Capital Punishment in Eighteenth-Century Spain

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The purpose of this article is to examine the theory and practice of capital punishment in eighteenth-century Spain and to evaluate Spanish justice within the broader framework of the European criminal justice system of the time. Spanish penal practices differed widely from English and French ones, and Spanish law was less given to the death penalty. Simple theft or larceny was not punished by the death sentence in Spain, and there was no additional legislation creating more capital offenses as in eighteenth century England. Spanish law reserved the death penalty for certain categories of crimes and criminals and their number remained the same throughout the early modern period. Preference was given to sentences to penal labor in the presidios. With its emphasis on judicial discretion and its consideration of extenuating circumstances, the Spanish system of justice can best be described as a calculated combination of punishment, utilitarian practices and mercy. The data analyzed in this article are drawn from contemporary writings and judicial records extant in the Madrid archives.

Cet article examine la théorie et la pratique de la peine capitale, dans l'Espagne du XVIII^e siècle, en considérant la justice espagnole dans un contexte plus large de la justice criminelle européenne de l'époque. La pratique pénale espagnole différait sensiblement de celles de l'Angleterre et de la France. C'est ainsi qu'elle y était moins disposée que dans ces pays à envisager la peine de mort. Et il n'y eut pas de législation additionnelle, accroissant le nombre de crimes capitaux, comme dans l'Angletterre du XVIII^e siècle. La législation espagnole réservait la peine de mort à certaines catégories de crimes et de criminels, catégories dont le nombre resta inchangé pendant toute l'époque moderne. Elle prévoyait plutôt des peines de travaux forcés dans les bagnes. Mettant l'accent sur le sens de la mesure et l'appréciation des circonstances atténuantes, le système judiciaire espagnol peut être décrit comme un dosage étudié de sanctions et de grâces, selon une ligne directrice utilitaire. Les données analysées dans cet article sont tirées d'archives judiciaires conservées aux archives de Madrid, en plus des écrits de l'époque.

Modern historians and penologists have generally assumed that there has been great progress in criminal law and an evolutionary development from the barbaric punishments of the Middle Ages and the early modern era to the more humane rehabilitation of recent times. According to this interpretation (first expressed by the sociologist Emile Durkheim), the main feature of the substantive criminal law of early modern Europe was its almost exclusive domination by the idea that crime could be deterred by severity and cruelty. Capital punishment was employed on a large scale for all kinds of crimes, and it was inflicted in various cruel ways, either prescribed by written law or left to the judges' discretion. Corporal penalties were frequently utilized as a means to increase the severity of capital punishment and in conjunction with other penalties. To Durkheim and his modern-day followers like Michel Foucault, the horror and ritualized violence of the public execution exemplified the justice of the early modern era.[1]

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1. Emile DURKHEIM, *The Division of Labor in Society*, trans. George Simpson (Glencoe, Ill., 1947); and Michel FOUCAULT, *Discipline and Punish*, trans. Alan Sheridan (New York, 1979).

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While it is true that the early modern European penal system was based on the fear of capital punishment and the prodigal use of corporal penalties, the historical model has long been oversimplified. Despite their common base, there were important differences between the criminal justice systems of various Western European countries. There was also a wide gap between the laws and everyday penal practice.[2]

When compared with that of England, the Spanish penal law is particularly striking. In the eighteenth century more capital statutes were created in England so that they stood at over 200 by the early nineteenth century. Although the number of executions did not increase to match the number of convictions because of the growing use of the royal pardon by which transportation could be substituted for hanging, the death penalty was declared with a prodigality that contrasts with Spain.[3]

Unlike England, there was no additional legislation creating more capital offenses in eighteenth-century Spain. Spanish law always reserved the death penalty for certain categories of crimes and criminals and their number remained the same throughout the early modern period. They included such serious offenses as premeditated homicide, parricide, treason, sacrilege, sodomy and counterfeiting. In addition, persistent and blatant offenders, like notorious bandits and robbers, were also subject to the death penalty.[4]

Another important difference between the legal systems of Spain and other Western European countries related to the penalty for theft. In England death had been the punishment for theft since Tudor times, and in the eighteenth century almost all the capital statutes passed by Parliament concerned property offenses. A similar increase in repressive punishments in the criminal law occurred in the Dutch Republic where, according to Pieter Spierenburg, capital punishment began to be imposed for simple theft in the eighteenth century. Likewise in eighteenth-century France, the death penalty was increasingly applied in cases against property.[5]

In Spain simple theft or larceny was not punished by the death sentence. The *Siete Partidas*, a thirteenth-century code that continued to be the principal guide to criminal justice in early modern Spain, established two kinds of penalties for simple theft, that is, theft without violence or force. The first was pecuniary and involved the restitution of the stolen object or its value; the second was corporal, being public shame and flogging.[6] In the eighteenth century the Bourbon rulers attempted twice (in 1734 and 1764) to introduce French legal practices by establishing the death penalty for theft, both simple and aggravated, perpetrated in Madrid and its jurisdiction. On both occasions they were opposed

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2. Joaquin PACHECO, *El código civil* (Madrid, 1888), p. L; Bruce LENMAN and Geoffrey PARKER, "The State, the Community and the Criminal Law in Early Modern Europe," in *Crime in Western Europe since 1500*, ed. V.A.C. Gatrell et al. (London, 1980), p. 14.

3. Douglas HAY, "Property, Authority and the Criminal Law," in Douglas Hay et al. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York, 1975), pp. 17, 22-23; LENMAN and PARKER, "The State," p. 14.

4. See *Las Siete Partidas, trans. Samuel Parsons (New York, 1931) for these crimes and their penalties. Also Eugenio* CUELLO CALON, *Derecho penal (Barcelona, 1926), pp. 84-86.*

5. P. PETROVITCH, "Recherches sur la criminalité à Paris dans le seconde moitié du XVIII^{e} siècle," in *Crimes et criminalité en France, 17^{e}-18^{e} siècle, Cahiers des Annales*, 33 (Paris, 1971), pp. 226-233; HAY, "Property," p. 22; J.M. BEATTIE, "The Pattern of Crime in England, 1660-1800," *Past and Present*, 62 (Feb. 1974), pp. 47-48; Pieter SPIERENBURG, *The Spectacle of Suffering: Executions and the Evolution of Repression —from a Pre-industrial Metropolis to the European experience* (New York, 1984), p. 150.

6. *Las Siete Partidas*, Partida VIII, Title XIV, law 18; Francisco TOMÁS Y VALIENTE, *El derecho penal en la monarquía absoluta (siglos XVI-XVIII)* (Madrid, 1969), pp. 249-250.

by the judges of the *Sala de Alcaldes de Casa y Corte*, a committee of the council of Castile that exercised judicial control over the city of Madrid. Divided into civil and criminal sections, the *Sala* for crime had final jurisdiction over all crime in Madrid and its environs within a radius of five leagues. In the case of the death sentence for theft, the judges of *Sala de Alcaldes* argued that the penalty was too severe for the crime and to be effective there had to be a just relationship between crimes and punishment. In view of the opposition, the laws were rescinded, and instead the judges were ordered to continue to sentence crimes of simple theft with the penalties used in the past, and according to their judicial discretion.[7]

Loss of records makes it impossible to determine the frequency of the death penalty in early modern Spain, but some data can be obtained for Madrid in the second half of the eighteenth century. While the extant documents are too fragmentary to permit systematic quantitative analysis, they do provide important insights into the practice of capital punishment in Madrid for the years 1751-1799. The two main sources are the *libros de acuerdos*, recording the decisions of the judges of the *Sala de Alcaldes de Casa y Corte*, and the *consulta records* containing the consultations of the *Sala* with the king over death sentences. Additional information can be found in the documents preserved in the Archivo de Villa relating to the costs of executions.[8] An examination of this material indicates that during the 49 year period from 1751 to 1799, a total of 138 persons were sentenced to death in Madrid by the *Sala de Alcaldes* (see Table 1). Of these, 118 were executed while the remaining 20 persons were pardoned by the king and their sentences were commuted to life terms (ten years at hard labor) and retention in either the North African or Caribbean presidios.[9] These figures do not include death sentences decreed by the other courts in Madrid, in particular the ordinary jurisdiction. The *corregidor*, a royal official who presided over the municipalities, had the sole right of ordinary jurisdiction, but in Madrid death sentences pronounced in that court had to be approved by the *Sala de Alcaldes* before they could be carried out.[10] Statistics for the ordinary jurisdiction as well as for the military courts (Madrid had a large garrison of soldiers) are unknown, but on the basis of some extant figures, it can be assumed that the *corregidor* condemned to death at least one or two persons a year, and the same was probably true for the courts-martial.[11]

The available evidence suggests that there was little fluctuation either in the number of death sentences or in actual executions in the whole period 1751-1799.[12] During the years 1751-1759, 31 persons were sentenced to death by the *Sala de Alcaldes* and 29 of them were executed (see Table 1). In the following decade there were 27 death sentences and

7. Juan SEMPERE Y GUARINOS, *Ensayo de una biblioteca española de los mejores escritores del reinado de Carlos IV*, III (Madrid, 1786), 166-171. For the laws of 1734 and 1764 see *Novísima Recopilación de las leyes de España* in *Los códigos españoles concordados y anotados* (Madrid, 1850), Book 12, title 14, laws 3, 5, 6.

8. Archivo Histórico Nacional, Madrid (hereafter AHN), Consejos, libros 1039-1087 (*libros de acuerdo*); the *consultas* are scattered throughout the AHN, Consejos collection. See also Archivo de Villa, Madrid (hereafter AVM), Secretaría, sec. 2, leg. 414, no. 8; *ibid.*, leg. 454, no. 66.

9. The retention provision meant that convicts could not return to Spain after serving their sentences without special permission from the tribunal that had sentenced them.

10. The crimes for which the *corregidor* prescribed the death sentence were the same as those for the *Sala de Alcaldes*. Antonio MARTÍNEZ SALAZAR, *Colección de memorias y noticias del gobierno general y político del Consejo* (Madrid, 1764), pp. 337-338; Vicente VIZCAÍNO PÉREZ, *Código y práctica criminal arreglada a las leyes de España* (Madrid, 1797), III, 294-300; 348-351.

11. AVM, Secretaría, sec. 2, leg. 454, no. 66; *ibid.*, leg. 414, no. 8.

12. Conclusions in the following paragraphs based on data from the *libros de acuerdos*, AHN, Consejos, libros 1039-1087.

Table 1 **Death Sentences — Sala de Alcaldes de Casa y Corte, 1751-1799**

Year	Number of Individuals	Persons Pardoned	Persons Executed
1751	8	2	6
1752	0	0	0
1753	4	0	4
1754	8	0	8
1755	2	0	2
1756	2	0	2
1757	0	0	0
1758	3	0	3
1759	4	0	4
1760	3	1	2
1761	0	0	0
1762	2	1	1
1763	0	0	0
1764	4	0	4
1765	3	0	3
1766	9	0	9
1767	1	0	1
1768	2	0	2
1769	3	0	3
1770	1	0	1
1771	6	3	3
1772	6	1	5
1773	5	0	5
1774	2	1	1
1775	2	0	2
1776	6	0	6
1777	5	5	0
1778	3	1	2
1779	0	0	0
1780	5	1	4
1781	2	0	2
1782	0	0	0
1783	6	1	5
1784	5	1	4
1785	2	0	2
1786	0	0	0
1787	0	0	0
1788	0	0	0
1789	0	0	0
1790	2	0	2
1791	1	0	1
1792	2	0	2
1793	0	0	0
1794	2	0	2
1795	0	0	0
1796	0	0	0
1797	4	0	4
1798	4	2	2
1799	9	0	9
Total	138	20	118

Source: AHN, Consejos, libros 1039-1087.

25 executions. The 1770s saw a rise in the number of death sentences (36), but the same number of persons were executed (25) as in the previous decade. In the 1780s there was a slight decline in both death sentences (20) and executions (17), but this was followed by an increase in the 1790s (24 death sentences and 22 executions). Given the lack of records for the *Sala de Alcaldes* for the first half of the eighteenth century, it is not possible to determine whether or not these figures represent a real decline from the previous period. There are some scattered data from the Archivo de Villa for the late seventeenth and early eighteenth centuries that do not show a significantly higher proportion of condemnations and executions and therefore would support the contention that the number of persons condemned and executed by the *Sala de Alcaldes* was always minimal.[13]

If there were few death sentences in early modern Spain, one of the principal reasons was the preference for sentences to penal labor. For those guilty of capital offenses, penal servitude at hard labor on the galleys was introduced in the sixteenth century as an alternative form of punishment more useful to the state. A series of laws beginning in 1530 gradually extended galley service to all kinds of offenders (both major and minor). As the years passed, the continuing need to fill the galley benches made the galleys the most common form of sentence. When the galleys were abolished in 1748, their place was taken by the naval arsenals and overseas presidios in North Africa and the Caribbean. In the same period the public works presidios were established in Spain for petty offenders. By the last quarter of the eighteenth century the presidio sentence became the usual punishment for all male offenders.[14]

The pursuit by the state of the utilitarian objective of the penalty worked against capital punishment and was an important factor in its reduction. The frequent use of royal pardon further tempered the system. In Spain, there were two kinds of royal pardons, general and individual, and both kinds could be either full pardons, or they could involve a commutation of the penalty. General amnesties were granted periodically by the king to celebrate some important event, i.e., the birth of an heir, a royal marriage, an important military victory. General pardons also were granted annually in commemoration of Christ's passion on Good Friday (*Perdones del Viernes Santo*), but these pardons were restricted to unpremeditated homicides and limited to 20 offenders a year.[15]

Individual pardons were even more common than the general pardons. They were issued by the king at the request of individuals in return for some service rendered, or on account of the nobility, character, knowledge or ability of the culprit. In practice, persons who did not have any of the necessary requirements often obtained them in return for money, in contrast to the general pardons that were granted gratis. As has been indicated, in cases involving the death penalty, sentences usually were commuted to penal labor in the overseas presidios.[16]

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13. AVM, Secretaría, sec. 2, leg. 454, no. 66; *ibid.*, leg. 414, no. 8. It has often been assumed that capital punishment declined in eighteenth-century Europe, but this conclusion is based mainly on English sources. Much additional research is needed to clarify the situation in other countries. The existence of differences in national experiences of the decline of public execution has been noted by P. SPIERENBURG, *The Spectacle*, pp. 205-206.

14. For penal servitude in early modern Spain, see Ruth PIKE, *Penal Servitude in Early Modern Spain* (Madison, 1983).

15. VIZCAÍNO PÉREZ, *Código*, III, 367-382; *Las Siete Partidas*, Partida VII, title XXXII, law 1. For the Good Friday pardons, see AHN, Consejos, legajos 5575-5769.

16. TOMÁS Y VALIENTE, *El derecho penal*, pp. 403-404; *Las Siete Partidas*, Partida VII, title XXXII, law 1.

The extant documents in the Madrid archives also provide interesting details about the crimes of the persons sentenced to death there (see Table 2). All of those condemned by the *Sala de Alcaldes* had committed crimes punishable by the death penalty in Spanish law. The majority (65 percent) were property offenders who had perpetrated robberies that involved the use of force, i.e., breaking and entering with or without injury and death. In all instances, the property stolen was of considerable value and/or the offender had committed several aggravated robberies. In 21 percent of the cases the stolen goods were taken from a church.

Table 2 **Classification of Death Sentences (by crimes), Sala de Alcaldes de Casa y Corte, 1751-1799**

Nature of Offense	Number	Percentage
Murder	36	26
Robbery	62	45
Banditry	32	23
Counterfeiting	5	4
Others	3	2
Total	138	100

Source: AHN, CONSEJOS, LIBROS 1039-1087; *Ibid.*, *Consultas*.

Banditry represented 23 percent of the total number of death sentences. All of the condemned bandits had committed murders, rapes and other crimes. The five men executed in 1799, for example, belonged to a bandit gang of seven members. This group, led by Manuel Antonio Rodríguez, alias "el rey de los hombres," was responsible for over 100 robberies and several murders and rapes perpetrated on the roads in the vicinity of Madrid during the years 1791-1793. Rodríguez and four of his companions, all recidivists and notorious criminals, were sentenced to be hanged and quartered, but the remaining two members of the gang, who had not participated in the rapes and murders, received long-term presidio sentences.[17]

Twenty-six percent of the death sentences were for crimes against persons. In instances of homicide, Spanish law (the *Siete Partidas*) listed assassination, treachery and premeditation as the three categories for which death was the stipulated sentence. The extant cases for the *Sala de Alcaldes* and the *libros de acuerdos* clearly show the attention that the judges paid to proof of one or more of these categories in determining death sentences. While the first classification is clear (an assassin is a paid killer), there were few such cases. As for the second category, the *Siete Partidas* describes a treacherous murderer as one who kills his victim from behind unexpectedly and when he is defenseless. Whenever and wherever victims were caught off guard and unable to defend themselves because of friendship, loyalty or confidence, these offenses were considered treacherous. In the same category were crimes perpetrated at night or in uninhabited areas because these conditions lessened the ability of the victims to defend themselves or receive aid from others. Similarly, offenses committed in religious establishments or at the royal court also were classified

17. AHN, Consejos, year 1799, folios 1040-1074.

as treacherous for they reflected disrespect for both faith and king as well as greater malice on the part of the culprit.[18]

Premeditation was considered by the court in all homicides, but it was difficult to demonstrate, that is, to prove beyond a reasonable doubt and with witnesses. Treacherous homicides, on the other hand, lent themselves to this interpretation. Almost all the homicide cases considered treacherous by the *Sala de Alcaldes* were also determined to be premeditated. Once adjudged premeditated and treacherous (*premeditado* y *aleve*), the death penalty was assured. Parricides were almost always classified as premeditated and treacherous, and they represented 38 percent of the death sentences for murder that were handed down by the *Sala de Alcaldes* in the years 1751-1799.[19]

In the majority of homicide cases, the judges found that the evidence was not sufficient to warrant the conclusion of premeditation. Most cases were adjudged to be what would be called today either voluntary manslaughter (intentional killing under severe provocation), or involuntary manslaughter (unintentional, but committed under circumstances of recognized mitigation).[20] The small number of death sentences for homicides reflects the court's consideration of mitigating circumstances and diminished responsibility in individual cases and the extensive use of judicial discretion.

In a separate section on punishment the *Siete Partidas* discusses the circumstances that judges must consider when assigning penalties, and the reasons for diminishing and increasing them. They are the age and social position of the offender and victim, and the circumstances of the crime (time, place and the nature of the offense).[21] The age of the offender was one of the most important factors reducing punishment. The *Siete Partidas* states that culprits under the age of ten and a half years were not subject to punishment while those under 17 years of age must receive a reduced penalty. In addition, the judges, using their wide discretionary powers, customarily reduced the prescribed penalties for minors, that is, offenders between 17 and 25 years of age. In the eighteenth century, certain writers, notably Jerónimo Feijóo, criticized this practice, arguing that since some of the most serious crimes were committed precisely by individuals in that age bracket, they should be punished with a stronger hand.[22]

At the other end of the scale, the *Siete Partidas* affirms that an older person should be punished less harshly, but there is no indication of what age was considered old. The cases in the surviving records show that there was wide variation (anything from 50 years on), and that judicial discretion was the deciding factor.[23] Other mitigating circumstances were drunkenness and insanity. The *Siete Partidas* specifically mentions intoxication as possible evidence of diminished responsibility in homicide, but drinking could not be used as an excuse for killing. It was introduced usually as a secondary argument in order to show that the offender could not control his actions because he was drunk. While drunkenness might reduce responsibility and result in a lighter penalty, it could not free an individual from punishment. In contrast, a demented person could not be punished for crimes that

18. *Las Siete Partidas*, Partida VII, title XXXI, law 8; TOMÁS Y VALIENTE, *El derecho penal*, pp. 347-350.

19. AHN, Consejos, libros 1039-1087.

20. For examples, see AHN, Consejos, legajos 5575-5769 (collection of Good Friday pardons).

21. *Las Siete Partidas*, Partida VII, title VIII, law 8.

22. Jerónimo FEIJÓO, *Teatro crítico universal* (Madrid, 1734), tomo VI, Discurso 1, part 4, p. 275.

23. AHN, Consejos, year 1799, folio 1040-74. For example, a 61 year old member of a bandit gang received a lesser sentence because of his "advanced age."

he committed. Spanish legal opinion also held that if a person became insane after he was sentenced to death, he could not be executed. Of great concern to Spanish jurists was the fact that a demented individual could not confess and repent his sins, and therefore, if executed in that condition, ran the risk of eternal damnation.[24]

Women also had certain privileges at law. They could not be flogged or executed while pregnant and they had to be incarcerated separately from men, but legally sex was not a reason to reduce punishment.[25] Women were subject to the same penalties as men, but few women were executed in Madrid in the second half of the eighteenth century. As in other Western European countries in the early modern era, violent criminality was a male activity. The records show that only five women were sentenced to death by the *Sala de Alcaldes* in the years 1751-1799. Four murdered their husbands (parricide) while the fifth perpetrated 17 robberies over the course of several years in various homes where she worked as a domestic servant. The four murderesses went to the gallows, but the execution of María Ortiz, the thief, was suspended because it was to take place precisely at a time when the royal family had to pass the execution site on their return to Madrid from the countryside. In order to prevent them from witnessing an ugly scene, the death penalty was commuted by the king to reclusion for life.[26]

Since their physical limitations precluded their being sentenced to the galleys and the presidios, major female offenders and recidivists, served their sentences in the *galera*. This was a penal institution for women founded in Madrid in the seventeenth century. In the eighteenth century the House of Correction of San Fernando was established and it performed a similar function for minor offenders.[27] Lesser offenses committed by women also were punished by public shame, flogging and banishment.

Social status was much more important than sex in determining penalties. One of the principal abuses of the early modern criminal justice system was the inequality of punishment. The *Siete Partidas* states that judges should carefully consider the social position of the party against whom the sentence is pronounced, and that commoners should be punished more severely than noblemen. Nobles could not be sentenced to any degrading punishment (flogging, the galleys), and if their crimes merited the death penalty, they were not to be hanged, but decapitated (sixteenth and seventeenth centuries) or garroted (eighteenth century).[28]

Death sentences pronounced by the *Sala de Alcaldes* had to be approved by the king before they could be carried out. When the king was absent from Madrid, the consultation was made in written form. Otherwise the judges of the *Sala* appeared before him assembled together as a court to inform him orally of the sentence. After the king approved the sentence with the phrase: "Let justice be done," the judges withdrew. Immediately afterwards the

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24. TOMÁS Y VALIENTE, *El derecho penal*, pp. 336-339; *Las Siete Partidas*, Partida VII, title VIII, law 5, VIZCAÍNO PÉREZ, *Código*, III, pp. 340-341.

25. *Las Siete Partidas*, Partida VII, title XXXI, law 11; *ibid.*, title XXIX, law 5; *Nueva Recopilación* in *Códigos españoles concordados y anotados* (Madrid, 1850), Book IV, title 24, law 2; TOMÁS Y VALIENTE, *El derecho penal*, p. 351.

26. AHN, Consejos, year 1771, folios 406-408v; *ibid.*, Libro 1059, June 25, 1771 (María Ortiz). For the statistical data see AHN, Consejos, libros 1039-1087.

27. For the House of Correction of San Fernando and the *galera* see Pike, *Penal Servitude*, pp. 5-7; 55-57.

28. TOMÁS Y VALIENTE, *El derecho penal*, pp. 318-319; *Las Siete Partidas*, Partida VII, title XXXI, law 8.

jail authorities were notified, and the prisoner was transferred to the jail chapel to await execution.[29]

The custom of placing prisoners in the chapel for the last few days of their lives (one to three days) developed out of a decree of Philip II in 1567 ordering that communion be administered to condemned prisoners on the day before their execution. Chapels were built in the jails to facilitate this and to permit those under sentence of death to receive continuous spiritual assistance from the jail chaplains (*padres carceleros*), usually two members of the Jesuit order, and representatives from other religious orders. While they were in the chapel, the prisoners also were visited by members of the Confraternities of Our Lady of Charity and of Peace (*Cofradías de Nuestra Señora de Caridad y de la Paz*), two Madrid charitable organizations whose main purpose was to accompany criminals to their executions and arrange for the burial of their remains.[30] When the moment came to leave the jail, the members of the Confraternities formed a procession and, holding high their banners and standards, marched in front of the prisoners to the place of execution. The official notary of the *Sala de Alcaldes*, the jail chaplains, several members of other religious orders, a few constables and a detachment of soldiers completed the contingent.

Capital punishment could be inflicted in various ways. Since the laws did not always specify the means of execution, judges could use their discretionary powers to determine the form of death. Certain methods common to the rest of Europe in the early modern period were not used in Spain, namely breaking on the wheel and quartering alive.[31] The preferred forms in Spain were hanging and the *garrote* (strangulation with an iron collar affixed to a post and tightened with a screw). The *garrote* began to be employed in the seventeenth century, but was not in general use until the eighteenth century. Since it was considered a less degrading penalty, it was applied usually to persons of higher social standing. In the eighteenth century sentences to hanging were sometimes changed on appeal to death by *garrote* as a modification of the penalty. Other forms of capital punishment prescribed by the laws, such as decapitation and burning alive, had fallen into disuse by the eighteenth century.[32]

While the ordinary forms of simple executions were hanging or the *garrote*, additional sufferings and humiliations were introduced for heinous crimes. Murderers and notorious bandits were often sentenced to be dragged (*arrastrado*) to the place of execution. By the eighteenth century this had become more of a formality than a punishment since the victims were placed in baskets attached to donkeys rather than being dragged bodily along the ground.[33] It was also standard procedure from the last quarter of the seventeenth century to subject the bodies of executed bandits to quartering and exposition of the severed parts (heads and sections) at the scene of their crimes. Likewise the remains of counterfeiters were burned, while murderers often had their right hands cut off and displayed after ex-

29. VIZCAÍNO PÉREZ, *Código*, III, ch. III; AHN, Consejos, leg. 9344, no. 3. In the years 1766-1778 condemned prisoners were placed in the chapel immediately after sentencing and before the sala consulted with the king.

30. VISCAÍNO PÉREZ, *Código*, III, 332-334. See also Lorenzo NIÑO AZONA, *Biografía de la Parroquia de Santa Cruz* (Madrid, 1955).

31. PACHECO, *El código penal*, p. L.

32. *Las Siete Partidas*, Partida VII, title XXXI, law 6; title VII, law 10; AHN, Consejos, libro 1039, Feb. 18, 1751; *ibid.*, March 3, 1751; TOMÁS Y VALIENTE, *El derecho penal*, pp. 382-385.

33. AHN, Consejos, leg. 8920, Nov. 8, 1780; *ibid.*, libro 1173, "Noticias para el gobierno de la Sala," ch. 33.

ecution.[34] The Roman punishment of *culleum* was still included in the penalty for parricide in the eighteenth century, but it was used infrequently and was always applied after death. The victims were garroted first and afterwards their remains were placed in wooden casks and thrown in the river. The objective of this exceptional punishment was to deny Christian burial to the perpetrators of serious crimes.[35]

The ritual of public execution remained the same from the sixteenth through eighteenth centuries. In Madrid, the execution of criminals was carried out in the Plaza Mayor or Main Square. Since the Plaza Mayor served as a public market as well as being the site of royal festivities, a permanent gallows was not possible. When an execution was to take place, a scaffold was erected opposite the Casa de la Panadería, an elegant building located on the north side of the square. If it was a large gallows (accommodating several prisoners), it was removed the same night as the execution. Otherwise it remained there until the *Sala de Alcaldes* ordered it dismantled except when the execution occurred before a religious holiday. The gallows also had to be removed whenever the king wanted to cross the Plaza Mayor on his way to the other side of town and whenever religious processions had to pass through the square.[36]

After 1790 the site of executions was transferred from the Plaza Mayor to the Plazuela de la Cebada, a large irregular square or open plaza with a fountain in the center. From its establishment in the sixteenth century, it served as a market place. On the eve of each execution a scaffold was erected in the center of the plaza, and the bells of the nearby churches of San Milán and Nuestra Señora de Gracia announced, with the tolling of their bells, the impending death of a criminal.[37]

The documents preserved in the Archivo de Villa provide valuable information about the costs of carrying out a death sentence. A simple hanging was the least expensive method of execution. In the seventeenth century it cost from 30 to 70 reales, and in the eighteenth century, about 200 reales. A garroting was more expensive (some 300 reales in 1687) because the executioner had to be paid extra for the screw.[38]

Salaries were a large item in the expenditure for an execution. In the 1750s the carpenters received 110 reales to erect the scaffold and 108 reales to dismantle it. The men who brought the wood to the place of execution and unloaded it were paid 12 reales for their labor and 12 reales more for the hire of their carts. The executioner's fee was 45 reales for each execution in addition to his yearly salary of 200 ducats (2,205 reales). If a sentence called for dismembering or quartering, the cost rose substantially. Additional sums had to be spent for the instruments (knives, cleavers, hammers, spikes) as well as for the baskets

34. AHN, Consejos, libro 1069, year 1781 (hanging, quartering and right hands cut off and displayed for two bandit murderers); *ibid.*, year 1773, folios 536-54 (three counterfeiters garroted and their bodies burned). For the introduction of quartering for bandits in the reign of Philip IV, see *Novísima Recopilación*, Book 12, title 17, law 1.

35. *Las Siete Partidas*, Partida VII, title VIII, law 12. For examples, see AVM, Secretaría, sec. 2, leg. 454, no. 66, Sept. 28, 1701; AHN, Consejos, year 1785, tomo 2, folios 1288-1302; *ibid.*, libro 1073, Nov. 16, 1785.

36. AHN, Consejos, July 17, 1797, folios 724-737.

37. Ramon de MESONERO ROMANES, *El antiguo Madrid* (Madrid, 1861), p. 176; AHN, Consejos, year 1790, folio 262. Burnings were held outside the city gates, but condemned criminals were marched through certain designated streets.

38. Data in this paragraph and the next are based on an examination of documents from AVM, Secretaría, sec. 2, leg. 454, no. 66; *ibid.*, leg. 414, no. 18.

and planks to hold the severed parts. Finally, there was the expense for the carts to carry the quarters to the scene of the crimes where they were to be displayed.[39]

Executions took place at mid-day and the judges tried to avoid holidays. As the court that had pronounced the sentence, the *Sala de Alcaldes* remained in session during the execution and did not disband until the judges received official notification of the death of the prisoner from the notary who had witnessed the scene. After the sentence was carried out, the town crier was required to announce publicly the crime for which the culprits had been put to death. The public announcement (*pregón*) was an important part of the ceremonial surrounding public punishment. The objective was to make an example, that is, to let the people know that all offenses were punished and to inspire terror through the spectacle of the king's power being applied to those who had offended society. For that same reason, it was prohibited to remove the bodies from the gallows where they remained until nightfall, when the executioner finally took them down. If the victims were sentenced to be quartered, the executioner placed the bodies on a table at the foot of the gallows where he performed the grisly task. Otherwise he turned the corpses over to the brothers of the Confraternity of Charity who arranged for their transport to the church of San Ginés, the traditional burial place for executed persons in Madrid.[40]

In the last quarter of the eighteenth century the practice of capital punishment came under attack by the leading figures of the Enlightenment. Public opinion in Western Europe was turning against the death penalty. Cesare Beccaria and other enlightened penal reformers argued that punishment should be designed to deter and not to exact vengeance, and that it should fit the crime and not be excessively barbarous. For this reason they rejected the death penalty and the system of royal pardon.[41]

In Spain, the enlightened reformers were faithful to the teachings of Beccaria except on the question of the death penalty and royal clemency. Restriction, not abolition, was their objective. Manuel de Lardizábal, in his *Discurso de las penas* (1782), a work that constituted the basis for the Spanish penal reform movement, devoted a long section to a discussion of the death penalty in which he accepted its necessity for certain crimes, but argued against its indiscriminate use. As for royal clemency, Lardizábal believed that pardons should continue to exist, but should be limited to a reduction of the penalty so as to allow for the correction of the offender through useful and rehabilitative labor.[42]

Like the other Spanish reformers of the era, Lardiźabal upheld a penal system in which capital punishment played a minor role and penal servitude the major one. The Spanish concept of justice depended heavily on judicial discretion and gave careful consideration to personal emotions and human elements, often admitting as evidence factors that probably would have been ignored or stricken from the record in other European courts. With its emphasis on the personal role of the judge and its consideration of extenuating

39. See also VIZCAÍNO PÉREZ, *Código*, III, 346-347; AHN, Consejos, libro 1173, "Noticias para el gobierno de la Sala," ch. 33.

40. VIZCAÍNO PÉREZ, *Código*, III, 333-338, 323; AHN, Consejos, year 1797, folios 724-737; *Las Siete Partidas*, Partida VII, title XXXI, law 11.

41. Cesare BECCARIA, *On Crimes and Punishments* (Indianapolis, 1977), ch. XVI, and the Spanish edition, *De los delitos y de las penas con el comentario de Voltaire*, ed. Antonio Delval (Madrid, 1982). For a discussion of the increasing sensitivity to the death penalty see SPIERENBURG, *The Spectacle*, ch. 6.

42. Manuel de LARDIZÁBAL, *Discurso de las penas*, in José Antón ONECA, "Estudio preliminar: El derecho penal de la Ilustración," *Revista de la Escuela de Estudios Penitenciarios*, X (1966), 697-706.

circumstances, Spanish justice contrasts greatly with the rigid adherence to harsh sentencing and the mechanical nature of justice in other Western European countries. The Spanish system of justice at the end of the eighteenth century can best be described as a calculated combination of punishment, utilitarian policy and mercy, consistent with the objectives of absolute monarchy and the preservation of the hierarchical society of the Old Regime.