books & ideas

Facing the question

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Despite what some people now imagine, the Middle Ages was no more inclined to torture than other periods. Through a study of the archives of the Paris Parlement, Faustine Harang demonstrates that the medieval judicial system used this practice in a way that was limited and—most importantly—highly controlled.

Reviewed: Faustine Harang, *La Torture au Moyen Âge (Parlement de Paris, XIV^e^-XV^e^ siècles)*, (Torture in the Middle Ages [The Paris Parlement in the Fourteenth and Fifteenth Centuries]) Paris, Presses universitaires de France, 2017, 308 p., 28 €.

In London, Prague, Amsterdam, Lucca, Carcassonne, Bruges, and Toledo, one can now visit torture museums and tremble before the terrifying iron chairs and pillories of a bygone era. Signs, consisting of Gothic letters against red backgrounds, seek to lure in passersby with the words "Torture Museum," typically preceded by "Medieval." This cliché is tenacious, and the so-called "Middle" Ages seems condemned, in the collective imagination, to be little more than a time of brutal and perverse violence. One of the great merits of Faustine Harang's book devoted to the "question" – the legal term that refers to torture – is that it bids good riddance to the conventional wisdom that thrills the contemporary tourist-voyeur. Harang shows that except for the repression of "heresies," torture's role in the medieval judicial system was not only limited but controlled.

Domains of inquiry

In this book drawn from a doctoral thesis, written in a clear and pleasant style but largely relieved of any critical apparatus, Harang sets out to historicize the practice of torture,

which in old French was known as *"gehine"* or *"géhenne*" (a word that was also used to refer to Hell and which subtly suggests the connection between divine and human justice). It immediately makes clear that in Europe, the birth of torture, which the Romans had earlier practiced,[1] belongs to a very specific medieval moment. Introduced in the thirteenth century, this form of judicial violence was first tied to the inquisitorial procedure that allowed a judge to use extraordinary means to extract a confession from the accused. It also results from the slow decline of the ordeal, i.e., trials by water or fire that were officially forbidden by the Fourth Council of the Lateran in 1215[2] and which torture, after the Church approved it in 1252, replaced in the western probationary system.

Yet the book rarely focuses on the Church, confining itself rather to the Parlement of Paris and secular jurisdictions of the French kingdom, particularly that of the provost of the Châtelet of Paris, whose criminal register has been preserved. The book's title is perhaps misleading, as it is not a synthetic study of torture, even if the author occasionally draws on other sources (such as chronicles, letters of remission, and inquisitorial treatises). It offers no comparison with England, for example, where torture was forbidden by the Magna Carta of 1215, nor with the Inquisition, even though it set the tone through its pursuit of heretics and witches.

The latter domains of inquiry are also better known, thanks to the work of Italian legal historians and the rich Anglo-American literature on the topic. Yet in France, Harang notes, there exists a relative historiographical void – a surprising statement, given that specialists of trials have long been interested in torture – which justifies devoting an entire study to the topic. This is true despite the gaps in the sources: indeed, one finds few explicit references to torture in the Parlement's records, despite the fact that transcriptions were required for forcible interrogations. Consequently, one can identify people who were subject to torture through appeals to the Parlement and through the *Criminal Register of the Châtelet,* which lists, for the late fourteenth century, 95 individuals who were sentenced to the question.

Infamous men

For torture to occur, a judge first had to make a decision in the form of an "interlocutory" sentence (i.e., pronounced during the trial), after an "inquiry" in which witnesses were heard, followed by careful deliberation that required, at times, the summoning of experts. When material proof and consistent testimonies were lacking, the question was the final resort and was simply an "option," as Harang calls it, in inquisitorial or adversary

[1] Yan Thomas, "Les procédures de la majesté. La torture et l'enquête depuis les Julio-Claudiens," *Mélanges à la mémoire d'André Magdelain*, Michel Humbert and Yan Thomas, eds., Paris, 1999, p. 477-499.

[2] The ordeal, which was a method recognized by the Church for determining God's judgment, consisted of subjecting the accused to a physical test, such as placing red iron on the skin or immersing an arm into boiling water.

procedure. In any case, its goal was to shed light on a crime by extorting a confession from the subject.

Some crimes resulted more systematically in the question than others, particularly thefts (representing 80% of the torture cases listed in the *Registre du Châtelet*), arson, acts of violence (including rapes), and, of course, murder. "Enormous" crimes, which were subject to corporal or capital punishment, as well as public order offences (treason, forgeries, poisonings, and sorcery) also justified recourse to torture, but Harang says little about the specifics and the few pages she devotes to this topic suggests a lack of familiarity with the scholarly literature.

A bad reputation (*mala fama*) proved critical in triggering torture proceedings, to the point that it "abolished all form of [social] privilege." Equivocations and uneasiness, as well as reputation and criminal background,[3] were sufficient justification to order the torture of a defendant. Thus people were tortured less for what they had done than because of who they were. When necessary, judges could even fabricate a defendant's bad reputation, torturing witnesses until they accused the defendant accordingly. It is thus in no way surprising that the victims of judicial torture were, for the most part, marginal figures, even lepers (suspected of poisoning wells), since marginality and vagrancy constituted aggravating circumstances.

Even so, Harang warns against the facile notion that the poor and the marginal were victims of stigmatization exacerbated by torture. Even bourgeois, despite being full-fledged members of civic institutions and frequently benefiting from exemptions, could be tortured. There privileges had no value before royal courts, which did not distinguish between classes. Similarly, the torture of noblemen was fully allowed (in contrast to the principle of Roman law that exempted *honestiores*). As for clerics, who in theory were protected by the privilege of *for,* they could be charged before royal courts in so-called "privileged" cases (for bearing arms, forgery, lèse-majesté, and so on) and were not totally immune from extraordinary procedures.

Martyred bodies

Once the question's interlocutory sentence was pronounced, the accused was brought to a special place – for cases before the Parlement, this meant the Conciergerie's Bonbec Tower (thus named because those who were there had a *bon bec* – a good "beak" or "mouth"; in other words, they were expected to talk) and for those at the Châtelet, a special room reserved for the question. Elsewhere – that is, in lower jurisdictions, such as town or seigneurial courts, where initial trials occurred – the question generally took place at a prison.

[3] We note the several fascinating pages that Harang devotes to the question of recidivism and "incorrigibility" (pp. 87-89), even if they make no connection to the theory of the "obstinate" or "relapsed" heretic and cite none of the major works on *fama.*

The agent of these "great works" (*hautes oeuvres*) was none other than the torturer, except when it was a king's jailor or sergeant. Only in Paris, however, at the beginning of the fifteenth century did torturers become professionals. At the Châtelet, notably, a *sergent à verge* (a "sergeant of the rod"), whose anatomical knowledge increased over the course of the century, was assigned the role of "tormentor," alongside his usual tasks. Towards the end of the fifteenth century, the role of the "questioner" became an independent office.

We must do away with the image of a dramatic face-off between torturer and victim. As Harang emphasizes, many people attended these questions, notably court personnel (judges, examiners, and counsellors), as well as clerks charged with carefully recording the proceedings and doctors and even midwives needed to identify the wounds, rapes, and pregnancies (since pregnant women could not be tortured[4]). Torture was not supposed to result in any mutilation of the accused's body, and under no circumstance was it to end in death. Every witness thus served to ensure that the process was conducted appropriately.

Though it is true that torture is like "a brutal intrusion into the soul by way of the flesh" (p. 5), which clearly recalls the terrifying short story "In the Penal Colony," and that it seeks to tear out a truth hidden in the body, the fact remains that the torturer could only use permitted methods. The first was limb compression: the accused was undressed and spread out across the rack or trestle. If the victim refused to confess, the torturer would exercise pressure on the body as it was stretched across a beam and pulled by its hands and feet. The second and sadly well-known technique consisted in aggressively and continuously pouring water over the accused. A third and more frequent scenario involved suspending the accused by means of a rope running through a pully attached to the ceiling, tying his hands behind his back and fastening weights to his feet to make him heavier.

There existed other forms of pressure, particularly of a psychological nature, that consisted in threats, manipulation, and, at times, the simulation of death. Incarceration, for its part, functioned as a form of torture when detention conditions were unbearable. Ultimately, 90% of those tortured confessed, half of whom "cracked" at the mere sight of the instruments of torture. Even so, the accused occasionally managed to defy torture by escaping or adopting strategies of evasion (for example, through letters of remission), deceit (some women feigned pregnancy), or, more rarely, physical resistance.

Whether they confessed or not, the accused were allowed to rest (they were fed and permitted to warm themselves by a fire), not only because their health required it, but because a confession only had juridical value if it was repeated spontaneously, that is, *after* the torture session. This obviously raises the problem, of which the judges were perfectly aware, of the kind of truth that torture brings forth. According to the legal historian Mario Sbriccoli, it was an "artificial" truth, constructed for judicial and even political purposes. It was, in any case, a

[4] A few other groups could be exempted from torture: old people, children (who were subject to a lesser form of extraordinary procedures), the infirm, and the sick, to whom torture could not be applied without risk.

suspicious truth, which explains the procedural guardrails that were established to prevent false confessions made out of fear that the punishment would be repeated.

Raison d'état's tortuous logic

When a judge was intemperate, hateful, corrupt, or prevaricating, one could take the path of appealing to Parlement – a route that was also permitted for interlocutory torture sentences (i.e., prior to confession). In these cases, the court punished the excesses and abuses to which the practice of torture was prone and did not hesitate to fine heavily and even to remove from office the judges in question. In this way, the Parlement contributed to regulating practices and homogenizing the use of torture, well before the royal ordinance of 1499 set rules for the entire kingdom. As Harang shows, it was the Parlement which, beginning in 1370, attempted to articulate the norm by basing itself on customs and jurisprudence, and which then limited the use of the question, by prohibiting, for example, torture with fire.

We should be careful, however, not to see the period through rose-colored glasses. While recourse to judicial torture seems to have been the exception in lay jurisdictions during the Middle Ages, and while the Parlement was constantly encouraging moderation and was loathe to administer corporeal punishment itself, some affairs of state did indeed necessitate the use of torture. Beginning in the early fourteenth century (with, for instance, the Knights Templar affair), the monarchy's great political trials, from which the Parlement was long excluded in favor of extraordinary commissions, were characterized by recourse to the question – a fact that is all the more striking in that it applied to powerful individuals.

In the final chapter, Harang considers in turn several of these cases of treason and lèse-majesté that justified the torture of the accused: Robert of Artois in 1331-1332, Jacques Cœur in 1451, Charles of Melun in 1468, and Jacques of Brézé in 1477. The author does not, however, refer to the extensive scholarship on this topic and, rather than a political history of torture conceived as the horizon of late medieval majesty, one must content oneself with a few formulaic passages on the "theatralization" of sovereign justice (echoing, needless to say, Foucault's account of the "spectacle of the scaffold"), the ideology of the public good (which legitimates torture because it reestablishes the social order and heals the wound of a "community sullied by wrongdoing" [p. 268]), and public consensus (or "tacit consent" to torture).

While the author clearly sees torture as a political tool in the service of newly emergent raison d'état, she fails to study the broader logic that also encompasses heresy and sorcery trials and which establish modern sovereignty's entire foundation on the crime of lèse-majesté and thus the use of torture. The latter was not abolished until the eve of the French

Revolution, due to the influence of abolitionists such as Cesare Beccaria. Yet even so, it remained the instrument, if not the basis, of raison d'état, as Harang insists in her conclusion. While “torture’s juridical foundations have crumbled,” its "political motives" have, for their part, persisted and torture “is never so frequently practiced as when the power and security of the state are at risk.” Thus we cannot dismiss it as a practice hailing from distant and barbarian times before the rise of democracy – as if electric shock torture in Algeria and the horrors of Guantanamo were no more than quickly forgotten exceptions.

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