Torture and Public Executions in the Islamic Middle Period (11th-15th Centuries)

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PREPRINT VERSION*

The notion that Islam is a religion that thrives on violence was part and parcel of European medieval polemics. 'The use of force,' writes Norman Daniel, 'was almost universally considered to be a major and characteristic constituent of the Islamic religion, and an evident sign of its error'.[1] In the Western imagination, Muslim warfare, or *jihād*, has been just one aspect of the Islamic penchant toward violence; another is the perceived cruelty and arbitrariness of the Islamic penal system. Traces of this preconception can be found also in modern times. As an example, one might mention that violent executions at the hands of fearsome, massively muscular Arab henchmen were a popular trope of 19th-century Orientalist painters, as seen, for example, in the two paintings, 'Execution of a Moroccon Jewess' (1860) by Alfred Dehodencq (1822-82) and 'Execution without Trial under the Moorish Kings of Granada' (1870) by Henri Regnault (1849-71).

While it has become a common scholarly tactic in recent decades to question approaches that otherize the European Middle Ages from the perspective of the modern, rational nation-state, declaring them uniquely irrational and violent, careful scholarly investigations into the complex mechanisms of penal justice and crime control under pre-modern Islamic regimes remain a desideratum. This is not to say that the Islamic prosecution of crime, in the period under consideration here (ca. 11th to 15th centuries), was not arbitrary and violent, even if it bears mentioning that Western travellers to the Near East sometimes praised the efficiency and also, the fairness, of the penal system in place under the Ottoman sultans (r. *ca.* 679-1342/*ca.* 1280-1924). But it should not be overlooked that scholars can still book significant progress in their understanding of the history of state punishment in Islamic societies, whether in terms

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* *Author's note:* For the published version, see Matthew Gordon, Richard Kaeuper & Harriet Zurndorfer (eds), *The Cambridge World History of Violence - Volume 2: AD 500–AD 1500* (Cambridge: CUP), pp. 164-184 (DOI: https://doi.org/10.1017/9781316661291.009). This chapter was written during a fellowship at the Netherlands Institute of Advanced Studies in the fall of 2015. In the later stages of preparing this chapter, the author was supported by an ERC Consolidator Grant (project number 724951).

[1] Norman Daniel, *Islam and the West: The Making of an Image* (first publ. 1960, rev. ed. Oxford: Oneworld, 1993), p. 131.

of *longue-durée* continuities or of spatio-temporal variations. Synchronically speaking, the social matrix in which state punishment was imbedded in the various pre-modern Muslim polities deserves closer inspection, such that the story that is told is not simply one of Oriental despotism, of brute violence perpetrated from the top down upon passive victims, but one that paints a fuller picture of the networks of relations that obtained between the social actors that were involved in the penal process, namely, those who implemented, those who theorised about, and those who suffered punishment by the state.

This chapter first reviews the normative bases for penal state violence, in particular for capital punishment and torture, in Islamic law and Islamic political theory. The chapter then moves on to discuss a number of examples from Islamic historiography, first from the reign of the Seljuq sultans of Persia, Iraq and Syria (r. 1040-1194) and then, second, from that of the Mamluk sultans of Egypt and Syria (r. 1250-1517). The Seljuqs and Mamluks exemplify the 'new Sunni internationalism' of the so-called Islamic Middle Period, a socio-political order based on a delicate balance of the military, religious, and mercantile strata of society. Moreover, the few available, book-length studies of crime and punishment in pre-modern Islam are focused on the Seljuq and the Mamluk periods. In the following text, these studies serve as convenient points of departure.

Normative Bases of Torture and Capital Punishment in Islamic law and Political Theory

One may legitimately question the practical relevance of Islamic criminal law (*fiqh al-ʿuqūbāt*) in the medieval Islamic polity. In fact, historians of crime and punishment in medieval Islam often opt to more or less ignore legal doctrines, considering them largely irrelevant to historical practice. Here, however, a short summary of the basic norms of Islamic criminal law, concerning capital punishment and torture, is given. This is useful on two accounts. First, if we want to assay the claim that criminal justice in medieval Islam was in fact largely un-Islamic, that is, disconnected from the Islamic judiciary and the norms provided by the Sharia, we need to know what these norms were. Second, even if Sharia criminal law *was* in many instances divorced from practice, it still claimed a certain discursive authority, and is therefore a useful thing to know about.

According to Islamic criminal law, five offenses are punishable by death: apostasy, blasphemy (whose definition includes the act of insulting the Prophet Muḥammad), illegal sexual intercourse, brigandage, and intentional homicide. The classical jurists count the penalties for the first four of these offenses among the so-called *ḥadd* (pl. *ḥudūd*) punishments (henceforth 'statutory punishments'), which they characterise as 'divinely ordained', because they are specifically mentioned in the

Qur'ān or the traditions reported from the Prophet (*ḥadīth*s). This sacrosanct character of the statutory punishments makes them largely inaccessible to juridical reasoning and extrapolations. As a corollary of this, statutory crimes were defined narrowly, and the acceptance of repentance, strict rules of evidence (such as the requirement of four eyewitnesses in cases of illegal sexual intercourse), the principle that the statutory punishments are inapplicable in the presence of legal doubt, and perhaps most importantly, the fact that the Islamic judge (*qāḍī*) does not act as public prosecutor, made condemnation by the judge unlikely or even impossible in most cases.

Thus, what emerges from the pre-modern Muslim legal literature is a 'paradoxical reluctance of the jurists to implement the serious *ḥadd* [statutory] penalties'.[2] There are several ways to interpret this phenomenon. One aspect that deserves to be highlighted is that the jurists opposed the staging of public spectacles of state violence, such as the statutory punishments (in particular crucifixion, the punishment for brigandage) usually implied. Violent punishment had been from early Islamic times the province of the government and its agents of public order, less so of the developing class of legal scholars and judges. The chronicles from early Islam up to Ottoman times provide many cases in which the authorities made an example of offenders against the public order by publicly shaming, torturing, and executing them. Thus, the fact that the jurists developed doctrines that painstakingly circumcised statutory crimes and punishments can be interpreted as an attempt to rein in state violence. At any rate, reports about the implementation of statutory punishments under the supervision of judges are exceedingly rare in the historiography of Islam.

Intentional homicide in Islamic law is regulated by the law of talio (*qiṣāṣ*, cf. Q 2:178), whereby the blood avengers of the victim can demand execution of the murderer from the judge, claim blood money, or pardon him. The chronicles of medieval Islam say almost nothing about talionic capital punishments; it is impossible to decide whether this is because they did not occur or because they were so frequent that the chroniclers ignored them. In addition to statutory and talionic offenses, crimes that cannot be judged on the basis of the revealed law alone (including cases where the evidence to support statutory or talionic punishment is convincing but not conclusive) are punishable by *ta'zīr* ('discretionary punishment'), which is meted out at the discretion of the judge. According to most Muslim jurists of the classical period, discretionary punishment must be less than the mildest statutory punishment, that is, less than forty lashes with the whip. However, in late classical Islamic jurisprudence, that is, from the 12th century onwards, utilitarian considerations came to overrule the

[2] Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge: Cambridge University Press, 2005), p. 55.

restrictions that had formerly been imposed on discretionary punishment. To cite an example, according to the Syrian jurist, Ibn ʿĀbidīn (Damascus, d. 1836 CE), 'innovators in religion' (*mubtadiʿūn*) whose 'innovation' (*bidʿa*) has not yet reached the full level of apostasy can be executed as their discretionary punishment.[3] One should also note that jurisdiction in matters of discretionary punishment drifted away from the Islamic judges to military-executive courts, a development that is traceable to the Seljuq period and fully manifest in Mamluk times.[4]

The classical jurists widely condemn the infliction of excessive pain, that is, torture, which they consistently associate with mutilation. According to various narrations, the Prophet repeatedly prohibited mutilation, whether of human beings or animals.[5] Later Mamluk jurists, however, came to define mutilation rather narrowly. 'Mutilation,' wrote the Egyptian Ibn al-Humām (d. 1457), 'is realised only in cutting off limbs and similar things that are done to the body and which persist [in their effect]'.[6] It is also in the works of Mamluk jurists that one detects a tendency to allow for judicial torture. Previously, and in stark contrast to Roman law, torture of witnesses was unknown in Muslim jurisprudence. However, from the late 13th century onwards, and roughly parallel to the rise of judicial torture in Europe, Muslim jurists such as Ibn Taymiyya (Damascus/Cairo, d. 1328), Ibn Qayyim al-Jawziyya (Damascus, d. 1350) and Ibn Farḥūn (Medina, d. 1397) legitimated judicial torture, thereby producing a profound shift in the Muslim doctrine of evidence.

Against this backdrop of the jurists' view of legal punishment, a second discursive tradition should be examined, that of Islamic political theory, which in the Islamic Middle Period was usually articulated in the form of courtly advice literature to rulers, the so-called Mirrors for Princes. The ideology expounded in this tradition served rulers of the Islamic Middle Period to explain and justify capital punishment and other forms of state violence, in addition and sometimes also against what the sacred law stipulated. The Muslim Mirrors for Princes 'usually exhort the ruler to piety and remind him of the judgment to come… but insofar as they touch on government, they see it as

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[3] Ibn ʿĀbidīn, *Radd al-muḥtār ʿalā 'l-Durr al-mukhtār*, 7 vols., ed. Husām al-Dīn Farfūr (Beirut: Dār al-Thaqāfa wa '-l-Turāth, 1421/2000), III, pp. 162, 192, 318.

[4] Christian Lange, *Justice, Punishment and the Medieval Muslim Imagination* (Cambridge: Cambridge University Press, 2008), pp. 39-44; Yossef Rapoport, 'Royal justice and religious law: *Siyāsa* and Shariʿa under the Mamluks', *Mamlūk Studies Review* 16 (2012), 79-80.

[5] Arent Jan Wensinck, *Concordance et indices de la tradition musulmane* (2nd ed., Leiden: Brill, 1992), VI, pp. 171b-172a (s.v. *m-th-l*).

[6] Ibn al-Humām, *Fatḥ al-qadīr* (Beirut: Dār al-Fikr, n.d.), VII, p. 477. Despite the jurists' general condemnation of castration as an act of mutilation, eunuchs were deployed widely in the Islamic Middle Period. See Shaun Marmon, *Eunuchs and Sacred Boundaries in Islamic Society* (New York-Oxford: Oxford University Press, 1995), p. 63.

a fundamentally secular domain… their sense of justice is usually expedient rather than *shar'ī*.[7] This tradition was arguably more important in practice than the legal doctrine developed by the jurists.

Next to the emphasis on justice, the term *siyāsa* (Pers. *siyāsat*) is central to this tradition. *Siyāsa* was used in the first centuries of Islam in the sense of 'governance', but from the 10th century, another, more narrow meaning of *siyāsa* as '(capital) punishment' emerged and was in full swing by the 12th and 13th centuries. As political theorists of the period argued, justice, the ruler's key virtue, requires the use of capital punishment almost as a *conditio sine qua non*. This development occurred more or less in parallel to the rise to power of Turkish and Central Asian military governments in the Nile-to-Oxus region, a transformation of the political landscape that produced both dynasties of the Seljuqs and Mamluks.

An 11th-century Iranian Mirror for Princes, the *Qābūsnāmeh*, states bluntly that the ruler must not neglect 'rightful bloodshed, because the common good depends on it'.[8] In the absence of punishment, claims another Mirror for Princes, written some hundred years later in Aleppo, 'men would devour one another'.[9] In late 12th-century advice literature one reads that 'people are wicked' and that 'with wicked people, things cannot be put right through tolerance and indulgence… [therefore] the sultans of today must rely on punishment (*siyāsat*) and awe'.[10] Under the Mamluks, the courtier Ibn al-Nafis (Cairo, d. 1288) wrote that sultans ought to be cruel and merciless; this would enable them to order 'many punishments, such as cutting off limbs, gibbetting (*ṣalb*), and crucifixion by nailing on a cross (*tasmīr*)'.[11]

Military regimes like that of the Seljuqs and Mamluks governed in an atmosphere of political instability in which the legitimacy of government had to be constantly reaffirmed by violent manifestations of state power. The Persian tradition of absolutism offered these regimes an 'independent ethical standard based on force and opportunism'.[12] Overall, the *siyāsa*-based authoritarianism of Middle Period Islamic governments led to a situation in which 'even great ṣultāns tended to be drastically arbitrary, splendid in their moments of generosity, inhuman in their anger or their

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[7] Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004), p. 150.

[8] Kaykā'ūs b. Iskandar b. Qābūs, *Qābūsnāma*, tr. Reuben Levy (London: Cresset Press, 1951), p. 55.

[9] *Baḥr al-favā'id*, tr. Julie S. Meisami, *The Sea of Precious Virtues: A Medieval Islamic Mirror for Princes* (Salt Lake City: University of Utah Press, 1991), p. 96.

[10] (Pseudo-)Ghazālī, *Naṣīḥat al-mulūk*, ed. Jalāl Humā'ī ([Tehran:] n.p., 1317/1928), p. 148.

[11] Ibn al-Nafis, *al-Risāla al-Kāmiliyya*, ed. and tr. Max Meyerhof and Joseph Schacht, *The theologus autodidactus of Ibn al-Nafis* (Oxford: Clarendon Press, 1968), p. 45 (tr. p. 68).

[12] H.A.R. Gibb, 'An interpretation of Islamic history (part two)', *Muslim World* 65 (1955), 126.

fears'.[13] In the popular imagination of the Islamic Middle Period, the figure of the executioner (*jallād*) became so intimately linked to that of the ruler that in the *Arabian Nights*, the caliph Hārūn al-Rashīd (r. 786-809) is regularly represented as the head of a triad comprising his vizier, Ja'far, and his no less famous executioner, Masrūr.

In an attempt to harmonise *siyāsa* and Sharia, and probably also to curtail the former, the jurists began to develop the doctrine of *al-siyāsa al-shar'iyya*, 'governance in accordance with Sharia'. In Ibn Taymiyya's classic exposition, excesses of *siyāsa* (which he terms 'oppressive *siyāsa*', *siyāsa ẓālima*) are condemned, but nonetheless utilitarian ideas about the commonweal are increasingly incorporated into juridical reasoning. Pre-modern Muslim thinking about *siyāsa shar'iyya* is rich and variegated. However, in the long run the concept arguably did more to undermine Muslim jurisprudence than to rein in the arbitrariness of autocratic rule. This is illustrated by the above-quoted example of Ibn 'Ābidīn, in whose account the death penalty qua discretionary punishment and the concept of *siyāsa* are closely intertwined. In Ottoman times, there emerged a tendency to lay down *siyāsa* punishments in the so-called *Qānūnnāmeh*s, for example the celebrated *Qānūn-i 'Osmānī* of Süleyman the Magnificent (r. 1520-66), a codification of *siyāsa* that arguably helped to stabilize affairs.

Torture and State Violence Under the Seljuqs (11th-13th centuries)

The Seljuqs ruled over the lands of Persia and large swaths of the Islamic world in the 11th to 13th centuries. They were the leading family of a confederation of Turkish tribal nomads who had moved into the central Islamic lands from the early 11th century onwards, conquering the Abbasid capital, Baghdad, in 1055. Given their Central Asian pedigree, the Seljuqs initially enjoyed little prestige in terms of their Islamic credentials. However, they soon rose to become patrons of Sunni orthodoxy, facilitating what historians, though not unanimously, refer to as a 'Sunni revival' in the 11th and 12th centuries. The Seljuqs' use of state violence, particularly when orchestrated in punitive rituals of power, often reveals traces of this situation.

One hears relatively little in the chronicles of the Seljuq period about the kind of violence deployed inside the dungeons of the sultan and his governors in the provinces, but there is little reason to doubt that the torturing habits of the Abbasid and Būyid rulers were continued. Certain Abbasid caliphs, such as al-Mu'taḍid (r. 892-902) and al-Qāhir (r. 933-4) were notorious for the torture chambers they entertained. The extortion technique known as *muṣādara*, 'the mulcting of an official of his (usually) ill-gotten gains or spoils of office',[14] appears to have been established at the Abbasid court

[13] Hodgson, *Venture*, II, p. 132.

[14] C. E. Bosworth, 'Muṣādara', in C. E. Bosworth et al. (eds), *Encyclopaedia of Islam, New edition* (Leiden: Brill, 1960-2005) [henceforth *EI2*], VII, p. 652b.

in Baghdad from the ninth century onwards, and there are many examples of dismissed officials pressed to divulge the whereabouts of riches from Būyid, Ghaznavid, and Seljuq times too. Instruments of torture that were used included a wooden box with iron nails pointing inwards, devised by the Abbasid vizier Ibn al-Zayyāt (d. 847), a kind of iron maiden that in a sad twist of irony, was applied to its inventor when he fell from grace. In the tenth century, torturers in Baghdad used iron tongs to tear the flesh from people's upper legs, and pulled out fingernails.[15]

Occasionally, torture became public. A chronicle devoted to the Rum Seljuqs of Anatolia, a subsidiary branch of the Seljuq family that ruled until 1307, provides an example. In 1214, the Rum Seljuq sultan ʿIzz al-Dīn Kay Kāwūs I (r. 1211-20) besieged the Christian city of Sinope at the Black Sea. When the defenders of the city refused to surrender, ʿIzz al-Dīn ordered that his royal prisoner and lord of Sinope, king Alexios I Megas Komnenos (r. 1204-22), be tortured in front of the city walls. This promptly caused Alexios to complain loudly to the onlookers on the ramparts:

> Alexios began to wail and cry out: 'O you godless people! Don't you see that they will kill me and, with cruelty and brutality, will make you prisoners of war? In whose interest do you continue to defend the city?' However, this had the same effect on them as the whistling of the wind on deaf rocks [...] The next day, the sultan ordered Alexios strung up head down and tortured until he lost his senses like an epileptic. When the inhabitants of the city saw that the predicament of [their] ruler had gone beyond all tolerable limit, they called out: 'Let the messenger [of the sultan] come into the city! We want to talk to him'.[16]

As noted above, in the pre-Mongol period, torture was universally rejected by the Muslim jurists, and acts of torture like the one inflicted on Alexios enjoyed no backing by the religious law. As for capital punishment, very few cases of statutory punishments are mentioned in the sources of the Seljuq period. A single case of stoning on account of illegal sexual intercourse seems to have come to the attention of scholars so far. This concerns a certain high-ranking amir of the Rumseljuq sultan Kaykhusraw II (r. 1237-46), a man named Tāj al-Dīn. Having previously schemed with the sultan's vizier, Saʿd

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[15] On Ibn al-Zayyāt, see Tanūkhī, *Nishwār al-muḥādara*, tr. D. S. Margoliouth, *The Table-Talk of a Mesopotamian Judge* (London: Royal Asiatic Society, 1921-22), p. 12. On torture with tongs, see Hamadhānī, *Takmilat tārīkh al-Ṭabarī*, ed. Albert Yūsuf Kanʿān (Beirut: al-Maṭbaʿa al-Kathūlikiyya, 1959), p. 176.

[16] Ibn Bībī, *Saljuqnāma*, tr. Duda, *Die Seldschukengeschichte des Ibn Bibi* (Kopenhagen: Munksgaard, [1959]), p. 66.

al-Dīn Köpek, to purge the court of a number of their political enemies, Tāj al-Dīn became himself the target of Köpek's intrigues. Tāj al-Dīn had raped one of the slave-girls of one of the local rulers of the sultan's domain, and Köpek quickly obtained a legal opinion (*fatwā*) from the 'leading jurists and judges' that a man who acted like Tāj al-Dīn had was to be stoned. This, however, could only be done with the consent of the sultan who, having been talked into it by Köpek, agreed to the punishment and issued an official order to carry it out. Köpek set out to apprehend Tāj al-Dīn at Ankara.

> He ordered Tāj al-Dīn to be put in chains and occupied himself several days with claiming and cataloguing his property. Having done so, he had him brought to the [main] square of Ankara. That amir, so loveable that the bright sun, envious of his shining face, veiled itself behind a cloud, and the planet Mercury, jealous of his ability to write and speak beautifully, bit into his own envious fingers, and no man with a soul would have been capable of hitting his jasmin-like chest with [as much as] a rose-petal, – that amir he ordered to be buried in the ground up to his navel, and he ordered the common people, coercing them, to stone him and thus make his sweet soul reach paradise. Then he had all the money and jewellery he possessed brought into the treasury.[17]

Despite the involvement of legal experts, and the ostensibly Sharia-conform protocol followed in implementing the punishment, the case of Tāj al-Dīn clearly does not satisfy the strict rules of evidence laid out in the normative literature. As others have noted, the *fatwā* sought by Köprek functioned as a 'legal fig leaf', while 'the initiative comes from a misled or ill-intentioned third party and the authority comes from the sultan'.[18] As it appears, the conspicuous unholiness of the affair did not escape the chronicler, who voices an uncharacteristic amount of empathy for the victim.

Other cases of stoning under the Seljuqs concern heretics, and may best be understood in light of the Seljuqs' declared aim to promote the cause of Sunni Islam. As an example, one might cite the case of a certain Maḥmūd al-Īlāqī, from the Kurdish town of Īlāq, who was active in Khorasan in the 1070s, spreading what amounted to heretical views in the eyes of the Seljuq authorities and Sunni leaders. Īlāq had been a hub of nativist Iranian prophecy in the eighth century, and Maḥmūd is accused, in the

[17] Ibid., pp. 204-5.

[18] Marion Holmes Katz, 'The *Ḥadd* Penalty for *Zinā*: Symbol or Deterrent? Texts from the Early Sixteenth Century', in Paul M. Cobb (ed.), *The Lineaments of Islam: Studies in Honor of Fred McGraw Donner* (Leiden-Boston: Brill, 2012), p. 371.

text that chronicles his demise, of perpetuating the teachings of two movements that were active there in the time of the Abbasid caliphate:

> He claimed substantial union [with God]. He possessed fragments from the treatises of the Mubayyiḍa and Khurramiyya… He sold such and such places in paradise, and so on. Having realised his [heretical] condition, men bore witness against him that necessitated his execution. This matter was discussed, then he was crucified and stoned to death. The first to throw stones at him while crucified were Judge Abū Muḥammad, who was the city's judge, and the imam ʿAbdallāh al-Ṣaffār, the city's legal adviser. They were followed by others, who smashed him to pieces. This occurred at Merv, when Sultan Malikshāh, may God have mercy on him, was there in the year 472/[1079-80].[19]

It seems no coincidence that al-Īlāqī met his violent end when the city in which he spread his teachings was visited by the sultan. Most likely, Malikshāh used the occasion to show his commitment to the eradication of religious deviancy. He did so in consultation, or so it seems, with the local (Sunni) religious establishment. That the chief's judge threw the first stone tallies with the normative legal literature, which stipulates that the head of the state or his representative, the judge, must throw the first stone if the conviction is based on a confession (which one assumes had been extracted from al-Īlāqī).

Public punishment meted out by the Seljuqs was particularly violent when it was directed against heretics. The Ismaʿilis, who for large parts of the 11th and 12th centuries were the Seljuqs' most worrisome domestic enemies, suffered from this perhaps more than any other group. Dozens of their supporters were immolated at Isfahan in 1101, when Sunni militias, at the encouragement of the leading local Shāfiʿī jurist, threw them into ditches burning with naphtha.[20] There are also cases of post-mortem public burning of the corpses of executed Ismaʿilis.[21] Certain late-medieval sources state that the body of the mystic, ʿAyn al-Quḍāt (d. 1131), after his execution in

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[19] Albert Z. Iskandar, 'A doctor's book on zoology: al-Marwazī's *Ṭabāʾiʿ al-Ḥayawān* (*Nature of the Animals*) reassessed', *Oriens* 27 (1981), 279-80 (translation slightly revised). On Khurramism in Īlāq, see Patricia Crone, *The Nativist Prophets of Early Islamic Iran: Rural Revolt and Local Zoroastrianism* (Cambridge: Cambridge University Press, 2012), pp. 139, 180, 270, 405.

[20] Ibn al-Athīr, *Al-Kāmil fī l-taʾrīkh* (Beirut: Dār al-Kitāb al-ʿArabī, 1417/1997), VIII, p. 450.

[21] Ibn al-Athīr, *Kāmil*, VIII, 597 (s.a. 507/[1113-14]); Ibn al-Jawzī, *Al-Muntaẓam fī tārīkh al-umam wa 'l-mulūk* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1412/1992), XVIII, 17 (s.a. 536/[1141-2]). The most comprehensive study of Ismaʿili history and thought remains Farhad Daftary, *The Ismāʿīlīs: Their History and Doctrines* (2nd ed., Cambridge-New York: Cambridge University Press, 2007).

Hamadhān, was wrapped in a naphtha-soaked cloak and set on fire. ʿAyn al-Quḍāt's end echoes what is perhaps the single most famous execution in the history of Islam, that of his fellow-mystic, Manṣūr al-Ḥallāj, in 922. The reasons for al-Ḥallāj's trial and execution are exceedingly complex, and the sources are difficult to interpret. Most seem to agree, however, that al-Ḥallāj, under drummed-up charges of being an Qarmāṭian agitator,[22] was crucified alive in Baghdad and decapitated the next morning, his corpse burnt and his ashes thrown into the Tigris. On such evidence, one may be justified in speculating about a background of religious deviancy in the case of a woman condemned to immolation in Baghdad in 1136. As is reported by the chronicler Ibn al-Jawzī (d. 1201), on the night from 21 to 22 July, in the courtyard of the Baghdad congregational mosque,

> a Muslim woman was arrested because she was suspected [of religious deviancy?], although she was deemed good. A reed basket was brought and she was made to stand in it. The naphtha-thrower struck fire at it, and so the basket burned. The woman, however, managed to escape, stripped of her clothes. She was pardoned. The fire had only touched her superficially.[23]

According to a Prophetic *ḥadīth*,[24] only God punishes with fire (that is, in the hereafter), and this reflects a certain predilection against punitive immolation. However, examples of public burnings, particularly of heretics, are known from the early centuries of Islam. The fourth caliph, ʿAlī b. Abī Ṭālib (r. 656-61), was credited with having ordered the immolation of apostates and idol-worshippers, and there are further examples from Umayyad and Abbasid times. The post-mortem immolation of executed corpses was rarely challenged by the jurists. As the jurist Ibn Ḥajar writes in the 8th/14th century, 'the [corpses of the] dead are burned to denigrate them, and to frighten [others] so as to not emulate them'.[25]

When the chronicles report that offenders were put on the cross (Arab. *ṣalb*), involvement of judges is, as a rule, not specified. Putting someone on the cross suggested an association with Qur'ān 5:33 and the crime of 'making war on God and His messenger', and the authorities certainly benefitted from the legitimacy that came with the act of *ṣalb*, even if the Islamic judiciary did not actively sanction it. In fact,

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[22] The Qarmāṭians, from their stronghold in Bahrain, regularly raided the lands of the Abbasid empire. See further Wilferd Madelung, 'Ḳarmaṭī', *EI2*, IV, pp. 660b-665a.

[23] Ibn al-Jawzī, *Muntaẓam*, XVII, p. 310.

[24] See Wensinck, *Concordance*, IV, p. 164a-b, s.v. *ʿ-dh-b*, with variants in the canonical collections of al-Bukhārī, al-Tirmidhī, Abū Dāwūd, and Ibn Ḥanbal.

[25] Ibn Ḥajar, *Fatḥ al-bārī wa-ʿumdat al-qārī* (Cairo: Muṣṭafā Bābī al-Ḥalabī, 1959), XV, p. 301.

crucifixion is probably the most commonly mentioned form of execution in Seljuq chronicles. Often, as in the case of al-Ḥallāj, *ṣalb* comes closer to the tying to a wooden post or to gibbeting (cf. the Persian synonym of *ṣalb*, viz. *bar dār kardan*, 'to put on a wooden stand') than to Roman-style nailing on a cross. When the Seljuq vizier Dargazīnī was 'crucified' (*ṣuliba*) in 1133, 'the rope around his neck snapped', and he fell to the ground.[26]

Chronicles from the 11th to the 13th centuries occasionally also mention other forms of capital punishment, such as trampling by elephants (especially in the East). For example, the Ghaznavid sultan, Ibrāhīm b. Masʿūd (r. 1059-99), had his own palace baker trampled to death for hoarding wheat and flour and thereby jeopardising the bread supply of the local populace.[27] Offenders were sometimes executed by being thrown down from heights, a discretionary or *siyāsa* punishment meted out particularly to sodomites.[28] Finally, decapitation by the sword was probably a common, perhaps even the commonest form of capital punishment (in the sense of talionic executions), as has been claimed,[29] but it receives relatively little attention in the chronicles.

Torture and State Violence Under the Mamluks (13th-16th centuries)

The Mamluks were military slaves (Arab. *mamlūk*, 'owned [individual]', 'slave'), mostly of Circassian and Kipchak origin, who wrestled power from their lords, the Ayyubid sultans of Egypt (r. 1174-1250). The long-lasting slave dynasty the Mamluks established throve on the prowess of their army (which in the 13th century carried them to victories over the Crusaders and the Mongols), the non-hereditary principles of succession that characterised their rule, and the sheer physical coercion that they deployed to bring society under their control. From the inception of the Mamluk sultanate, the Mamluks had a reputation for the ruthless use of force. It was the Mamluks, after all, who, under the leadership of the famous general Baybars, had repelled the Mongols at the battle of ʿAyn Jalūt (1260) and thereby saved Syria and North Africa from devastation.

Baybars, who went on to rule as the Mamluk sultan from 1260 to 1277, was famous for his stern sense of justice. While his contemporary, the courtier Ibn al-Nafīs, is unreservedly positive about the fact that Baybars was 'stout-hearted, cruel, and merciless',[30] the 19th-century Egyptian scholar, al-Bājūrī, criticises Baybars for being the first to introduce torture in Egypt, among which al-Bājūrī counts burning, drowning,

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[26] Bundārī, *Tārīkh dawlat āl Saljūq* (Beirut: Dār al-Āfāq al-Jadīda, 1978), p. 157.

[27] Niẓām al-Mulk, *Siyāsatnāma*, ed. Hubert Drake (Tehran: Bungāh-i Tarjama ū Nashr-i Kitāb, 1962), p. 85.

[28] Ibn al-Jawzī, *Muntaẓam*, XVIII, p. 33. For further examples, see Lange, *Justice*, p. 69.

[29] Berthold Spuler, *Iran in frühislamischer Zeit* (Wiesbaden: Steiner, 1952), p. 373.

[30] Ibn al-Nafīs, *Risāla*, p. 45 (tr. p. 68).

strangling and impaling.[31] While instances of these practices are indeed attested in the sources, more commonly implemented capital punishments were hanging, crucifixion, and execution by the sword. The chroniclers often refer to, or rather pass over, these punishments in a matter-of-factly way. This makes it difficult to say with any degree of precision how regularly they were implemented, because the casualness in which the matter is dealt with suggests that a lot of public executions find no trace in the sources. It is only when executions were particularly shocking, for whatever reason, that they are described in some detail.

Such is the case with the hanging of a judge's wife and that of her lover, himself a judge, at Cairo in 1513. The two were apprehended *in flagranti* by the husband, who then insisted on bringing charges against them. They were initially sentenced, by a military judge, to flogging and a fine, and suffered the ignominious spectacle of being paraded, sitting backwards on donkeys, through the city. However, when news of the story reached the ears of the sultan, Qānṣūh al-Ghawrī (r. 1501-16), he demanded that the adulterers be stoned. When the four chief judges of Cairo refused to ratify his order, citing the lack of proper evidence and the repentance of the male lover, the sultan flew into a rage. He dismissed all chief judges and shouted at the legal scholar who had drawn up the lovers' defence: 'By God, I hope you go home and find someone doing to your wife what al-Mashālī [the wife's lover] did to the wife of Khalīl [the cuckolded judge]!' The two lovers were then hanged (rather than stoned), tied to the same rope and facing each other, near the door of the house of one of the jurists who had objected to the death sentence.[32]

It is clear why chroniclers showed interest in this event. Not only was the manner of execution highly unusual, and were the two victims members of the learned high society of Mamluk Cairo, but more significantly, their trial had triggered a constitutional crisis, in which the sultan struggled to assert his power over the religious judiciary. He was not entirely successful, one might add, for one reading of the incident is that in late-Mamluk Cairo, Islamic judges *had* in fact enough clout to seriously challenge, and rein in, the sultan's autocratic exercise of penal power. Although the two lovers met a violent death, it is significant that they did not suffer stoning, the Sharia punishment for adultery. The veto of the chief judges appears to have impeded this. Instead, as one surmises, the sultan had to resort capital punishment on the basis of considerations of *siyāsa*.

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[31] Al-Bājūrī's comment is found in his *Ḥāshiya* on the *Fatḥ al-qarīb* (*K. al-ḥudūd, faṣl fī aḥkām al-bughāt*) of Ibn al-Qāsim al-Ghazzī (d. 1512), quoted by C. Snouck Hurgronje, *Verspreide Geschriften* (Bonn-Leipzig: K. Schroeder, 1923-27), II, p. 198.

[32] Ibn Iyās, *Badā'iʿ al-zuhūr fī waqā'iʿ al-duhūr*, ed. M. Muṣṭafā, H. Roemer and H. Ritter (Cairo-Wiesbaden: Steiner, 1960-63), IV, p. 340-50.

As adumbrated above, the chroniclers did not pay much attention, except in particularly spectacular circumstances, to executions that derived their legitimacy from the above-mentioned five Sharia types of capital punishment. This may explain why one reads almost nothing in the chronicles about talionic executions, and why crucifixion, the Sharia punishment for brigandage, is often dealt with in off-hand fashion by the chroniclers. But when an execution took place that squarely contradicted Sharia provisions, it roused interest. This seems to apply to the crucifixion of a young boy-servant in Damascus in 1248, an event described at length by the historian Abū Shāma al-Maqdisī (d. 1268).[33] This young Turkish slave of an amir, writes Abū Shāma, had been found guilty of murdering his master, but instead of being punished talionically, he was crucified:

> His face was turned towards the east, and his hands, upper arms, and feet were fixed with nails, and he stayed alive from the noon of Friday till the noon of Sunday, then he died. He was said to have been courageous, brave, and pious, and he had taken part in a campaign at Ascalon and killed a number of Franks and also killed a lion notwithstanding his youth. There were some memorable things in connection with his crucifixion. He abandoned himself without resistance and fear but rather stretched his hands so that they could be nailed [to the beams]. Then his feet were nailed, and he looked on this without groaning or grimacing with pain or moving any of his limbs. This I was told by several people who were witness to this. He remained patient and quiet without groaning but just looked at his feet and his sides, to the right and to the left again, and sometimes he looked at the people. It was said that he asked for water but was not given any. People's hearts flowed over with pity and compassion for [this] creature of God, so young a boy who had to suffer such a trial.

Although medieval Muslim chroniclers mention cases of crucifixion on 'countless' occasions,[34] the level of empathy shown by Abū Shāma is unusual. From a comment by Abū Shāma, one suspects that his master had sexually harassed the crucified young boy. Another aspect that deserves highlighting is the considerable effort Abū Shāma spends on detailing how nails were driven through the boy's hands and feet. Crucifixion by nailing to a wooden contraption is in fact one way in which the Mamluks seem to have

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[33] The following translation is taken from Tilman Seidensticker, 'Responses to crucifixion in the Islamic world', in Lange and Fierro (eds), *Public Violence*, pp. 212-4.

[34] Otto Spies, 'Über die Kreuzigung im Islam', in Rudolph Thomas (ed.), *Religion und Religionen. Festschrift für Gustav Mensching* (Bonn: Röhrscheid, 1967), p. 150.

exacerbated the brutality of the punishment. In previous centuries, crucifixion often involved no more than the tying of a body to a wooden contraption. Also the legal literature never mentions nailing. In the Mamluk chronicles, however, crucifixion by nailing (*tasmīr*) is relatively common.[35] In fact, it may be conjectured that while some forms of the death penalty, such as burning, recede into the background in Mamluk times, others, such as nailing to the cross, bisection, and impaling, become more visible. A combination of Mamluk-style capital punishments is reported by Ibn Ḥajar for the year 1391, when the governor of Damascus first nailed to the cross, and then bisected, a group of amirs.[36] Execution by bisection (*tawsīṭ*), a punishment that appears to have a Central Asian pedigree, predates the Mamluks. The practice of cutting offenders into half, or splitting them lengthwise, was described by the traveller Ibn Faḍlān (d. 922) as a mode of execution, applied to adulterers and thieves, customary among the Oghuz and Bulgars of the Volga.[37] There are also a couple of reports about the practice in Seljuq chronicles.[38] However, it appears that it was only under the Mamluks that *tawsīṭ* became a commonplace capital punishment, or even 'the usual method of execution'.[39] Unruly militaries were thus executed, for example after Sultan al-Ṣāliḥ Ṣalāḥ al-Dīn's (r. 1351-54) troops reconquered Damascus from a band of looting amirs.

> On Monday, 12 November 1352, the sultan rode out from the castle, in midst his army, to the dais… The sultan sat down on the dais, and the army stood in front of him, at the foot of the citadel. The amirs whom they had brought with them from the area of Aleppo were brought forth, and they began to make each amir stand [in front of the sultan]. Then they consulted about him. Some were pardoned, others condemned to bisection. Seven [amirs] were bisected: five amirs of forty and two amirs commanding over a thousand [footsoldiers]… The rest were pardoned and thrown back into prison.[40]

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[35] See R. P. A. Dozy, *Dictionnaire détaillé des noms de vêtements chez les Arabes* (Amsterdam: Jean Müller, 1845), pp. 269-70 n7, who quotes several examples from al-Nuwayrī's chronicle of Egypt. Cf. Nuwayrī, *Nihāyat al-ʿarab fī funūn al-adab,* ed. Najīb Muṣṭafā Fawwāz and Ḥikmat Kishlī Fawwāz (Beirut: Dār al-Kutub al-ʿIlmiyya, 1424/2004), XXX, p. 95 (s.a. 665/[1266-7]). See also the comment on *tasmīr* made by Ibn al-Nafis, as quoted above (n11).

[36] Ibn Ḥajar, *Inbāʾ al-ghumr bi-abnāʾ al-ʿumr*, ed. Muḥammad ʿAbd al-Muʿīd Khān, 9 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1406/1986), III, p. 70 (s.a. 793).

[37] Ibn Faḍlān, *K. Aḥmad b. Faḍlān*, tr. James E. Montgomery (New York: New York University Press, 2014), pp. 203 (*shaqqawhu bi-niṣfayn*), 233 [§§ 19, 63].

[38] Ibn al-Jawzī, *Muntaẓam*, XVII, p. 3.

[39] Schacht and Meyerhof, *The theologus autodidactus*, p. 81 (Excursus F).

[40] Ibn Kathīr, *Al-Bidāya wa 'l-nihāya* (Cairo: Dār al-Manār, 1421/2001), XIV, p. 230 (s.a. 753).

The premeditated and ordered, public performance of violent punishment served the Mamluks to disguise the fact that Mamluk society was often not orderly and well-protected from unrest, but rather plagued by violence that was difficult to contain, even if it should be noted that the Mamluk empire enjoyed remarkable longevity. Public punishments were spectacles, celebrations of the lack of power of the punished offenders, and thus manifestations of the power of the ruling elite. As one historian of the Mamluks has remarked, they were 'a form of street theatre' too, such that '[w]hen the Emir Qusun was condemned [in the year 1342] to be crucified, street vendors cashed in by selling lollipops in the shape of the crucified victim'.[41]

A common pattern in Seljuq and Mamluk times was that the members of groups of criminals were simultaneously executed in different spots in the city.[42] Symbolically enveloping the city with their violence, the ruler thus claimed absolute control over the polity he governed. Following a similar logic of staking out territorial claims, the fragmented bodies of amputated, beheaded or bisected enemies of the state were carried, often over long distances, and paraded through the cities in the Seljuq and Mamluk domains. Toward the end of the Mamluk period, in 1501, even the sultan himself was thus treated; following a coup, Sultan al-ʿĀdil Ṭumāmbāy (r. 1500-01) was decapitated and his head carried around on a leather tray through all of Cairo.[43] Urban ignominious parades, in general, were a common sight in Seljuq and Mamluk times. It is worthwhile noting that ignominious parading is one of the most-often mentioned punishments in the *Arabian Nights*.

Perhaps the most gruesome type of public parading, in fact of any public spectacle of violence, was the flaying alive of victims and parading of their stuffed skins. Leo Africanus (d. after 1550), who passed through Cairo in the dying years of the Mamluk sultanate, relates information about this practice, borrowing his description from the chronicle of Ibn Iyās:

> rebels or seditious persons they flay alive, stuffing their skins with bran until they resemble the shape of a man, which being done, they carry the said stuffed skins upon camelbacks through every street of the city, and there publish the crime of the executed. I never saw a more dreadful

[41] Robert Irwin, *The Arabian Nights: A Companion* (London: Alan Lane, 1994), p. 158.

[42] See, for example, Ibn al-Jawzī, *Muntaẓam*, XVIII, p. 160; Ibn Ṭawq, *Al-Taʿlīq* (Damascus: IFPO, 2000-7), II, p. 705.

[43] Ibn Iyās, *Badāʾiʿ al-zuhūr*, IV, p. 10. For other examples of the parading of corpses, see Lange, *Justice*, p. 66 n43; Bernadette Martel-Thoumian, *Délinquance et ordre social. L'État mamlouk syro-égyptien face au crime à la fin du IXe-XVe siècle* (Pessac: Ausonius, 2012), p. 251.

> punishment, for the reason that the condemned lies so long in torment. Only when the torturer touches the navel with the knife does he yield up his soul; but this he may not do until the magistrate standing by commands it.[44]

Death by flaying is also known to have been meted out under the Seljuqs and the North African Fāṭimids (r. 909-1171), who applied the punishment to rebels.[45] In comparison, the Mamluk chronicles relate more instances of flaying, not only of rebels but also of Bedouin brigands, murderers, grave robbers, and thieves. In the final decades of the Mamluk sultanate, according to Bernadette Martel-Thoumian, the inhabitants of Cairo and other Mamluk cities witnessed a 'superabundance of horror' (*surenchère de l'horreur*).[46] According to Ibn Iyās, even the Mamluk sultans started to have second thoughts about whether their violence was justified. When in August 1513, Sultan Qānsūḥ al-Ghawrī, known for his severity in punishment, was presented with the stuffed skin of a young Bedouin, dressed up like a mannequin in a silk garment and a hat, he was reportedly outraged. Ibn Iyās adds that the sultan had in fact never ordered such a macabre spectacle.[47] In the end, the violence meted out by the Mamluk rulers to the populace caught up with them. On 14 April 1517, the last Mamluk sultan, Ṭūmān Bāy II, was ignominiously hanged at the Zuwayla Gate in Cairo, an execution that was instantly 're-created by the masters of the shadow-theatres, much to the delight of Egypt's new master, the Ottoman Sultan Selim the Grim [r. 1512-20]'.[48]

Conclusion

When examining the cases of violent state punishment in the Seljuq and Mamluk chronicles, it is often difficult or even impossible to establish a correlation between offenses and punishments. The statutory punishments, an area in which such predictability presumably would have obtained, were only seldom implemented. By contrast, the legal framework of discretionary punishment and *siyāsa* justice was notoriously flexible. There seems to be a certain calculated arbitrariness in how the sultans of the Islamic Middle Period made their penal authority public. Spectacles of punishment in medieval Islam, in the words of Aziz al-Azmeh, were 'negative

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[44] Leo Africanus, *The History and Description of Africa and the Notable Things Therein Contained* (Engl. tr. by John Pory [1600], London: Hakluyt Society, 1896), III, p. 887. I have modernised Pory's idiom (CL).

[45] See Heinz Halm, *Das Reich des Mahdi* (Munich: C. H. Beck, 1991), pp. 286-8; Ibn al-Athīr, *Kāmil*, VIII, p. 544 (s.a. 500).

[46] Martel-Thoumian, *Dèlinquance*, p. 254.

[47] Ibn Iyās, *Badā'iʿ al-zuhūr*, IV, pp. 324-5.

[48] Irwin, *The Arabian nights*, p. 158.

ornaments of power, a display of arbitrariness, not necessarily in the choice of the person to be eliminated or disgraced, but in the discretion used in artfully carrying out an execution or making a foe destitute. Here, arbitrariness and uncommon harshness or brutality in the infliction of punishment manifests unaccountability and unapproachability.'[49]

As regards the early caliphal period (7th to 10th centuries), there is certainly no shortage of examples of violent public punishments reported in the chronicles dealing with the Umayyad and Abbasid regimes. Is one really entitled, then, to speculate about an increase in punitive state violence following the 'Barbarian incursions' of the Turks into the heartlands of Islam starting in the early 11th century?[50] The cruelty of the Turks is a trope in late-medieval (as well as early modern and modern) Islamic literature, and one should guard oneself against reproducing the anti-Turkish clichés of Arab and Persian historiography. Let us not forget also that the Ottomans, the direct heirs of both the Seljuqs and Mamluks were, as noted above, sometimes lauded for their equity in imposing punishment on their subjects. In the absence of book-length studies that are explicitly dedicated to the history of crime and penal justice in the centuries before the Seljuqs, diachronic comparisons would seem premature.

Still, the frequency with which public executions and other kinds of violent state punishment are mentioned in the Muslim chronicles of the 11th to the 15th centuries is striking. Furthermore, it is not far-fetched to think that public spectacles of pain, as rituals of power aiming to create a sense of legitimacy, became particularly important in the highly militarised, post-caliphal periods of Islamic pre-modern history. In his panoramic study of Iraq and Egypt in the 10th century, Adam Mez commented that, in terms of the state's suppression of crime, 'the Baghdad and Cairene governments show[ed] a refreshing restraint and moderation'.[51] It would appear to be difficult to make similar assertions about the Seljuqs and Mamluks.

That said, certain shifts from Seljuq to Mamluk times can be detected. This concerns, in the first instance, changes in the legal doctrine of torture and punishment based on utilitarian considerations of the public interest. Judicial torture was legalised under the Mamluks; the definition of mutilation, forbidden categorically by tradition, became narrower; the justification of punishment on the basis of *siyāsa* made increasing inroads into Muslim jurisprudence, as in general *siyāsa* and Sharia entered into a new synthesis. As for punitive practices, some punishments, such as immolation,

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[49] Aziz Al-Azmeh, *Muslim Kingship: Power and the Sacred in Muslim, Christian and Pagan Polities* (London: Tauris, 1997), p. 132.

[50] Cf. C. E. Bosworth, 'Barbarian Incursions: The Coming of the Turks into the Islamic Word', in D. S. Richards (ed.), *Islamic Civilization 950-1150* (Oxford: Cassirer, 1973), pp. 1-16.

[51] Adam Mez, *The Renaissance of Islam* (first publ. 1922, London: Luzac, 1937), p. 369.

were less common in the Mamluk period, but at the same time, an array of formerly unknown, or hardly known, violent punishments appear to have been introduced. Among the non-lethal penalties, shaming punishments appear to have become more widespread and invasive, and amputation to have increased in frequency. As for capital punishments, crucifixion by nailing, bisection, impaling, and skinning alive appear to feature in Mamluk chronicles more regularly than in the chronicles of previous centuries. In sum, Mamluk society witnessed a certain proliferation, perhaps also a "banalisation",[52] of torture and violent punishment.

The standard scholarly narrative regarding Islamic law under the Mamluks has been that it was severely compromised by the *siyāsa*-based, and therefore largely arbitrary, justice of the sultan, as well as by the failure of the Muslim jurists to adequately protect legal doctrine from becoming divorced from practice. The jurists, instead, would have contented themselves with emphasizing the theoretical, or symbolic, primacy of Sharia. More recent scholarship, by contrast, has emphasized the symbiotic nature of Sharia and *siyāsa*, the fact that *siyāsa* was commonly held, by both jurists and rulers, to *encompass*, not to *replace*, Sharia. This may be the case. However, it so happens that in the particular area of crime and punishment, and especially on account of the doctrine of discretionary punishment, the law was so underdetermined and so riddled with loopholes that only little opposition could be mounted to check the rising tide of penal violence by the state.

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[52] Martel-Thoumian, *Délinquance*, p. 243.

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