal law was the prevention of the triumph of vice over virtue. Containment of humanity's inherent evil was the motto of Muryart's view of justice.⁴⁷

The reformers ultimately reversed the philosophical and political assumptions of this model and advocated in its place the cultivation through education and experience of inherently good human qualities. By the middle of the eighteenth century, some Enlightenment philosophers had embraced a position on the passions not unlike the one proposed recently by the neurologist Antonio Damasio, who insists that emotions are crucial to reasoning and consciousness, not at odds with them. Although Damasio traces his intellectual roots back to the seventeenth-century Dutch philosopher Spinoza, European elites only came to generally accept a more positive evaluation of the emotions—the passions, in their terms—in the eighteenth century. "Spinozism" had a bad reputation as leading to materialism (the soul is only matter, hence there is no soul) and atheism (God is nature, therefore there is no God). By the mid-eighteenth century, some in the educated professions had nonetheless accepted a kind of implicit or soft materialism, which made no theological claims about the soul, but did argue that matter could think and feel. This version of materialism led logically to the egalitarian position that all humans have the same physical and mental organization and therefore that experience and education, rather than birth, explain the differences between them.⁴⁸

Whether they subscribed to an explicitly materialist philosophy or not—and most people did not—many in the educated elites came to hold a very different view of the passions than Muryart's. Emotion and reason were now seen as partners. The passions were "the unique Motor of Sensible Being, and of intelligent Beings," according to the Swiss physiologist Charles Bonnet. The passions were good and could be mobilized by education for improvement of humanity, which was now seen as perfectible rather than inherently evil. By this view, criminals had made mistakes but could be reeducated. Moreover, the passions, based in biology, fed into moral sensibility. Sentiment was the emotional reaction to a physical sensation, and morality was the education of this sentiment to bring out its social component (sensibility). Laurence Sterne, Thomas Jefferson's favorite novelist, put the new credo of the age into the mouth of his central character Yorick in his tellingly titled novel, *A Sentimental Journey*:

Dear sensibility! . . . eternal fountain of our feelings!—'tis here I trace thee—and this is thy divinity which stirs within me . . . that I feel some generous joys and generous cares beyond myself—all comes from thee, great—great SENSORIUM of the world! which vibrates, if a hair of our heads but falls upon the ground, in the remotest desert of thy creation.

Sterne found this sensibility even in "the roughest peasant."⁴⁹

It might seem rather a stretch to link blowing one's nose into a handkerchief, listening to music, reading a novel, or ordering a portrait to the abolition of torture and the moderation of cruel punishment. Yet legally sanctioned torture did not end just

because the judges gave up on it or because Enlightenment writers eventually opposed it. Torture ended because the traditional framework of pain and personhood fell apart, to be replaced, bit by bit, by a new framework, in which individuals owned their bodies, had rights to their separateness and to bodily inviolability, and recognized in other people the same passions, sentiments, and sympathies as in themselves. "The men, or perhaps the women," to return to the good doctor Rush one last time, "whose persons we detest [convicted criminals], possess souls and bodies composed of the same materials as those of our friends and relations." If we contemplate their miseries "without emotion or sympathy," then "the principle of sympathy" itself "will cease to act altogether, and . . . will soon lose its place in the human breast."⁵⁰

3

“THEY HAVE SET A
GREAT EXAMPLE”

Declaring Rights

DECLARATION: The action of stating, telling, setting forth, or announcing openly, explicitly or formally; positive statement or assertion; an assertion, announcement or proclamation in emphatic, solemn, or legal terms. . . . A proclamation or public statement as embodied in a document, instrument, or public act.—*Oxford English Dictionary*, electronic 2nd. ed.

WHY MUST RIGHTS be set forth in a declaration? Why do countries and citizens feel the need for such a formal statement? The campaigns to abolish torture and cruel punishment point to one answer: a formal, public statement confirms the changes in underlying attitudes that have taken place. Yet the declarations of rights in 1776 and 1789 went further still. They did not just signal transformations in general attitudes and expectations.