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Paul Friedland, *Seeing Justice Done: the Age of Spectacular Punishment in France*. Oxford: Oxford University Press, 2012. x + 334 pp. Figures, notes, and index, 334 pp. \$65 U.S. (cl). ISBN 978-0-19-959269-2.

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Hanging, beheading, breaking on the wheel, people in the pillory, corpses on display: these are the spectacular aspects of French justice from the middle ages to the modern era. Although such matters are inherently fascinating to many students of history, they are considered indicative of what made the past radically different from the present, proof that western societies have experienced at least some progress. Paul Friedland does not see things quite this way. Rather, he explores past practices and attitudes to capital punishment as a way to reveal what he considers hidden elements in current thinking. "This book might be seen as attempting a kind of anthropologically-informed presentism," (p. 15) Friedland explains in his introduction that the purpose is "to gain some insights into our own, modern assumptions about the essential purpose of punishment" (p. 2), specifically the purpose of capital punishment. He believes that "we have an almost visceral need to believe that it is *primarily* about one thing: deterrence" (p. 5). His "we" are contemporaries who belong to "Western society at large" (p. 17). This minimizes other possible purposes for the death penalty, notably preventing the convicted felon from committing future crimes, facilitating spiritual redemption by making the criminal's confession (whenever possible) part of the execution, healing the community through a collective public ritual, and even balancing the proverbial scales of justice with the Biblical "an eye for an eye ..." (known in legal jargon as *lex talionis*). By concentrating on the history of capital punishment when it was performed publicly in France, Friedland hopes to provoke reflection on the continued use of the death penalty in the United States today.

Other experts in the field, more directly indebted to anthropological approaches than Friedland, have generated an abundance of scholarship on the topic.[1] However, Friedland sees them as trying to understand the past on its own terms, whereas he seeks to explain how "pre-modern practices evolved into modern ones" (p. 14). To do so, he considers the *longue durée*, beginning with the Salian Franks in 507 and ending with the last public execution in France in 1939. That said, much of the book is devoted to Friedland's scholarly backyard, the eighteenth century. He undertakes his analysis by astutely distinguishing between theories, practices and perceptions of capital punishment. Parsing these matters more carefully adds nuance, and even outright correction, to various cultural explanations offered by the likes of Michel Foucault and Pieter Spierenburg.[2]

In the early period, Friedman exposes the facile distinctions historians have made between different legal traditions and the influence they had in defining regions of early modern France. He prefers to speak of the layering of different traditions. Roman law stressed criminal intent and exemplary deterrence when determining punishments, whereas Salic law emphasized penal compensation or payback, which depended more on determining the worth of the victim. The Carolingian legacy added a layer of Christian rituals focused on public penance, personal redemption, and concern for the community as a whole. The burgeoning of Roman legal studies in the late eleventh century re-infused penal practices with concerns for exemplary punishment as a means to deter crime and protect not only

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individuals, but the public interest. As a result, a wide variety of regional customary laws in France came to reflect an increased emphasis on prior malicious intent, concepts of *lèse-majesté*, and the need to use corporal—and therefore spectacular—punishment to deter crimes that threatened public order. By the late thirteenth century, those authorities authorized to dispense “high justice” began to build *fourches patibulaires* where the bodies of executed and mutilated criminals could be gruesomely displayed in order to terrorize other would-be malefactors. Increasingly reserving the most spectacular forms of punishment for the highest authorities, often by designating specific crimes as *cas royaux*, meant that by the sixteenth century “the theory and practice of punishment in France had reached a point where they can be said to have had a relatively stable and more or less national character” (p. 67).

Having reached the “age of spectacular capital punishment in France” (the book’s subtitle), Friedman inserts a pair of chapters on professional executioners and the rituals of execution respectively. The social infamy of being touched by an executioner is memorably evoked by explaining the practice of *havage*, or the right of an official executioner to take a modest amount of goods in the public market as compensation for his professional duties and the social ostracism it provoked. Dressed in flamboyant garb, executioners would move through the market using a special spoon to collect produce, whether walnuts, cuttlefish or cheese, thereby avoiding the cultural contamination of the merchants or their goods that would otherwise result from direct contact. Friedman’s description of the various stages of the execution ritual largely accords with Michel Bée’s emphasis on those religious elements that allowed expiation, personal redemption and collective healing.<sup>[3]</sup> However, Friedman attributes the execution of the effigies of the condemned (usually crude paintings) as well as the public execution of animals to the community’s need to overcome the crime and move on. Before a Roman theory that emphasized criminal intent came to monopolize legal thinking, he argues that crime had to be punished in a ritualistic manner, “regardless of whether the criminal was human or animal, dead or alive, present or represented” (p. 112), in order to heal the social wound inflicted by the offense. In other words, according to Friedland, execution rituals had yet to become primarily about deterrence.

From the sixteenth to the eighteenth centuries, when deterrence supposedly became a more central justification for highly ritualized—and occasionally exceptionally brutal—forms of public punishment, the authorities could not always ensure that crowds would respond as they wished. Friedland provides interesting evidence of changing attitudes to public executions during this period. For a long time, descriptions of public executions provided plenty of detail on everything but the moment of execution itself. As he explains the evidence, starting in the early sixteenth century, once Protestants refused to play the part scripted for ordinary criminals by not repenting on the way to the scaffold, observers no longer participated in the ritual in the same way. This new attitude allowed observers to watch the execution in a more detached manner, as human drama and public spectacle combined. Voyeurism replaced ritualistic participation.

This interpretation attributes remarkable influence to executions of Protestants, which were far less numerous than the ritualized dispatching of common criminals that took place in every major town in the kingdom. Evidence for this argument depends heavily on the diaries of a foreigner (a Swiss named Felix Platter who, not surprisingly, took a particular interest in the execution of Protestants when at Montpellier in the 1550s). Friedland turns similarly to literary reportage to demonstrate the spread of the new voyeurism in the early seventeenth century. He examines François de Rosset’s accounts of executions in *Les Histoires tragiques de nostre temps* (1614) and aptly calls them “tragic realism” (p. 141). Here, the emotional responses from readers (obviously not present at the executions described) are likened to the response of those *amateurs* of executions who rented prime space in order to watch events as if they were theater. In the eighteenth century, the rise of *sensibilité* brought harsh criticism of such hobbyists, especially if they were women. A growing sympathy for fellow human beings unknown to oneself, whether inspired by the rise of the novel or reflected in it, clashed with the perception of public executions as a form of entertainment. The execution of Damiens in 1757, famously described in all its gory detail by Michel Foucault, marked both “the apogee of spectacularity” (p. 179) and the moment at

which “the pendulum revers[ed] direction” (p. 180). Thereafter, it became increasingly unacceptable to watch criminals suffer during an execution. The result was a cultural crisis over spectacular punishment as exemplary deterrent.

Friedland then recounts the familiar story of the Enlightenment critique of capital punishment, but enriches it by pointing out that even the harshest critics, including Cesare Beccaria, were not truly abolitionists since they all accepted it in special circumstances such as treason or open rebellion. Therefore, the difference between supposed abolitionists and supporters was really over the spectacular nature of punishment. Was it necessary as a deterrent or were executions simply the best way to rid society of dangerous individuals? If it were the latter, then there was no need to make a spectacle of suffering. Here lay the conceptual basis for the instrument championed by Dr. Guillotin. The guillotine offered an ideal blend of these two positions because it eliminated suffering while preserving spectacle. Friedland obscures this element of the new procedure by claiming that “death by guillotine took place so quickly that it hardly seemed like a death at all” (p. 250) and then asserting that it had become an “invisible spectacle” (p. 260).

On the contrary, the actual moment of death would have been difficult for viewers to discern in any execution other than a beheading. In contrast to being hanged or broken on the wheel, an immense gush of blood and the raising of a severed head made the moment of death by guillotine certain and highly visible.<sup>[4]</sup> Moreover, revolutionary crowds did not gather simply to see others killed. They wanted to see how those individuals faced death. This was surely one of the main reasons for “gawking” in the pre-revolutionary period as well. Spectators, as opposed to viewers who participated in a collective ritual of expiation and healing, came to see courage or cowardice, fortitude or faintheartedness, at least as much as they came to see suffering. Thus, this human drama came to be viewed as a form of gratuitous emotional suffering. In the later nineteenth century, Friedland explains, French authorities gradually shortened the route to the site of execution until eventually executions took place immediately outside prison walls. In the twentieth century, official concerns about popular morality triumphed over the belief that executions needed to be public in order to have real deterrent value. Between 1939 and the abolition of capital punishment in France in 1981, the execution of criminals took place behind prison walls where they were observed by only a handful of official witnesses. (This continues to be the practice in many parts of the United States today with a needle taking the place of a falling blade. The ostensible purpose remains the same: deterrence.)

Friedland’s main claim is that “we” have focused too much on deterrence, and therefore missed other aspects of punishment, both past and present. There has been a great deal of highly sophisticated work on theories and practices of punishment in the western world, so it is not clear who has failed to examine this issue properly. Perhaps Friedland has an untutored readership in mind, frequently adopting a colloquial tone with phrases like “three-strikes-and-you’re-out policy,” “out of sync with,” “sounds awfully familiar,” “the ‘wow’ factor” (pp. 59, 213, 230, 260), yet he covers some rather arcane texts, ranging from the *Brevarium Alaricum* (506 C.E.) and Jean Boutillier’s *Somme rural* (c. 1385) to Buchez and Roux’s thirty-seven volume *Histoire parlementaire de la Révolution française* (1837). The impressive range of sources he has exploited for this account are meant to complicate the received wisdom, which is surely not as simplistic as suggested in the introduction and conclusion.

It is certainly fun to follow Friedland’s introductory debunking of the execution of the “sow of Falaise” in 1386 for eating a human child, an incident made famous, much distorted and erroneously explained, he says, by numerous scholars so imbued with eighteenth-century notions of criminal intent and exemplary deterrence that they could only condemn the execution as part of an age of barbaric and nonsensical punishment. In his conclusion, Friedland compares this medieval execution of a pig to the recent official killing of a pack of feral dogs in Georgia following attacks on a librarian and later her professor husband, both of whom died of dog bites. He notes that the dogs were euthanized on the order of a judge in much the same way as criminals are put to death in the United States, and then adds that

killing the dogs was done in the interest of public safety, which “took precedence over the definitive determination of guilt” (p. 283). But one is hard pressed to see how the medieval and contemporary cases demonstrate that penal practice, both past and present, has been “masked by a rhetoric of exemplary deterrence” (p. 283). He suggests that capital punishment persists because we “still want in some visceral way to see people (or animals) *pay* for their crimes” and “we still want to *see* justice done” (p. 284). This may well be true, but it is not illustrated by the fate of feral dogs in Georgia.

Given his expressed purpose, which is to use an erudite history of cultural responses to capital punishment over the *longue durée* in France as a “presentist” reflection on penal practices in the United States today, Friedland would have been better served by meditating on the execution in 2001 of Timothy McVeigh following his conviction for blowing up a federal building in Oklahoma City and killing 168 people. The United States attorney general authorized a closed-circuit television broadcast of his execution in order to allow hundreds of survivors, rescue workers and members of victims’ families to watch the execution. Despite some limits—McVeigh’s request to have his death shown on national television and several lawsuits filed by cable television companies to make that happen were rejected in court—making this execution “public” in a limited way was clearly meant to satisfy demands for a personalized retributive justice, not just one operated on behalf of society. It was thus a victory for so-called “victims’ rights.” Literally “seeing justice done” was supposed to bring a sense of closure to families by satisfying an impulse for revenge and meeting the basic standards of the *lex talionis*. In other words, deterrence played no part in the broadcast. Its multifaceted purposes were the same as many of the other motives for public executions in early modern France.

Moreover, capital punishment has long been justified as an efficacious means to prevent future crimes by eliminating perpetrators who threaten society, without really considering deterrence. Such thinking received a full airing in the late eighteenth century, as Friedland points out. What he does not note, however, is that attitudes to capital punishment today are influenced by a previously impractical alternative: life in prison. Given that option, why persist in killing criminals? The Sow of Falaise and the Dangerous Dogs of Georgia were killed because they had acquired a taste for human flesh, in other words, to prevent them from killing more people. This is prevention and is unrelated to deterrence. Euthanizing convicted murderers behind prison walls may have resolved the cultural crisis that arose in the eighteenth-century when, as Friedland shows, compassionate sensibility first clashed with exemplary deterrence, but it clearly does not serve the other purposes of capital punishment in the past. If read carefully, *Seeing Justice Done* might help those who have not thought much about the history of capital punishment to reflect on why it persists in the United States today.[5] But Friedland is more thought provoking when not engaged in presentism, for he has written a sweeping intellectual and cultural history that challenges a number of prevailing explanations about the rise and fall of public executions in France.

## NOTES

[1] A few basic works in this field are (in addition to those cited below), Nicole Gonthier, *Le Châtiment du crime au Moyen Age, XII<sup>e</sup>-XVI<sup>e</sup>* (Rennes: Presses universitaires de Rennes, 1998); Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden: Brill, 1993); Robert Muchembled, *Le Temps des supplices: de l’obéissance sous les rois absolus, XV<sup>e</sup>-XVIII<sup>e</sup>* (Paris: Armand Colin, 1992); Richard M. Andrews, *Law, Magistracy, and Crime in Old Regime Paris, 1735-1789* (Cambridge: Cambridge University Press, 1994); Pascal Bastien, *L’Exécution publique à Paris au XVIII<sup>e</sup> siècle: Une histoire des rituels judiciaires* (Seyssel: Champ Vallon, 2006). Works from other national contexts are equally relevant, notably Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford and New York: Oxford University Press, 1996); Richard van Dülman, *Theatre of Horror: Crime and Punishment in Early Modern Germany*, trans. Elisabeth Neu (Cambridge: Cambridge University Press, 1990), V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford: Oxford

University Press, 1994); Thomas W. Lacqueur, "Crowds, carnival and the state in English executions, 1604-1868," in *The First Modern Society: Essays in English History in Honour of Lawrence Stone*, eds. A. L. Beier, D. Cannadine and J. M. Rosenheim (Cambridge: Cambridge University Press, 1989), pp. 305-56, and Louis Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1991).

[2] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Random House, 1977) and Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression from a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984).

[3] Michel Bée, "Le Spectacle de l'exécution dans la France d'ancien régime," *Annales: Économies, Sociétés, Civilisations*, 38 (1983): 843-62.

[4] Friedland later includes a quotation from Prudhomme's *Révolutions de Paris* of April 1793 which expresses just how visible death by guillotine actually was: "Another reproach one could level at this punishment is that, if it spares the condemned pain, it does not sufficiently conceal the sight of blood from spectators; one can see it flowing from the blade of the guillotine and spraying out in abundance over the cobblestones of the scaffold. This repulsive spectacle should not be offered to the eyes of the people. ... The people are degraded in seeming to want vengeance rather than contenting themselves with wanting justice done." (266-67)

[5] For an example of the kind of discussion that reflects on the legal, moral and philosophical aspects of capital punishment today, see Alan Ryan's essay "The Right to Kill in Cold Blood: Does the Death Penalty Violate Human Rights?" in his *The Making of Modern Liberalism* (Princeton, N.J.: Princeton University Press, 2012), pp. 139-155.

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