

The Death Penalty and Historical Change in Spain

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Abstract

This article studies the long duration of the death penalty in Spain until its abolition in the Constitution of 1978. After analysing the plurality of theoretical approaches and possibilities offered by archival sources and specialised historiography (particularly those produced by specialists in the history of law and social history), I synthesise the Spanish answers to the major questions posed in the international historiographical debate on this issue. I then review the formality and the religious and juridical content of these “ceremonies of torment” in order to understand the scope of the practice of the death penalty in processes of social change: what did political power transmit from the scaffolds and what type of social impact was generated by public executions? How did the institutions that exercised the death penalty evolve? Why, during the transition from the Old Regime to the liberal state, was the death penalty used more regularly than before? How many prisoners were in fact executed, for what crimes, and using what procedures and techniques? Finally, after confirming that in the decades straddling the nineteenth and twentieth centuries the death penalty was on the decline, being counteracted by abolitionist discourse in the field of penal sentencing, I examine the functions played by political executions in the repressive dynamics of the Civil War and Francoism.

HISTORIOGRAPHICAL CONTRIBUTIONS AND THEIR SOURCES

The multifunctionality of the death penalty and its judicial, political, and cultural meanings become more fully intelligible in historiography when they are considered in relation to processes of historical change. This seems logical when one considers the prominent role of institutional violence in the political changes of the three first

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decades of the nineteenth century during the transition from the Old Regime to the liberal state. But, prior to the final third of the eighteenth century, during the reign of the great Hapsburg kings Carlos V and Felipe II in the sixteenth century, the death penalty was already keeping in step with historical changes. During this period it played a significant role in the mercantilist policies of the Spanish Empire, as part of what has come to be called punitive utilitarianism subordinated to economic and geopolitical interests in the Mediterranean, North Africa, and overseas territories.¹

The historiography of the death penalty in Spain is still neither broad nor ambitious in comparison with the thematic repertoire of other European historiographies, but it allows for a meaningful analysis. Two historiographical approaches are most relevant here: the history of law and social history. Penologists and historians, in spite of their methodological divergences and utilisation of different sources, converge in their analyses of the history of the death penalty in relation to processes of social, political, and cultural change.

The Spanish historiography of the death penalty makes it abundantly clear that the death penalty was first addressed through the study of the history of law and institutions, which made use of a broad repertoire of doctrinal and legal sources. With respect to the protracted periods of early medieval and modern penal history, it must be stressed that this approach suffers from the dispersion of normative sources that were produced over the course of the centuries in the form of charters, royal decrees and orders. However, in reality, two legal sources that must necessarily be consulted when studying the history of the death penalty are the *Siete Partidas* of Alfonso X The Wise (written in the second half of the thirteenth century) and the *Nueva Recopilación* (promulgated in 1567 and expanded several times until they were collected in the *Novísima Recopilación* in 1805).² The veritable compendium of the Old Regime's penal legislation continued to have the force of law even beyond the end of Absolutism, until the promulgation of the Penal Code of 1848.

Leaving aside the historical bibliography produced during the nineteenth century and the early decades of the twentieth century by penologists, penitentiaries, essayists and politicians,³ approaches to the history of law analyzing the death penalty began to emerge in the late Francoist period on the initiative of jurists like Carlos García Valdés and Marino Barbero, who were doubtless motivated by the repulsion they felt at the continued validity of the death penalty during the Francoist dictatorship. Those who continued their work made contributions that are essential for understanding the relevance of the death penalty in the institutional changes of the Old Regime, during the processes of liberal legal codification, and throughout the stages of the decline of the death penalty.⁴ When considering the most recent contributions, it must be emphasised that the historiography of the death penalty has renewed its theoretical framework through opening up to interdisciplinary dialogues, and strengthened its methodological foundations through the detailed study of a broad repertoire of sources deposited in historical archives.⁵

Judicial sources contributed to major advancements in the understanding of the reality of penal sentencing in general, and the death penalty in particular, over the course of the nineteenth century. These sources have enabled statistical estimates to be produced, which, while incomplete, are already advanced. Such statistical analyses of the enforcement of the death penalty are difficult to produce due to the territorial dispersion of juridical institutions, gaps in the data that has been made officially available, and the fact that the newly emergent liberal state did not promote the production of penal statistics until the late 1830s. Despite this, Pedro Ortego has managed to produce, on the one hand, a detailed study of the statistics of the death penalty throughout the nineteenth century, and, on the other, highly useful approximations of penal statistics during the closing stages of the Old Regime. The latter was made possible by the elaboration of so-called "*planes o estados anuales*" (annual plans or states) by different chancelleries and courts of law (*audiencias*) of the Monarchy during the final years of the eighteenth century. These essentially consist of statistical data on trials, lawsuits, and records processed by the justice administration, which enable the study of crimes and punishments that have been little explored to date.⁶

Some time after these initial investigations by jurists, specialists in social and cultural history turned their attention to the question of the death penalty, focusing on medieval, modern, and contemporary histories and drawing on distinct theoretical approaches. Three of these theoretical frameworks stand out: first, the economic-

structural perspective of historical materialism and its relations to critical criminology and German, Italian, and British penal sociology (above all, there was a notable influence of the Frankfurt School and the work of Dario Melossi and Maximo Pavarini); second, the impressive work of Foucault and post-Foucauldianism in French historiography; and third, Norbert Elias' thesis of the civilizing process and the best known results of its application to historiography, from Robert Muchembled to Pieter Spierenburg and James Sharpe, amongst others.⁷

Modern historians examined a wide range of judicial documents from the Old Regime in the national archives—*Archivo General de Simancas*, *Archivo Histórico Nacional*, *Archivo de la Real Chancillería de Valladolid*, and *Archivo de la Real Chancillería de Granada*. The documents, in addition to those of the tribunals of Navarre and Aragon, originated in the chancelleries, law courts, and councils of the Crown of Castile, together with the Tribunals of the Inquisition, special jurisdictions, and municipal and local jurisdictions. Although these studies focused on the Modern Age, it was essential that they also consider the death penalty in the Early Middle Ages, because many of the regulations and procedures of public executions emerged during this period—and because the most notable processes of historical change in the second half the sixteenth century had antecedents in the final third of the fifteenth century.⁸

For their part, contemporary historians, on the one hand, have been researching in the hypertrophied world of the archives generated by judicial institutions since at least 1808, when Spain started to undergo the transition from absolutism to liberalism. On the other hand, these historians have been exploring the archives of territorial law courts, which were created from 1834 onwards, and the immense documentary collections generated by the ordinary jurisdictional framework of the liberal state.⁹ To these collections must be added those of the Supreme Court, where many of the sentences of the law courts arrived—perhaps all of them from 1870 onwards—as it was the final judicial instance where appeals were reviewed.¹⁰ All that remained beyond the Supreme Court was the King's pardon, which the government could administer.

The trails left by the death penalty must be sought in the bundles of documents and files of all courts of law at lower and higher levels, as it was normal for a death sentence to leave a prolonged trail. In many cases, this gives us an idea of the sheer scale of the efforts made by the condemned (and those who helped them) to avoid this terrible fate. But to these sources can be added a broad and diverse range—chaotic by definition—of iconographic, journalistic, and literary sources and memoirs, which provide contrasting information and allow for the recreation of the atmosphere of certain events that were the object of judicial attention and had a strong cultural impact.¹¹ Reconstructing the importance of the cultural functions of public executions has largely been possible thanks to the documentation generated by religious guilds and brotherhoods that provided spiritual assistance to the condemned. These include the Brotherhood of Peace and Charity of Madrid, the Guild of the True Cross of Pamplona,¹² the Guild of the Passion of Valladolid, the Brotherhood of the Blood of Christ of Zaragoza, the Guild of Our Lady of Charity of Cáceres, the Brotherhood of Charity of Cádiz, the Brotherhood of the Corpus Christi of Granada, and so on.¹³

Another source of testimony for executions emanates from popular literature and orality. Considering that from the fifteenth century onward ballads about the executed were composed and disseminated, this is a line of research that is lacking from Spanish historiography on the death penalty, although it is already well-developed in other European countries, above all France, England and Germany. That “literature of the scaffold” (*romances de ciegos*), which we know used to be channelled through texts printed and sold at the place of executions to narrate the crimes and dispatch of the condemned, is a cultural product that we should consider “within the punitive ritual, as instruments that multiplied the echoes of the execution and justice.”¹⁴

The social history of punitive institutions, through considering the death penalty in different historical stages, has provided a broad sociocultural panorama of the death penalty without ignoring its political significance or functionality in upholding or defending a determinate political regime, as the work of V.A.C. Gratell and Douglas Hay, amongst others, has demonstrated. But Spanish historiography on the death penalty has also incorporated a focus on the history of social movements and collective actions in processes of social change in order to analyze this interaction in the final decades of the nineteenth century and the first decades of the twentieth century.¹⁵ The

toolkit of social history has been further strengthened by drawing on culturalist perspectives on the history of modern punishment, namely in the work of David Garland, which allow the death penalty to be conceptualized as a complex institution with juridical, political, and cultural dimensions.

The notion of a “penal civilizing process” has led modern punishment to be defined in cultural terms, that is, as a set of punitive practices and discourses that are intelligible in the processes of the production and representation of new sensibilities that make changes in punitive culture understandable.¹⁶ This explains why in Spain the Foucauldian perspective, so deeply rooted in the social history of punitive institutions, has enriched the analytical model of the thesis of the civilizing process, while also revealing that its application goes against the grain.¹⁷ This historiographical practice has a historical explanation, as it refers to a specific Spanish history, namely the enforcement of the death penalty in periods of institutional violence, which are highly significant in a country whose passage through the contemporary period has been marked by civil wars. The fact that not many decades ago tens of thousands of death penalties were carried out still weighs heavily in the memories of the Spanish.¹⁸ It is therefore not surprising that investigations of the declining stages of the death penalty—the first decades of the twentieth century—in the context of the extreme violence of the Civil War and the postwar repression have been motivated by what John Pratt eloquently formulated as “how the *civilizing process* can bring about the *uncivilized consequences*”.¹⁹

A JUDICIAL PROCEDURE, A STATE CEREMONY

As in other European kingdoms, some executions in Spain achieved notoriety as they were a matter of the state intended to fulfill an eminently political purpose. In general, executions were judicial acts, but they were also exhibitions of state power that in the Modern Age were articulated through a juridical and religious ceremony that aimed to attract the attention of the subjects “with pomp and circumstance” and produce an impact—terror.²⁰ The message of the punitive ceremony had to resound even more forcefully if the death sentence was for a regicide or attempted regicide, such as that aimed at Fernando the Catholic in 1492. Something very similar occurred centuries later, beginning in 1823 with the punishment of the leaders of the liberal *pronunciamiento* (insurrection) that forced Fernando VII to alter his absolutist resolve, as it was clear that this subjection of the monarch had endangered his physical integrity (this was particularly true with the English and French precedents in mind). Between 1820 and 1823, the insurgent liberals held power and forced the king to swear an oath to the Constitution of 1812 that he himself had repealed six years earlier.

In spite of more than three centuries separating these events, we find that on both occasions, once the attacks had been brought under control, the *ira regia* was vented with full intensity in the face of the crimes—*lèse-majesté* (*lesa majestad/laesa maiestas*) and high treason—which had acquired a superlative character in the penal regulations that began to be constructed in the thirteenth century and that Fernando VII himself wanted to preserve at all costs when absolutism was waging its final battles. The humiliation and cruelty contained in these punitive ceremonies can be confirmed by simply reading a brief account of each punishment in contemporaneous news reports.

On Friday 7 September, on the stairway of the Royal Palace of Barcelona, king Fernando the Catholic was stabbed by a peasant named Juan Cañamares. The guards apprehended the aggressor and the mortally wounded king ordered that Cañamares' life be spared so that he could be interrogated. The doctors had to use all their skills to cure the wound, which required seven stitches. Judicial torture only managed to ascertain that Juan Cañamares had acted alone and had been misled by ideas that he believed he had received from the Holy Spirit. The Royal Council declared him guilty of *lèse-majesté* and sentenced him to be executed on 12 December that same year:

Por sentencia contra el dada, fue en vn carro traído por la ciudad, y lo primero le cortaron la mano con que hirio al Rey, y despues le arrancaron la vna teta con tenazas ardientes, y le sacaron vn ojo, y luego la otra mano y el otro ojo, y las narizes y todo el vientre y cuerpo con las mesmas tenazas ardientes.

Despues le cortaron los pies y le sacaron el coraçon por las espaldas, y fuera desto lleuaron el cuerpo al campo, donde de los muchachos fue apedreado y quemado, y aun su ceniza auentada: pero ahogaronle primero por clemencia y misericordia de la Reyna.²¹

In application of the sentence dictated against the prisoner, he was taken through the city in a cart, and the first thing they cut off was the hand with which he wounded the King, and then they tore off a breast with red-hot tongs, and they took out an eye, and then the other hand and the other eye, and then the nose and the whole stomach and body, with the same red hot tongs. Then they cut off his feet and took out his heart through his back and then immediately took the body to the countryside, where it was stoned by youths and burned, and his ashes were even thrown into the air; however, before doing all of this, they drowned him because of the clemency and compassion of the Queen.

If the future of the modern state in Spain was beginning to build a solid foundation under Fernando the Catholic, three centuries later the whole political edifice of absolutism was to undergo its worst and final crisis. The liberalism that had come to power in 1820 thanks to a military insurrection started by general Riego was contested by the absolutist reaction and boycotted by the king himself, until it was defeated in 1823 with the help of the European absolutist powers and the Hundred Thousand Sons of San Lu s. Fernando VII swiftly restored absolutism and, in addition to creating the "Boards of the Faith" (*Juntas de la fe*), also re-established the method of execution that the liberals had abolished—the gallows.

The traditional shaming symbolism of death by hanging became even more significant when the figure that the liberals considered their hero, the leader of the liberal insurrection of 1 January 1820 at the Cabezas de San Juan, general Riego, was executed this way. Because of his noble status, Riego should have been executed by firing squad, but according to the absolutist regulations he was found guilty of committing an act of treason and that in practice meant dying dishonourably. On 7 November 1823 he was hanged and then decapitated in the Plaza de la Cebada in Madrid, where he was brought, broken and humiliated, in a large basket dragged by a white donkey through streets full of people who had convened to humiliate him—perhaps the same mob that had at one time admired him.²²

Many possible readings can be made of these two cases that are so separate in time, including a reading that counterposes Isabel the Catholic's gesture of mercy in asking for the prisoner to be drowned before receiving the punishment prescribed by the regulations and the judges to the brutality of the execution of general Riego. With respect to the *post-mortem* mutilations inflicted on the executed, the *ira regia* of Fernando VII was more cruel. But it is interesting to note that between the fifteenth century and the nineteenth century, between one landmark in torture (that of the regicide Juan Ca namares) and another (that of the insurgent general Riego), between two public executions, there are three centuries during which the death penalty was practiced as a procedure of juridico-penal execution and as an act of the representation of political power, as a state ceremony. (In the majority of cases, however, the *ira regia* did not have to show explicit signs of anger; on the contrary, a process was underway through which the most cruel expressions of the work reserved for the executioner were being replaced or moderated.)

From the mid-thirteenth century onward, in the Christian kingdoms of the peninsula, the death penalty had acquired this form as the result of a slow process involving the convergence of the influence of ecclesiastical penal law (with its afflictive and redemptive conception of penalties) and the gradual assumption of Roman Law in matters of penal retribution (as against the Germanic conception of the ordeal and private retribution). In this form the death penalty entered modernity. Under Absolutism the sovereign was without question the prevailing source of legislation in the final instance.

Some studies of early medieval penal law indicate that in the decades straddling the fifteenth and sixteenth centuries, the death penalty, despite continuing to be the most exemplary punitive sanction due to the cruelty of its techniques and procedures of torture, no longer played a preponderant role in punitive practices. Some church figures even questioned the efficacy of the death penalty, which now faced alternative proposals intended to replace executions with penalties that served public interest. The data collected on this matter is illustrative. During

the reign of the Catholic Monarchs, in the tribunals of the Real Audiencia y Chancillería of Valladolid, exile had become the “star penalty”: “the penalty of exile accounts for 33.1% of the sentences imposed, the principle sentence in the range of punishments, while the death penalty, on the contrary, only accounts for 10.2%, the sixth in importance.”²³ To this should be added a very small percentage of penalties (barely 2.8%) that could be considered utilitarian penalties, consisting of “sentencing to serve in the Crown's armies involved in taking the Nazari kingdom of Granada.”²⁴ Some decades later, from the mid-sixteenth century onward, the death penalty was largely subordinated to this utilitarian idea and to meeting the needs of the Crown's interests in the peninsula and overseas.²⁵ Thus began a long stage of penal history that was overdetermined by punitive utilitarianism, which is one way of denominating a penal ideology derived from dominant political thought. This system of penalty was intended to fulfill a political function of prime importance in the consolidation and strengthening of the modern state.

Although the instruments of punitive control were logically insufficient and the crown would need to heighten the collaboration of municipal bodies in order to combat disorder and crime, it was possible to observe the function of crime prevention projected by the most striking elements of punishment in the popular mentality. These were preserved for posterity in the most famous pages of Castilian literature, such as the misfortunes of Don Quijote when he freed the galley slaves by confronting the guardians of the *Santa Hermandad* (Holy Brotherhood). From the period of the Catholic Monarchs onward, some institutions fulfilled two functions (political and judicial) by persecuting and punishing a great variety of crimes and *sinful*-crimes. I am referring, on the one hand, to the Holy Brotherhood, which watched over country roads, abandoned villages, and fields, and also executed prisoners tied to trees or stakes with their crossbows. And I am also referring, on the other hand, to the Holy Inquisition, conceived years before to confront heresies, which, to be sure, were also persecuted by the ordinary jurisdiction, as can be seen in the *Partidas* and the *Novísima Recopilación*.

It is well known that the Inquisition also acted against blasphemies and disorderly and sinful conduct (bigamy and sodomy especially, but also lesbianism and bestiality), and later, in the eighteenth century, against signs of superstition.²⁶ Once it had been fully institutionalised and unified during the reign of Carlos V, the Inquisition became an institution that was “clearly political and instrumentalised by the emperor.”²⁷ This meant that, from this time onward, in the midst of the conflicts that brought the papacy into confrontation with the national-catholicism of Felipe II and the Hapsburgs, the *obstinados* and *relajados* tried by the judges of the Inquisition were finally sentenced to the galleys by the King's justice, a penal decision that was unquestionably more utilitarian than being burnt at the stake.²⁸

Penal law fulfilled a function of prevention and intimidation, an effect that was magnified due to the public character of bodily mutilations, exposure to public shaming in the pillories and *rollos* (a column with a similar function to a pillory) in the main squares, and, of course, although this was more occasional (as its repercussions were far greater), the theatricality of carrying out capital punishment. As in other European kingdoms, public executions grew in spectacularity and dramatism during the Modern Age.²⁹

Allowing for a wide margin of judicial discretion—which might temper the severity of a sentence or, on the contrary, result in an exemplary punishment—crimes that in practice were usually punished with the maximum penalty included double or multiple manslaughters and murders; parricides—which were much more alarming when women killed their husbands; robberies with murder; robberies in sacred places; banditry; and various other crimes, including excesses of sodomy or counterfeiting.³⁰ Nonetheless, at the end of the Old Regime the monarchy imposed clear limitations on the decision-making capacities of judges in death sentences.³¹

A functional division of the death penalty into cultural and economic components can thus be observed: on the one hand, the projection throughout society of the legal threat of the death penalty that was occasionally put into practice as a state ceremonial with a public and solemn character; and on the other hand, the economic utilisation of the death penalty by the state itself, whereby the death penalty was often replaced with sentences that obliged the guilty to carry out dangerous tasks in the galleys, military fortifications, or work in the sulphur mines at Almadén.

This suggests that in the practice of imposing penalties in Spain under the Old Regime, the death penalty was not frequently used. Its function as a state ceremony was normally verified as a judicial act, and on a few occasions political powers were forced to use the death penalty with a purely political purpose—as a “pedagogy of fear”, a resource for the symbolic coercion and intimidation of the people. This is confirmed by empirical studies carried out using judicial and prison documentation from the final third of the sixteenth century. According to data on the sentences imposed on inmates in the prisons of the Crown of Castile, the most used penalty was the galleys (in total, 80%) and, conversely, the penalties of exile and death accounted for 5% and 4% respectively.³² With respect to the period of the Catholic Monarchs, due to the influx of the ideology of punitive utilitarianism, there was a major change in the figures for penal executions.

In the seventeenth century, and even in the eighteenth century, executions did not reach strikingly high numbers. Some empirical studies on the final third of the eighteenth century, based on the sentences referred to the Council of Castile by the Criminal Sections of the law courts, deduced that 3% were death penalties (imposed in the texts of the sentences, and not all were carried out).³³ The percentage of cases that the Tribunals of the Inquisition referred to the field of ordinary jurisdiction for execution by the secular branch (the so-called the *relajados*) were even smaller.³⁴

In Spain, figures for executions carried out in cities where there were religious guilds dedicated to spiritually assisting the condemned speak of situations that were very different from those documented in Paris and London.³⁵ This is shown in the data that historians have published on cities as different as Pamplona, Valladolid, Zaragoza, Cáceres, Cádiz, Granada, and Madrid. Few documentary sources have survived and when they are found it is not easy to determine the validity of their information. Nonetheless, it seems indisputable that the number of executions increased as the Old Regime collapsed and the liberal state emerged. In this new context, when the legitimacy of the state was called into question, it became necessary to enforce the political use of the death penalty.

In Madrid, according to the data of the Brotherhood of Peace and Charity (and bearing in mind that the Brotherhood did not record either the prisoners of the Inquisition or prisoners of any other civil or military jurisdiction that fell outside their field of assistance), 112 death penalties were carried out under the reign of Felipe V, 60 were carried out under the reign of Felipe VI, 121 were carried out under the reign of Carlos III, and 61 under the reign of Carlos IV. During the War of Independence—a period of crisis that affected the activity of the guilds that comforted prisoners sentenced to death – 183 executions were recorded. The number of executions carried out increased even further under the reign of Fernando VII, when 259 executions were took place, and under the reign of Isabel II, when 221 were carried out.³⁶

The crisis of the Old Regime and the episodes of political violence mentioned above changed this situation. At the end of the eighteenth century an increase in public executions is reflected in the notes of guilds providing assistance to the condemned, such as the Guild of the Passion in the city of Valladolid.³⁷ And in the nineteenth century the increases were even more striking. This is confirmed by the statistics (still provisional, as they are incomplete) on the death penalty in the whole of Spain throughout the nineteenth century. Pedro Ortego has counted more than 4,600 death sentences; the highest numbers correspond to the absolutist decade of Fernando VII's reign (1823-1833) and the Revolutionary Sexennium (1868-1874).³⁸ Executions were carried out for political motives, but also to punish other types of crimes, such as those that had been considered repugnant and atrocious since ancient times (treacherous murders and homicides with robbery) and others, such as banditry, which revealed an underlying reality of disorder and social violence.

For its part, military jurisdiction was applied in full measure to confront popular insurrections and workers' mobilisations. In order to understand the function of death penalties involving the execution by firing squad of leaders and activists participating in social protests and political struggles, it is instructive to read the reports of military authorities. Throughout almost the entire nineteenth century, the Royal Ordinances of Carlos III had the force of law, and thus continued to be the source for assigning public order functions to the Captain General of the army in the corresponding region. These regulations enabled each military leader to convert “any street disorder

into a crime against the state” and thus mobilised the army to repress social revolts and authorized the enforcement of the death penalty as a central punitive action.³⁹

The cases in which the death penalty was effectively put into practice show that the most important criminal headings from 1848 onward were murders in connection with robberies, banditry, and crimes considered to be political or military in nature (many of which were also political crimes). However, the most significant change came in 1870. With the Penal Code of 1870 (in reality a reform of the code of 1848), the death penalty ceased to be a singular penalty in itself and became the highest degree of punishment that could be handed down for a particular crime. After examining the sentences that reached the Supreme Court, I suggest that, following the codification of 1870, the death penalty was imposed for crimes of murder, parricide, and robbery with murder (at times double or multiple murders, and on occasion combined with injury and rape). However, although it was the judge who had the capacity to add the terrifying fact of the death penalty when issuing a sentence of temporary or life imprisonment, in practice this decision was delegated to the political power, so that the latter should decide whether to apply measures of clemency. The political power normally commuted a death penalty to a lesser degree of punishment, such as *cadena perpetua* (a life sentence served in the Canary Islands, Africa, or overseas) or *reclusión perpetua* (a life sentence served in a penitentiary establishment in the peninsula).

As in many other countries, the death penalty has also been rejected in Spain, either partially (through requesting its non-application in certain crimes, above all political ones) or totally, as it is considered uncivilised, cruel, disproportionate, and irreversible.

In particular, the death penalty has been opposed through political movements and legal initiatives that are explicitly abolitionist, often encouraged by decisions taken with regard to the death penalty in other countries, such as neighbouring Portugal.⁴⁰

In fact, the death penalty was entering a major historical crisis that would, however, also involve major regressions. The figures for executions decreased considerably over the course of the second half of the nineteenth century as the liberal state's penal-penitentiary model was established, despite the fact that codification still contained a broad series of articles reserved for the threat of the death penalty. This tendency gradually continued until the early decades of the twentieth century. According to the *Colección de la Justicia Criminal*, during the first decade of the twentieth century the number of executions fell, but a considerable number of judicial sentences involving the death penalty continued to be registered (381), while in the following decades, prior to the abolitionism of the Second Republic,⁴¹ the number of executions continued to fall: 218 death sentences were given between 1911 and 1920, and 110 between 1921 and 1930.⁴² Once again, bear in mind that these were sentences, not executions.

In this way, by the 1930s the death penalty (and life imprisonment abroad) had almost been extinguished in practice, while it became normal for judges to have recourse to applying long-term prison sentences.⁴³ Evidently, as Garland notes, the decline of the death penalty does not necessarily indicate a reduction of punishment or the end of state violence.⁴⁴ Furthermore, the tendency of the civilizing process in penal matters was brutally halted by the drive for revenge and ideological cleansing carried out beginning in the bloody summer of 1936. And, subsequently, the death penalty would continue to grow out of proportion. The military jurisdiction continued to try the vanquished and handed down thousands of death sentences that the dictator himself confirmed, signing them with an annotation indicating he was “well informed,” primarily between 1939 and 1943.⁴⁵ It was not until well into the 1950s that the figures for the death penalty returned to “normal.”⁴⁶

A CEREMONY OF TORMENT, A PUNITIVE CULTURE

The announcements concerning public executions in the Modern Age provide information that is very similar in different Spanish cities. The resemblances and recurrences speak of a ceremony codified by regulation and custom, in which figures appear that personify a whole network of powers. Figures of order and religious figures, judges, and

the executor of high justice (or executioner) stand out, together with a network of municipal, ecclesiastical, charitable, and philanthropic institutions, which parade before the city's inhabitants and lay community, the ensemble of residents who are also faithful Catholics of the parishes, spectators and givers of alms, guests in body and soul.⁴⁷

A death sentence and public execution became, in reality, "days of torment." These were days when an atmosphere was created that brought together many signs related to the public execution—the publication of the sentence, the collection of alms for the soul of the condemned, the erection of the scaffold, the coming and going of Church personnel and judicial and municipal authorities around the prison chapel, and so on. Later would come the spectacularity of the procession to the scaffold, the hanging or garrotting of the condemned, and their burial, and, on occasion, *post-mortem* punishments that increased the impact of the ceremony and enhanced its dramatic character, such as the amputation of the right hand, quarterings, decapitations, or the placement of the condemned in a barrel to be thrown in the river.⁴⁸ The "quarters" were distributed around the places where the condemned had committed acts of violence and robbery. The practices of quartering, decapitation, and the amputation of the hands persisted until the early 1830s, although there were periods when liberalism prevented these practices, since this style of punishment formed part of the dispute between liberals and absolutists over the gallows and the garotte.

The penal spectacle reminded everyone of the limits of disorder. It made the public participate in the affirmation of a definite and secure sense of order, which they reproduced through their mere presence before the torment of the condemned. The state spoke from the scaffolds. During the Old Regime this ceremonial process underwent few essential changes, although local investigations show that there were more variants of this ceremony than had been supposed. However, both the changes to this ceremony and the essence of the ceremony itself (which was at times reactive to these changes) became more intelligible during the decades of transition to the liberal state throughout the nineteenth century, especially when the concurrence of military jurisdiction in the execution of fellow countrymen is observed. Article 40 of the Penal Code of 1822 details the ritual that should be followed from the moment that the condemned was taken from the prison chapel, because the liberals wanted to establish a new process that would remove baroque features from the ceremony, restricting displays of religiosity.⁴⁹

When the condemned was taken to the prison chapel, the public collection of alms began in the streets and churches to the sound of small bells. This was done by municipal almoners and administrators of religious congregations to pay for both material costs (including those related to personnel, the infrastructure and the burial) and spiritual costs (including church services), and in this way save the soul of the condemned. An economy of piety, or form of paying for the upkeep of the guild that was in charge of assisting the condemned and the church or convent that provided the place for the burial of those condemned to death, was thus set in motion.⁵⁰ Later, during the crisis of the early nineteenth century and periods of liberal government and French domination, some of the old rites of the days of torment underwent changes. Restrictions were placed on customary rituals, including, for example, the collection of alms, to avoid the omnipresence of almoners in the streets during the days when the condemned were *en capilla*—preparing to meet their fate in the prison. In Valladolid, during the French invasion, the bell-ringing procession was suppressed and as a result fewer alms were collected.⁵¹

An educational literature on succour was generated and distributed amongst the guilds and brotherhoods that assisted the condemned. These texts, such as "Instruction by Father Don Pedro Portillo of the Congregation of the Saviour of Madrid for directing the unfortunate condemned prisoner to his final suffering," were designed to provide guidance.⁵² This document in particular, which was widely distributed during the crisis of the Old Regime and over the course of the nineteenth century, enables us reconstruct the experience of the ceremony of the death penalty in a way that likely comes close to what actually occurred.⁵³

Before prisoners received the possible announcement of a death penalty, a priest had to visit them in prison to ensure that they had confessed. The priest was advised to speak to them sweetly to "win their hearts," but never to raise false expectations: without telling them that their cases were truly desperate, "to keep them always in hope and fear." Each prisoner received the death sentence in their own way, some with anger and curses, others weeping

bitterly, and others who were left “stupid, remaining silent from consternation.” Priests who spent time with prisoners during their final days and hours *en capilla* were told to remember the “fright” and “horror” felt by a “miserable condemned person” confronting “the terrible image of a shameful death.”

Precisely because there had always been denunciations of the frivolity of the prisoner's “last suppers,” Father Portillo's text insists on the obligatory simplicity of everything that takes place in the chapel: the condemned will be given some food, solely to keep them vigorous, and a warm drink.⁵⁴ Once they have eaten they will be made to rest in bed, but given that there is a risk of their not resting and going insane, exhortations should be short and confessions brief. The instructions in the text requested that prayers should always be repeated in Spanish (not Latin) and that prisoners condemned to death should never be given hope of pardon or reprieve. This was during the time until the morning of the execution. At eight in the morning, kneeling and wearing a “tunic or coat,” the prisoner should be at the entrance of the prison so that the executioner could mount him on a mule or donkey and tie his hands. The priest should take him by the arm to console and fortify him in front of the public. The cortege would then set off.

A small crucifix is placed in the hands of the prisoner, “and he is warned that from that moment he should not take his eyes off the Lord, taking great care to repeat what they tell him from the prison to the execution.” At the foot of the scaffold the prisoner makes a brief confession, and while the priest and the prisoner each mount their own steps, the prisoner is urged on “with the greatest fervour.” When everything is over, “justice having been done,” the priest should make “a brief exhortation to the people.” The instructions in the text do not overlook the fact that the execution is a public act and demonstration of the power of justice in the punishment of a crime, and note that priests should always proceed “in agreement with the Judges.”

The execution was a solemn and daunting experience, accompanied by bells ringing in mourning, candles borne by penitents fully covered by tunics and hoods, and prayers, litanies, and songs that in many cities were sung by choirs of foundling children raised in religious hospices. Creating great suspense, the execution cortege would wind its way through the streets from the prison to the scaffold. Before the liberals of the Triennium (1820–1823) began to relocate them to the outskirts, scaffolds were set up in public squares in cities, some of which continued to be the sites of executions until the 1880s and 1890s: La Plaza de la Cebada (Barley Square) or the Puerta de Toledo (Toledo Gate) in Madrid, the Patio de Cordeleros (Courtyard of the Rope Makers) in Barcelona, La Puerta de Elvira (Elvira's Gate) in Granada, the Campo Volante in Corunna, the Plaza de la Fruta (Fruit Square, now the City Council) in Pamplona, and so on.

Once the condemned had arrived at the scaffold, a highly regulated ceremony was held, filled with juridical-religious formalities that served to reproduce the exemplary and moralising message of political power. At such public—even multitudinous—events, even though they were marked by religious withdrawal and prayer, it was also possible to see the executioner ask the prisoner for forgiveness, and for the latter to confess to committing the crimes for which the execution was taking place (this also displeased the liberals of 1820, who banned this practice). Immediately after, the execution was carried out, which consisted of either hanging or garrotting the condemned, or, if they were a military officer, executing them with firearms (by arquebus in the eighteenth century, and by rifle in the nineteenth century, although death by firing squad was later expanded to include civilians tried by the military). Military justice imposed a relevant nuance on the ceremony: it was carried out without pomp or delay, forcefully, and with sobriety. This modesty, in contrast to the solemnity of an execution dressed in religiosity, was called for by the liberals in their regulations and speeches, but the strength of tradition nearly always prevailed.

Afterward, the corpse was removed and burial processions began, although in the case of military officers the corpse could be given to relatives (this was another procedure introduced by the liberal codification, but it did not result in the disappearance of the old function of religious guilds and brotherhoods). During this time, before and after the public execution, collections were taken for the soul of the prisoner. The accounts and minutes of the guilds clearly indicate that the quantity of alms increased prior to the execution of the condemned on the scaffold, especially if the prisoner died with Christian composure and resignation.⁵⁵

Over the centuries, more continuities than changes can be observed in the ceremony. The debate between tradition and change primarily focused on ostentation, but baroque inertia imposed itself on the ceremony even at the most decisive moments when liberalism was in power. On the contrary, it was in relation to the instruments used, the technology of death, that the debate became most fierce, and changes in the technologies used during public executions reveal the depth of historical change. The garrotte was crucial to these historical changes.

The garrotte, which had already been used by the Inquisition as an instrument of torture and a technology to execute the condemned before they were burnt, had been for centuries associated with debates on the humanisation of punishment. In Spain it was considered to be a simple instrument of execution. It was easy to produce and, above all, could be conveniently transported and stored by executioners of justice themselves. Jerónimo de Barrionuevo, a chronicler of the seventeenth century, had said that it was an “ingenious instrument that with two turns of the screw, in the blink of an eye, one is in the next life.” And without shedding blood. Such was its fame throughout Europe at the end of the Old Regime.⁵⁶ It is not surprising that in 1791 “citoyen Thomas” should have put a proposal to the National Assembly for it to be adopted as an instrument of execution before the guillotine was chosen.⁵⁷

The Spanish garrotte, when compared to the gallows, benefitted from a culture that promoted a certain humanisation of punishment. For example, a fierce controversy and several protests arose in Pamplona due to the hanging and barrelling of a woman who had poisoned her husband. The demand was that she be garrotted, which indicates that a new enlightened sensibility was developing that clashed with the humiliating spectacle of the gallows. It is true that judges applied the death penalty to criminals who had murdered their husbands, but the usual practice was that even in such cases the classical notion of *infirmis sexus* was imposed, resulting in some type of attenuation of the penalty because women were involved. There were no official regulations in this respect, but there was a juridical doctrine that opposed the hanging of women (formulated in the sixteenth century by Jerónimo Castillo de Bovadilla). And, in any case, a general tendency became evident by which judges applied the principle of “the best death” when dealing with women in their arbitrations.⁵⁸ In other places, such as Valencia, in addition to suppressing regulations on beheading (which stipulated the use of a knife for nobles and a rope for plebeians), over the course of the eighteenth century it was determined that nobles should be garrotted (and paraded on a mule or donkey) and plebeians should be hanged (and paraded in a large basket).⁵⁹ Hence, the garrotte had been humanised and ennobled over the course of the eighteenth century.

With the enthronement of Napoleon's brother, Joseph I, new proposals and regulations were introduced to serve as referents throughout the nineteenth century. In 1809, together with the Inquisition and other institutions of the Old Regime, the gallows was abolished, the garrotte was imposed without any distinction between the condemned, and the prisoner's time *en capilla* was reduced to 24 hours. With these changes, and in the complex and traumatic context of the War of Independence, the history of the firing squads became fixed in the memory of the Spanish, while the shameful aura of the gallows grew larger. Goya portrayed its soulless and cursed reputation in his depiction of two French soldiers pulling on the legs of a hanged man to make him die more rapidly.

In addition to abolishing the gallows, the Cortes of Cadiz for their part helped banish punishments involving public shaming and torture from the repertoire of punishments practiced in Spain (the latter prohibition was later accepted by Fernando VII, even while he strove to restore the gallows and other bodily punishments). It was the gallows, as well as the Inquisition and old administrative structures, that appeared to be inalienable symbols. The debate over the gallows and the garrotte was central in the struggle waged between absolutists and liberals in the field of punitive culture. The first Penal Code in the history of Spain, the liberal code promulgated in 1822, favoured the penalty of imprisonment, recognizing that it entailed material hardship insofar as it was included in the catalogue of corporal punishments, and prescribed garrotting against a board (“without torture or any modification”) as the method to be used when carrying out the death penalty, while it denounced the gallows as a symbol of darkness and absolutism (and, in passing, eliminated *post-mortem* penalties). The new penal law, which persisted in the conviction that public executions served an exemplifying function, prescribed the garrotte without class distinctions: the condemned would wear a black or white tunic according to the type of crime they had committed.

Many justifications for the garrotte stressed its merciful nature, although history had amply demonstrated that it rarely caused instantaneous death, and that at times it failed through lack of use, because it was rusted, or because the screw that tightened the iron tie failed, all of which caused enormous suffering to the condemned. Of the many news reports of garrottings that had failed with agonising results, one report that directly affected the liberal authorities who defended its use can be singled out: the case of the execution of Juan Baquedano, alias *Juanillo*, in 1822, for conspiring against the liberal constitutional system.⁶⁰ The military authorities who had the power to sentence civilians to death by garrotting were unaware that a screw in the garrotte had rusted. The executioner attempted to garrotte *Juanillo* for half an hour. The public protested, and finally, after consulting military authorities, the soliders who were present to maintain order were authorized to shoot the prisoner. Despite the fact that the Penal Code allowed relatives to claim the body of the executed and bury it without ceremony, the strength of custom prevailed and the body was buried after a procession of the Guilds of the True Cross and the Brotherhood of Charity had taken it not to the convent, but to the public cemetery.

However, it was the terrible scenes of hangings that generated growing social repulsion. The scandal of one of these experiences affected the king himself. It occurred in Madrid on 15 July 1829, when eight robbers were executed by hanging. The executioners from Madrid and Toledo “did it so badly and it lasted for so long (about four hours), that two of the priests in attendance wrote to the Council of Castile requesting that another less shameful and more efficient means be used.”⁶¹ Facing this state of affairs, the garrotte prevailed over the gallows. Fernando VII, basing his decision on decency and humanity, abolished the penalty of the gallows in 1832. The final years of the reign of Fernando VII saw the rise of the classist enforcement of the garrotte and the emergence of the famous formulation “*garrotte vil*,” which, despite its short history, as it was abolished the following decade, impacted Spanish imaginaries of the death penalty.

A distinction was established between the noble garrotte (for members of the nobility), the ordinary garrotte (for the common people), and the vile garrotte (for those who were sentenced to shameful crimes). Given that prisoners were to die by strangulation in all three cases, where did the differences lie? These forms of the garrotte were distinguished by the ways that condemned prisoners were led to the scaffold, the clothing of the prisoners, and the decoration of the garrotte itself: a mount with a saddle and a black horse blanket were provided for the privileged of the *garrotte noble* (noble garrotte), a lesser mount and a hood attached to a tunic were given to those executed by the *garrotte ordinario* (ordinary garrotte), and those who were to suffer the *garrotte vil* (vile garrotte) were carried by a lesser mount or dragged in a large basket.⁶²

Formally, the history of these distinctions in the penalty of the garrotte lasted only a few years, as the Penal Code of 1848 eliminated them, stating that “the garrotte” (without adjectives) was the sole technique of execution in civil legislation, employing the same definition as the code of 1870. Class differences disappeared, although in the code of 1848 the clothing worn by the condemned was used to distinguish the crimes they had committed: a black cassock was normally worn by prisoners facing execution, unless they were parricides or regicides, in which case they were led to the scaffold in a yellow cassock with a cap of the same colour, both stained red to simulate blood. In addition to reducing the time spent *en capilla* to 24 hours, the codification of 1870 stated that all prisoners must wear a black cassock, but there are news stories and literary narratives that speak of the persistence of certain old customs. Similarly, and in spite of an increasing number of criticisms that invoked a logic of humanity and civilisation, public executions continued to serve an exemplifying function. However, an exception was included in the code of 1870 that would later eliminate the spectacle of execution in the final decades of the century: executions would not be carried out in public when authorities decided that this was necessary for extraordinary reasons—normally to avoid riots.

The garrotte triumphed while death by firing squad emerged as another technique of execution that held unquestionable prestige in the military mentality: to not be executed by arms was equivalent to being treated as a vulgar criminal. Military justice had historically employed the death penalty in the form of execution by arquebus or musket. In fact, there were already precise regulations in the Royal Ordinances of Carlos III, which, amongst other details, ordered that those condemned to death should be dispatched by arms to the sound of drumbeats.

Death by firing squad gained importance in the first period of the restoration of absolutism, between 1814 and 1820, when Fernando VII confronted liberalism using the special jurisdiction of the Military Commissions.⁶³ During this absolutist sexennium, despite the reinstatement of the gallows, judges were more inclined to enforce death by the garrotte, resulting in the use of both the garrotte and the firing squad for executions until 1819. The gallows never overcame its loss of prestige. However, following the liberal triennium, the gallows did regain a certain contrived prominence as a political identity mark against liberalism. For its part, death by firing squad continued to gain prominence as a method of execution, becoming commonplace in a punitive culture that had denounced the gallows as cruel and degrading. From this time until its abolition, the death penalty in Spain was applied through two techniques—the antiquated garrotte and the novel firing squad. In this regard, the recurring debate on honourable and dishonourable forms of executing those condemned to death continued into the future.

An important turning point in the progressive decline of the death penalty was the abolition of public executions in 1901. From this time onward, with the exception of military justice until 1956, death penalties dictated by the justice system were always carried out using the garrotte during the daytime and inside prisons so that privacy was ensured. This procedure for carrying out death penalties was determined by prison regulations, and remained nearly unaltered in all subsequent penal and penitentiary regulations. Although the public character of the death penalty was formally abandoned, within an essentially retributive penal system that punished in order to warn of the dangers of committing a crime, society must necessarily receive clear evidence of the penal execution. In this regard, the governing authority stationed troops and public order forces around the prison prior to the execution, both to intervene in the case of possible incidents, and also, in a certain manner, to provide public notification that an act of power was to take place. For the same reason, a black flag was raised prior to the execution. News of forthcoming executions was concisely published in the *Boletín Oficial de la Provincia*, and the press was informed of these executions. The latter tended to be divided on whether to provide more or fewer morbid details regarding the executioner's skill, the attitudes shown by the condemned and their family, the reaction of the public, and so on. During this period, moreover, the impact of industrial progress on execution procedures became apparent: because of the railway and the telegraph, the state required fewer executioners, who moved from court to court and prison to prison to carry out their duties within the brief 24 hour period during which the condemned remained in the chapel (I have provided documentary evidence of this by analyzing cases such as that of Bonifacio García Martínez, a prisoner sentenced at the Territorial Court of Pamplona to two death penalties for robbery and double homicide).⁶⁴

During the civil conflict from 1936 to 1939, the death penalty hypertrophied and grew out of proportion, keeping pace with the social dynamics of political violence and repression. Following the harsh repression of the post-war period, the death penalty was used less frequently, but it continued to have a significant social and cultural impact. Between 1963 and 1975, the death penalty in Spain was used in specific cases that had significant international repercussions.⁶⁵ During this period, nearly all executions took place for political reasons within the framework of military jurisdiction, the majority by firing squad. In order to preserve the decisive weight of military justice, the political regime amended the legal framework that punished terrorist offences several times, making these punishments more severe.

The news stories about the last individuals executed under Francoism eloquently demonstrate the history and memory of the death penalty in Spain. In 1974, Salvador Puig Antich, an activist of an ultra-leftist armed group, was garrotted (at practically the same time as the common prisoner Heinz Chez), which invoked stupor and anger amongst the majority of the anti-Francoist opposition. The following year, in September 1975, the dictator ordered the execution of five people accused of belong to terrorist organizations by firing squad, which generated an immense international political response.

In February 1976, when the transition from dictatorship to democracy was beginning, the centrist government of Adolfo Suárez amended the anti-terrorist regulations that had made possible the use of martial courts involving “summary” and “*sumarísimos*” procedures during the final period of Francoism.⁶⁶ Nonetheless, the legal foundation that enabled the administration of the death penalty remained unscathed. Military jurisdiction continued to hold

enormous power. Additionally, the ordinary Penal Code (which was reformed in 1973) continued to include the death penalty. As a result, in Barcelona in October 1977, two death penalties were handed down to José Luís Cerveto, the infamous “murderer of Pedralbes”; these sentences were upheld by the Supreme Court, but ultimately commuted to two thirty-year prison terms. Between 1977 and 1978 the death penalty ceased to function and began moving toward abolition.

The spirit of abolitionism finally triumphed in the Constitution of 1978 when the death penalty was abolished in civil jurisdiction (consensus had not been reached on this matter in the previous democratic constitution, the Republican Constitution of 1931). Article 15 of the Magna Carta makes this explicit: “The death penalty is hereby abolished, except as provided by military criminal law in times of war.” Several years later, in 1995, due to pressure from an intense abolitionist campaign promoted by Amnesty International, the death penalty was also removed from the Military Penal Code.

CONCLUSION

Social changes in Spain are usually explained with reference to their political texture. The same is also true of changes in the practice of the death penalty. The Old Regime, with roots dating back to the Early Middle Ages, was a protracted time during which the administration of the death penalty reflects slow and gradual judicial and cultural changes related to the amendment of penal regulations and the recurrence of execution ceremonies. However, at the start of the nineteenth century, the political convulsions that led to the rise of the liberal state affected the death penalty in two critical ways.

First, the death penalty has been most prominent during the most intense periods of political violence in the nineteenth and twentieth centuries, of which I underscore three: first, the cycles of major repression exerted following the defeat of Napoleon, both before and after the liberal triennium of 1820–1823, during which Fernando VII not only restored previous forms of the administration of justice, but also expanded military jurisdiction in order to confront disorder and eliminate liberalism; second, the strife-ridden periods of insurgency and counterinsurgency against not only anti-liberal Carlism, but also republicanism and the incipient workers' movement that accompanied the birth and development of the liberal state beginning in 1834, during which states of war were frequently declared in order to allow military authorities to intensify the work of repression; and third, in the following century, the periods of bloody repression during the Civil War of 1936–1939 and in the aftermath of the war during the rise of the Francoist state. The death penalty—at times so bloated and grotesque that it becomes confused with the repugnant militaristic dynamics of punishment and vengeance that are generated in civil conflicts between Spaniards—was legally founded on the existence of a duality of penal regulations available to the established powers: on the one hand, the ordinary penal jurisdiction, and on the other, the military penal jurisdiction, which authorized the imposition of the death penalty on civilians tried in military courts.

Second, the death penalty informs us of historical shifts in the administrative and normative structures that frame its role in the liberal system of punishment. The establishment of a doctrine and normative structures during the rise of the liberal state reflects the contentiousness of this period of history, during which innovative ideas were assembled and disassembled and new legal frameworks and norms emerged. Intended as a corporal punishment directed against those found guilty of committing treacherous crimes (crimes lacking any political significance that might situate them in relation to political conflict), the death penalty gradually shifted to the periphery of liberal penal codification, while at the same time the deprivation of liberty in the penitentiary came to occupy the centre of the new punitive system.

During the entire nineteenth century, the processions that accompanied the condemned to the place of public execution continued to be seen in the streets and city squares. However, as these processions took place in the atmosphere of the new punitive culture, they were no longer held without controversy, and amidst widespread calls for their abolition in parliament and elsewhere, they were ultimately forbidden in 1901. At the start of the

twentieth century, the death penalty, as well as other sentences with which it normally overlapped—including life imprisonment abroad, to which the majority of death sentences were commuted—were still formally in force but used less frequently, and during the Second Republic the use of capital punishment in civil jurisdiction was abolished for two years.

No one could foresee that the death penalty's slow extinction would be cut short in such an atrocious way with the military *coup d'etat* of 1936. After thousands of the repressed had been sentenced to death, at the end of the 1950s the death penalty was normalised, and the number of executions that took place was as low as it had been prior to 1931. But the execution of prisoners for political motives continued. In 1974 the dictatorship used an old instrument of execution—the garrotte, popularly known as the “garrotte vil” – which conjured an image of the death penalty that would be remembered in Spanish society long after its official abolition in civil jurisdiction (with the Constitution of 1978) and military jurisdiction (with the reform of the Military Penal Code of 1985).

ENDNOTES

- ¹ The relation between punitive utilitarianism and the mercantilist policies of the Spanish monarchy has been analyzed in several monographs on penal and penitentiary history, see: HERAS SANTOS, J.L. de las, *La justicia penal de los Austrias en la Corona de Castilla*, Universidad de Salamanca, 1994; ROLDÁN, H. *Historia de la prisión en España*, PPU, Barcelona, 1988; and BURILLO, F.J., *El nacimiento de la pena privativa de libertad*, Edersa, Instituto de Criminología de la Universidad Complutense de Madrid, 1999.
- ² To study the death penalty in modern history it is essential to be familiar with the *Séptima Partida*, the eighth book of the *Nueva Recopilación*, and the twelfth book of the *Novísima Recopilación*.
- ³ In addition to Bernaldo de Quirós, Dorado Montero, Cuello Calón and Ruiz Funes, amongst others, it is necessary to highlight the work on the death penalty done by the doctor and deputy to the Cortes who promoted the law of 1901 that put an end to public executions, known as the “Pulido law” in honour of his surname (PULIDO FERNÁNDEZ, A., *La pena capital en España*, Madrid, Imprenta Enrique Teodoro, 1897).
- ⁴ PUYOL MONTERO, J.M., “La abolición de la pena de horca en España”, *CHD*, 4 (1997), pp. 91–140; PUYOL MONTERO, J.M., *La publicidad en la ejecución de la pena de muerte. Las ejecuciones públicas en España en el siglo XIX*, Universidad Complutense, Madrid, 2001.
- ⁵ ORTEGO GIL, P., *Entre jueces y reos. Las postrimerías del Derecho penal absolutista*, Dykinson, Madrid, 2015.
- ⁶ We do not know what statistics might be deduced from the files processed by ordinary judges (ORTEGO GIL, P., *Entre jueces y reos...*, p. 38); ORTEGO GIL, P., “Las cifras de la pena de muerte en España durante el siglo XIX: una aproximación estadística”, in Manuel TORRES AGUILAR and Miguel PINO ABAD (*Coordinadores*), *Burocracia, poder político y justicia. Libro-homenaje de amigos del profesor José María García Marín*, Dykinson, Madrid, 2014, pp. 545–576.
- ⁷ MELOSSI, D.; PAVARINI, M., *Cárcel y fábrica. Los orígenes del sistema penitenciario (siglos XVI-XIX)*, Siglo XXI, Madrid, 1980; FOUCAULT, M., *Vigilar y castigar. Nacimiento de la prisión*, Siglo XXI, Madrid, 1994; ELIAS, N., *El proceso de civilización. Investigaciones sociogenéticas y psicogenéticas*, FCE, Madrid, 1993; MUCHEMBLED, R. (1987), *Socières, justice et société aux 16e et 17e siècles*, Imago, París, 1987; SPIERENBURG, P., *The spectacle of suffering. Executions and the evolution of repression: from a preindustrial metropolis to the European experience*, Cambridge, Cambridge University Press, 1984; SHARPE, J. A., “Last dying speeches: religion, ideology and public execution in seventeenth-century England”, *Past and Present*, 107, 1985, pp. 144–167.
- ⁸ BAZÁN, I., “La pena de muerte en la Corona de Castilla en la Edad Media”, *Clio & Crimen. Revista del Centro de Historia del Crimen de Durango*, 4, 2007, pp. 306–352.
- ⁹ MARCOS ARÉVALO, M.J., *El hacinamiento, la marginación y la pena de muerte: la cárcel de Badajoz en el siglo XIX*, Diputación de Badajoz, 1984; LLORCA ORTEGA, J. (1990), *Capilla de reos de muerte, depósitos de cadáveres y sepulturas de ajusticiados en la Valencia del siglo XIX*, (Discurso de ingreso en la) Academia Valenciana de Jurisprudencia y Legislación, Cuaderno número 64, Valencia, 1990; GARRIDO ARANDA, A., “Hacer morir en Ceuta: los ajusticiados en los siglos XVIII y XIX”, in Palacios Bañuelos, L. (coord.), *De puntillas por la Historia*, Córdoba, 1997, pp. 105–120; etc.
- ¹⁰ SERRANO TÁRRAGA, M.D., *La pena capital en el sistema español*, UNED, Madrid, 1992.
- ¹¹ While Goya (as well as Ramón Casas and José Gutiérrez Solana, amongst other painters) have been an essential source for iconographic studies, the writers who have most influenced historiography by recreating an atmosphere of or even documenting an execution are Mariano José de Larra, Benito Pérez Galdós, Pío Baroja, Emilia Pardo Bazán and Vicente Blasco Ibáñez. Equal attention has been drawn to the importance of foreign travellers who witnessed scenes of agony, such as the Frenchman Mathurin-Joseph Brisset, author of *Madrid ou observations sur les mœurs, et usages des espagnols au commencement du XIXe siècle*, Paris, 1825.

- ¹² I have analysed in detail the data on the religious assistance provided to prisoners sentenced to death in the documentation of the Guild of the Holy Cross in the city of Pamplona: AMP, Gremios, Cofradías y Hermandades, Cofradía de la Vera Cruz, libro 2º (1628-1748) and libro 3º (1753-1816).
- ¹³ MUNUERA, D., "Cofradías y ceremonial de ejecuciones", *Areas. Revista Internacional de Ciencias Sociales*, 1983, pp. 3-4; OLIVER OLMO, P., "Pena de muerte y procesos de criminalización (Navarra, siglos XVII-XX)", *Historia Contemporánea*, 26, 2003, pp. 269-292; AMIGO VÁZQUEZ, L., "Del patíbulo al cielo. La labor asistencial de la Cofradía de la Pasión en el Valladolid del Antiguo Régimen", in CAMPOS, F.J. and SEVILLA, F. de (coords.), *La Iglesia española y las instituciones de caridad*, El Escorial, 2006, pp. 511-542; CARBAJO ISLA, M., "Muertes malas. Ejecuciones en el siglo XVIII", in FLORES, J. A. ABAD, L. (coords.), *Etnografías de la muerte y las culturas en América Latina*, Universidad de Castilla la Mancha, 2007, pp. 75-98; SÁNCHEZ SANTOS, J.N., "Cofradías y ajusticiados en Madrid", in CAMPOS, F.J., *El mundo de los difuntos: culto, cofradías y tradiciones*, San Lorenzo del Escorial, Ediciones Escorialenses, 2014, pp. 1051-1070.
- ¹⁴ GOMIS, J., "Los rostros del criminal: una aproximación a la literatura de patíbulo en España", *Cuadernos de Ilustración y Romanticismo. Revista Digital del Grupo de Estudios del Siglo XVIII*, Universidad de Cádiz, nº 22, 2016.
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- ²⁰ EVANS, *Rituals of retribution. Capital punishment in Germany, 1600-1987*, Oxford University Press, 1996, p. 50.
- ²¹ BAZÁN DÍAZ, I., "La utilidad social del castigo del delito en la sociedad medieval: <<para en ejemplo, terror e castigo de los que lo oyesen>>", in LÓPEZ OJEDA, E., *Los caminos de la exclusión en la sociedad medieval: pecado, delito y represión/ XXII Semana de Estudios Medievales*, Nájera, del 1 al 5 de agosto de 2011, Logroño, Instituto de Estudios Riojanos, 2012, pp. 447-476.
- ²² If we are to believe Benito Pérez Galdós, who expressed himself in these terms when evoking *The terror of 1824* in his *Episodios Nacionales*.
- ²³ Not all the death penalties imposed in the sentences were successfully carried out, so the percentages may vary.
- ²⁴ BAZÁN, I., "La pena de muerte en la Corona de Castilla en la Edad Media", *Clio & Crimen. Revista del Centro de Historia del Crimen de Durango*, 4, 2007, pp. 306-352.
- ²⁵ ROLDÁN BARBERO, H. (1988), *Historia de la Prisión en España*, PPU, Barcelona, 1988, p. 9 y ss.
- ²⁶ On the penal procedures of the Inquisition see, amongst others: TOMÁS Y VALIENTE, F., *El derecho penal en la monarquía absoluta*, Tecnos, Madrid, 1969; GACTO, E., "Aproximación al Derecho penal de la Inquisición", in ESCUDERO, J. (ed.), *Perfiles jurídicos de la Inquisición española*, Universidad Complutense, Madrid, 1986 and GACTO, E., *Estudios jurídicos sobre la Inquisición española*, Madrid, Dykinson, 2012.
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- ²⁸ KAMEN, H., *La Inquisición Española. Una revisión histórica*, Crítica, Barcelona, 2011, p. 196.
- ²⁹ SPIERENBURG, P., *The Spectacle of Suffering. Executions and the Evolution of Repression*, Cambridge University Press, 1984.
- ³⁰ Such a harsh punishment for "money forgers" demonstrated a political use of the death penalty to defend the economic order and the private interests of the dominant classes. This has been analysed by MCGOWEN, R., "Cruel inflictions and the claims of humanity in Early Nineteenth Century England", in WATSON, K., CHELSTROM, E., eds., *Assaulting the Past: Violence and Civilization in Historical Context*, Newcastle, Cambridge Scholars Publishing, 2007, pp. 38-57.
- ³¹ Note the difference between the *Pragmática* of October 13, 1639 (the king allows judges to commute the death penalty) and the *Real Orden* of March 12, 1771 (the king orders judges to impose the death penalty irrevocably).
- ³² HERAS SANTOS, J.L. de las, *La justicia penal de los Austrias en la Corona de Castilla*, Universidad de Salamanca, 1994, p. 278.
- ³³ PALOP RAMOS, J.M., "Delitos y penas en la España del siglo XVIII", *Estudis* nº 22, 1996.
- ³⁴ A critical synthesis of the penal statistics of the Inquisition, including the percentages and proportions collected by different investigations in Valencia, Murcia, Toledo, Galicia, Ciudad Real, etc, can be found in KAMEN, H., *La Inquisición Española. Una revisión histórica*, Crítica, Barcelona, 2011, pp. 192-194.
- ³⁵ Although the death penalty must have had a resounding impact on the hectic everyday life of Parisians, executions in France did not exceed the figure of 5% during the entire modern age. In England, conversely, some studies, including

- those of Steve Hindle, have identified the period from 1550 to 1640 as the most rigorous in the history of English criminal justice, with close to 75,000 people sentenced to death (later, despite the existence of some 200 types of crime punishable by the death penalty in the infamous *Bloody Code* and the custom of carrying out multiple hangings on a single day, the real figures were probably lower, and were reduced even further due to acts of clemency and the deportation of the condemned to America and Australia). (BASTIEN, P., *Une histoire de la peine de mort. Bourreaux et supplices*. Paris, Londres, 1500-1800, Seuil, Paris, 2011, pp.12, 32, 47, 50).
- ³⁶ PUYOL, J.M., *La publicidad en la ejecución de la pena de muerte. Las ejecuciones públicas en España en el siglo XIX*, Universidad Complutense, Madrid, 2001. A more comprehensive reference for the period of Fernando VII and Isabel II, which draws on more complete data, is: ORTEGO GIL, P., "Las cifras de la pena de muerte en España durante el siglo XIX: una aproximación estadística", in Manuel TORRES AGUILAR y Miguel PINO ABAD (Coordinadores), *Burocracia, poder político y justicia. Libro-homenaje de amigos del profesor José María García Marín*, Dykinson, Madrid, 2014, pp. 545–576.
- ³⁷ AMIGO VÁZQUEZ, L., "Del patíbulo al cielo. La labor asistencial de la Cofradía de la Pasión en el Valladolid del Antiguo Régimen", in CAMPOS, F.J. and SEVILLA, F. de (coords.), *La Iglesia española y las instituciones de caridad*, El Escorial, 2006, p. 524.
- ³⁸ ORTEGO GIL, P., "Las cifras de la pena de muerte en España durante el siglo XIX: una aproximación estadística": "This figure (4,600), on one side, will have to be increased as we gather more information; while, on the other, it will have to be qualified with the death penalties that were not carried out, whether this was because the condemned had fled, because they were granted a pardon or because they died before facing the executioner". Much of the data collected by Pedro Ortego confirms what some local studies had already indicated; for instance, "that the death penalty was a typically male punishment" (*Ibid*, p. 553).
- ³⁹ GARCÍA RIVAS, N., *La rebelión militar en derecho penal*, Universidad de Castilla-La Mancha, Ciudad Real, 1990, pp. 51–52.
- ⁴⁰ A detailed study of the impact of the abolition of the death penalty in Portugal on Spanish politics and justice can be found in: ORTEGO GIL, P. (2019), "Apuntes sobre la repercusión en España de la abolición de la pena de muerte en Portugal", *Boletín da Faculdade de Direito (Universidade de Coimbra)*, 95/1 (2019), pp. 615–667.
- ⁴¹ ALEJANDRE, J.A. (1981), "De la abolición al restablecimiento de la pena de muerte durante la República (1932-34)", *Revista de la Facultad de Derecho de la Universidad Complutense*, n° 62, pp. 7–46.
- ⁴² SERRANO TÁRRAGA, M.D., *La pena capital en el sistema español*, UNED, Madrid, 1992, pp. 174–175).
- ⁴³ GARGALLO VAAMONDE, L., OLIVER OLMO, P. (coords.), *La cadena perpetua en España: fuentes para la investigación histórica*, Grupo de Estudio sobre Historia de la Prisión y las Instituciones Punitivas y Universidad de Castilla-La Mancha, Ciudad Real, 2016. This is an open access online document, available at <https://historiadelaiprision.wordpress.com/lacadena-perpetua-en-espana/>
- ⁴⁴ GARLAND, D., *Una institución particular. La pena de muerte en Estados Unidos en la era de la abolición*, Didot, Buenos Aires, 2013., p. 111.
- ⁴⁵ OLIVER OLMO, P., "Pena de muerte y proceso civilizatorio en España: del imaginario abolicionista al exterminista" in NICOLÁS MARTÍN, M.E., GONZÁLEZ MARTÍNEZ, C. (coords.) *Ayeres en discusión: temas clave de historia Contemporánea hoy*, Universidad de Murcia, 2008 (<https://www.ahistcon.org/PDF/congresos/publicaciones/Murcia.pdf>).
- ⁴⁶ It can be stated—albeit cautiously, as it has not been possible to exhaustively check the activity of the military jurisdiction, and there might be variations—that between 1952 and 1975, 70 people were sentenced to death and executed. This figure is "relatively small, especially when compared with the years prior to 1952, but also in a comparative perspective with countries with a democratic system, like the United Kingdom, France and the United States" (PORTAL GONZÁLEZ, A. (2014), "Los muertos del régimen de Franco entre 1952 y 1975", *Aportes: Revista de historia contemporánea*, n° 85, pp. 7–50).
- ⁴⁷ OLIVER OLMO, P., *La pena de muerte en España*, Síntesis, Madrid, 2008, pp. 15–18.
- ⁴⁸ Although this practice disappeared in the seventeenth century, one *post-mortem* penalty that could be handed down was for the body of the condemned to be left unburied (as occurred in Pamplona in August 1631). OLIVER OLMO, P., "Pena de muerte y procesos...".
- ⁴⁹ Curiously, the first liberal Penal Code (article 103 of the Penal Code of 1822) stated that a drawing should be made of the person who was going to be executed. This was not included in any later Spanish penal code.
- ⁵⁰ OLIVER OLMO, P., *La pena de muerte en España*, Síntesis, Madrid, 2008, p. 19.
- ⁵¹ AMIGO VÁZQUEZ, L., "Del patíbulo al cielo. La labor asistencial de la Cofradía de la Pasión en el Valladolid del Antiguo Régimen", in CAMPOS, F.J. and SEVILLA, F. de (coords.), *La Iglesia española y las instituciones de caridad*, El Escorial, 2006, p. 529.
- ⁵² These instructions were found in the documentation of the "Constituciones provisionales de la Real Asociación de Caridad establecida para alivio de los pobres presos de las cárceles" (Archivo General de Navarra, Casa de galera, cárceles..., legajo 4°, c. 54).
- ⁵³ This is discussed in OLIVER OLMO, P., "Pena de muerte y procesos de criminalización (Navarra, Siglos XVII-XX)", *Historia Contemporánea*, n° 26, 2003, pp. 289–292.

- ⁵⁴ These controversies generated a lot of popular—and even sophisticated—literature (Pérez Galdós echoes them in his writings) and provoked reactions from the authorities in places like Pamplona and Cáceres, amongst others (MARCOS ARÉVALO, M.J., *El hacinamiento, la marginación y la pena de muerte: la cárcel de Badajoz en el siglo XIX*, Diputación de Badajoz, 1984 p. 132).
- ⁵⁵ OLIVER OLMO, P., “Pena de muerte y procesos de criminalización (Navarra, Siglos XVII-XX)”, *Historia Contemporánea*, nº 26, 2003.
- ⁵⁶ OLIVER OLMO, P., *La pena de muerte en España*, Síntesis, Madrid, 2008, p. 9–10.
- ⁵⁷ BASTIEN, P., *Une histoire de la peine de mort. Bourreaux et suppliques. Paris, Londres, 1500-1800*, Seuil, Paris, 2011, p. 288.
- ⁵⁸ ORTEGO GIL, P., “Condenas a mujeres en la Edad Moderna: aspectos jurídicos básicos para su comprensión”, *Historia et ius. Rivista di storia giuridica dell'età medievale e moderna* www.historiaetius.eu - 9/2016 - paper 29.
- ⁵⁹ LLORCA, J. (1990), *Capilla de reos de muerte, depósitos de cadáveres y sepulturas de ajusticiados en la Valencia del siglo XIX*, (Discurso de ingreso en la) Academia Valenciana de Jurisprudencia y Legislación, Cuaderno número 64, Valencia.
- ⁶⁰ OLIVER OLMO, P., “Pena de muerte y procesos de criminalización (Navarra, Siglos XVII-XX)”, *Historia Contemporánea*, nº 26, 2003, p. 288.
- ⁶¹ ORTEGO GIL, P., *Entre jueces y reos. Las postrimerías del Derecho penal absolutista*, Dykinson, Madrid, 2015 p. 406 (citing MORALES SÁNCHEZ, F.M., *Páginas de sangre. Historia del Saladero*, Madrid, 1880).
- ⁶² PUYOL MONTERO, J.M., *La publicidad en la ejecución de la pena de muerte. Las ejecuciones públicas en España en el siglo XIX*, Universidad Complutense, Madrid, 2001, pp. 131–133.
- ⁶³ ORTEGO GIL, P., *Entre jueces y reos. Las postrimerías del Derecho penal absolutista*, Dykinson, Madrid, 2015, p. 400.
- ⁶⁴ Archivo de la Audiencia Territorial de Pamplona, Asuntos penitenciarios, Caja 99-1: “Expediente sobre la ejecución de la pena capital impuesta al reo Bonifacio García Martínez llevada á efecto en 12 de junio del año actual, 1909”.
- ⁶⁵ OLIVER OLMO, P., *La pena de muerte en España*, Síntesis, Madrid, 2008.
- ⁶⁶ “sumarísimo” – “extremely summary,” a very brief procedure, developed and executed within a few hours.

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