Corporeal Truth: Conscience, Fear and the Body in French Criminal Interrogations, 1750-1850

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This article studies the changing meanings given to the bodily behaviour of suspects during criminal interrogations in France between 1750 and 1850. Contrary to the suggestion that the body became less important for criminal procedures with the end of the old regime, I argue that the body's relevance increased in the nineteenth century – but its meanings altered. If the body had been a means to destroy the self through judicial torture, it became a means to access the self instead. Early modern legal scholars and magistrates already developed a crude practical understanding of the bodily behaviour of suspects during interrogations: a calm body signified innocence, an agitated body suggested guilt. In practice, however, eighteenth-century magistrates displayed little interest in suspects' bodies. In the early nineteenth century, as torture was abolished and legal thinking about the body became somewhat more sophisticated, bodily behaviour could, at least in some criminal trials, play a more decisive role.

Introduction: The End of the Body?

In June 1844, celebrity lawyer Gustave Chaix d'Estange made a rousing plea in the Paris assize court. His client, Edouard Donon-Cadot, had been falsely accused of parricide! Towards the end of a six hour speech – a “magnificent plea, full of oratory movements”, according to the *Gazette des Tribunaux* – Chaix came to the capstone of his defence.¹ “In my belief,” he orated,

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“in these sorts of cases, there is one definite proof, one decisive sign of innocence or guilt: it is the attitude of an accused at the very moment when the crime is committed, his attitude in the first moments that follow.” The body of a suspect immediately after the crime inevitably revealed their guilt or innocence.

The man who has just committed a crime, his first crime, the child who, at the age of eighteen, has had his father's throat cut before his eyes and heard his last cry, is not calm and quiet. See, the emotion is on his face; the sweat, a cold sweat floods him. Try and talk to him, his voice shakes, he can't answer. Look, his hand is shaking with uncontrollable movements, his legs quiver under his body and refuse to carry him.

And yet, his client had been calm and composed when investigators had first met him, shortly after the murder had taken place. There could be no clearer proof, Chaix proposed, that Donon-Cadot was innocent.

No, no, nature has never produced the sort of monsters man's imagination has sometimes dreamt of. No doubt she has put culpable tendencies and bad instincts in the hearts of some men. Early corruption overtakes them and leads them to crime; that I consent. But it did not make them calm, stoic from the beginning, cold and impassive amidst their first crime.²

After some final words by the prosecution and the defence, the jury deliberated on a verdict. A large amount of evidence and even a retracted confession notwithstanding, Donon-Cadot was found innocent. The case of Donon-Cadot shows that, in spite of some historians' claims to the

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¹ Cited in Gustave Chaix d'Est-Ange, *Discours et plaidoyers*, ed. Edmond Rousse and Charles Constant, 2nd ed. (Paris: Durand et Pedone-Lauriel, 1877), II, 619.

² Ibid., II, 612–13.

contrary, the suspect's body could play a decisive role in nineteenth-century criminal procedures.

The history of criminal justice cannot be told without the history of the body. If an older historiography of criminal justice primarily dealt with legal texts, recent studies in the field recognise that bodies – of suspects and victims, of judges and witnesses, of lawyers and audience members – had a huge impact on the decisions of the court and the experience of justice by its participants.³ Historians of criminal justice have stressed the importance of the body mainly in three ways. First, they have looked at the body as an object of punishment. In this respect, for instance, Michel Foucault has famously posited that around 1800, the target of criminal punishment shifted: the spectacular corporal punishments of before diminished and the new prison sentences only touched the body of the criminal in order to reach their soul.⁴ A second approach has been to study the bodies of suspects and victims before the criminal trial and as evidence at the trial. Scholars such as Michel Porret, Laura Gowing and Karine Lambert have analysed the bodies that were made visible in medical reports, interrogation transcripts and witness statements to study the histories of physical violence, forensic medicine, unwanted pregnancies and sexual practices.⁵ Finally, historians of criminal justice have studied how magistrates, police officers and experts interpreted the suspect's body as an indication of their

³ See e.g. Frédéric Chauvaud, *La chair des prétoires: histoire sensible de la cour d'assises* (Rennes: Presses Universitaires de Rennes, 2010), 12; Katie Barclay, *Men on Trial: Performing Emotion, Embodiment and Identity in Ireland, 1800–45* (Manchester: Manchester University Press, 2019), 5.

⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995), 16–17. See also the discussions of this view in Randall McGowen, “The Body and Punishment in Eighteenth-Century England,” *The Journal of Modern History* 59, no. 4 (1987): 652–79; Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012).

⁵ Michel Porret, *Sur la scène du crime: pratique pénale, enquête et expertises judiciaires à Genève (XVIIIe-XIXe siècle)* (Montréal: Presses de l'Université de Montréal, 2008); Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven: Yale University Press, 2003); Karine Lambert, *Itinéraires féminins de la déviance: Provence 1750-1850* (Aix-en-Provence: Université de Provence, 2012).

criminal predisposition or innocence, referring to the application of ideas in physiognomy, phrenology and criminal anthropology.⁶

For all these diverse approaches to the body in criminal justice, there has been fairly limited attention towards bodies during the criminal procedure, for instance during the interactions in criminal interrogations. In this respect, Yann Robert has recently claimed that “the importance of the body in eighteenth-century judicial thought and practice has been almost entirely overlooked.”⁷ In present-day police and legal practice, the body is a common means to assess whether a suspect or witness is telling the truth. If someone lies, the assumption is that their body will involuntarily reveal this in some way. While many people seem to be confident in their ability to interpret “body language” on their own, police officers can rely on a range of technological means – such as polygraphs and voice stress analysis – to interpret bodily signs of truth and falsehood.⁸ Yet we know fairly little about the reading of the body for the truth before the twentieth century. This article aims to explore how the bodily behaviour of a suspect when they appeared before their judges was used as a means to find the truth in France between 1750 and 1850, a period of tremendous legal changes which, I will show, also entailed changes in the uses of the body.

Studying practices of the body in court is not only illuminating for the history of crime and criminal justice, but also a means to understand wider ideas about and practices of the body. Since the “corporeal turn” of the 1980s and 1990s, historians of the body have sought to

⁶ Frédéric Chauvaud, *Les criminels du Poitou au XIXe siècle: les monstres, les désespérés et les voleurs* (La Crèche: Geste, 1999), 103–14; David G. Horn, *The Criminal Body: Lombroso and the Anatomy of Deviance* (London: Routledge, 2003); Barclay, *Men on Trial*, 106–13.

⁷ Yann Robert, *Dramatic Justice: Trial by Theater in the Age of the French Revolution* (Philadelphia: University of Pennsylvania Press, 2019), 211.

⁸ On the development of technological means to find the truth via the body, see Richard A. Leo, *Police Interrogation and American Justice* (Cambridge (Mass.): Harvard University Press, 2008), 82–105.

understand the changing meanings, practices and experiences of the body.⁹ While there has been much attention as to how truth might be found on the “stable” body – permanent bodily characteristics, as analysed for instance in physiognomy – this has not been the case for “body language”, the meanings of the mostly involuntary motions of the body. This article analyses some of these meanings. The criminal court, moreover, is an interesting site to do so precisely because bodies were performed and interpreted in interactions between people from diverse social backgrounds. Although the situation was specific and dominated by a male judicial elite, the changing practices of the body in criminal court can offer new insights into the ways bodily behaviour was interpreted in a powerful institution that affected people from all social backgrounds.

When I claim that there has been fairly limited attention for the role of the body in criminal procedures, there is one notable exception, an exception that has tempted historians to make larger claims about the body in criminal justice: judicial torture. Lisa Silverman, for instance, has carried out a fascinating analysis of pain, truth and the body in early modern Toulouse. She has shown that before the eighteenth century, magistrates saw judicial torture as a means to obtain the spontaneous truth of the body. By inflicting pain, the obstreperous will of the suspect could be crushed, and their body itself would speak the truth. The body in pain was given privilege over the mind as the most reliable site of truth in criminal procedures. In the course of the eighteenth century, she has argued, this view shifted. Inflicting pain on the body came to be seen as inhumane, and moreover, ineffective. Magistrates and legal scholars rejected the idea that truth resided in the body: henceforth, they only located truth in the mind. Truth

⁹ For an overview of research in this field, see e.g. Alain Corbin, Jean-Jacques Courtine, and Georges Vigarello, eds., *Histoire du corps*, 3 vols., Univers historique (Paris: Seuil, 2005); Sarah Toulalan and Kate Fisher, eds., *The Routledge History of Sex and the Body: 1500 to the Present* (London: Routledge, 2013); Willemijn Ruberg, *History of the Body, Theory and History* (London: Red Globe Press, 2020).

depended on the exercise of free will, rather than on its destruction.¹⁰ Similar arguments have been made in the German historiography of criminal justice. Antje Schumann, for instance, has recently suggested that “by the end of the eighteenth century, the shift from the body to the psyche of the suspect as the site of the interrogation is unmistakable.” With the abolition of torture, the argument goes, the role of the body in criminal procedures greatly diminished. Instead of playing to people’s bodies, interrogators played to their minds.¹¹

While there is something to be said for this evolution, it conceals the continuing importance of the body in criminal justice as seen, for instance, in the plea of Chaix d’Estange. In this article, I argue that the body did not lose its role in criminal procedures, at least not in France between 1750 and 1850. Rather, the approach of magistrates and legal scholars to the body changed. If the body had been a means to destroy the self through torture before, it primarily became a way to access the truth of the self after the revolutionary reforms. This approach to the body was not new, but rose in prominence with the abolition of torture. To substantiate this argument, I turn away from judicial torture in order to focus on interrogations without torture in the eighteenth and early nineteenth centuries. Using legal manuals, commentaries, published trial reports and a sample of interrogation transcripts, I show that the body was often examined with more care after the abolition of torture than before, nuancing the narrative of a straightforward shift from body to mind. When magistrates could no longer put the body through pain, they needed to study it more closely in order to reach the truth.

¹⁰ Lisa Silverman, *Tortured Subjects: Pain, Truth and the Body in Early Modern France* (Chicago: University of Chicago Press, 2001). Cf. Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton, 2007), chap. 2.

¹¹ Antje Schumann, *Verhör, Vernehmung, Befragung: Zu Geschichte und Dogmatik des Rechtsbegriffs der Vernehmung im Strafprozess und seiner Auflösung im 20. Jahrhundert* (Tübingen: Mohr Siebeck, 2016), 105.

1. The Invisible Body

For eighteenth-century legal scholars, the body was an important site of truth during criminal procedures, particularly during the interrogation of a suspect.¹² These scholars, often experienced magistrates themselves, provided advice for novice colleagues on how to conduct criminal trials.¹³ As such, Antoine Bruneau, writing in 1715, argued that “through interrogations we find the truth, which is why we must not omit any circumstances [...], reporting in the transcript the countenance of the accused, the colour of his face, red or pale, his words outside the interrogation, which can reveal the interior of his spirit & the state of his conscience.”¹⁴ The general countenance of the suspect, as well as the colour of their face in particular, should be regarded and reported as vital circumstances to interpret a suspect’s claims. Bruneau explicitly argued that reading the body was necessary to access the truth of the “inner self”.

Other, later legal scholars largely agreed, even if not all made the connection between the body and inner truth explicit. The renowned legal scholar Pierre-François Muyart de Vouglans stated that during interrogations, magistrates must “observe [the suspect’s] countenance, their gestures, their variations, & other circumstances that may serve to unveil the situation of their spirit.”¹⁵ François Serpillon agreed in 1767, “the most skilful [judges] always have their eyes on the accused, & they carefully observe all his movements. If he cries, if he sighs, if he trembles, & turns pale: they ask him why.”¹⁶ And Daniel Jousse joined the chorus in 1771, suggesting that an interrogator “should always keep his eyes fixed on the suspect,” so

¹² On eighteenth-century French criminal procedure in general, see Richard Mowery Andrews, *Law, Magistracy and Crime in Old Regime Paris, 1735-1789. Volume 1: The System of Criminal Justice* (Cambridge: Cambridge University Press, 1994).

¹³ Ribard, Dinah. “L’écriture de la doctrine, XVIIe-XVIIIe siècles,” in *L’écriture des juristes: XVIe-XVIIIe siècle*, ed. Laurence Giavarini (Paris: Classiques Garnier, 2010), 111–27.

¹⁴ Antoine Bruneau, *Observations et maximes sur les matières criminelles* (Paris: G. Cavelier fils, 1715), 132.

¹⁵ Pierre-François Muyart de Vouglans, *Institutes au droit criminel, ou Principes généraux en ces matières, suivant le droit civil, canonique, et la jurisprudence du royaume* (Paris: Le Breton, 1757), 267.

¹⁶ François Serpillon, *Code criminel ou commentaire sur l’ordonnance de 1670* (Lyon: Perisse, 1767), 649.

as to spot any signs that could betray their guilt or innocence. He urged magistrates to write down any relevant corporeal behaviour, such as trembling, crying, and sighing, and to ask suspects why they were behaving in this way.¹⁷

The body, all these scholars suggested, was crucial to observe during the interrogation because it could reveal the state of a suspect's inner conscience. Scholars did not suggest that the body could directly reveal that a suspect was lying, as with present-day techniques of lie detection, but rather that it could reveal their guilty conscience. Legal scholars diverged from the science of physiognomy in their approach to the body. Since Antiquity, physiognomic treatises had also offered access to the truth of the individual through their body. But whereas physiognomists tended to analyse stable bodily characteristics as an indication of someone's character, legal scholars focused on temporary bodily behaviour as an indication of a suspect's conscience.¹⁸ Moreover, eighteenth-century physiognomists tended to focus on the face, whereas the lists of relevant bodily characteristics in legal manuals included not only the face (reddening or turning pale, crying, looking away), but also the arms (gesturing) and the body as a whole (trembling, sighing). It should perhaps not surprise, then, that physiognomy was never explicitly mentioned in the legal manuals.

Instead, legal scholars elaborated their own, often rather crude interpretations of the body. The body, they argued, could provide clues within the quasi-mathematical system of legal proofs that was used to decide on guilt or innocence. Jean-Pierre Sartoris indicated that signs such as "surprise, confusion, emotion, trembling & other marks of this kind, which are the ordinary & natural consequences of the crime, form clues; they point to a burdened and embarrassed conscience." In contrast, "the assurance, the calm and serene air of an accused, his

¹⁷ Daniel Jousse, *Traité de la justice criminelle de France* (Paris: Debure, 1771), II, 278.

¹⁸ Colin Jones, *The Smile Revolution in Eighteenth Century Paris* (Oxford: Oxford University Press, 2014), 152–53.

constancy & the firmness in his answers, form an indication of his innocence.”¹⁹ Jousse similarly agreed that “trouble, emotion, paleness, trembling, marks of remorse that escape involuntarily, & other such signs” were clues of someone’s guilt, as they were the “ordinary & natural consequences of the crime”.²⁰ A calm and controlled body was a sign of innocence, while uncontrolled “emotion” and bodily movements were indicators of a troubled conscience and hence the probable guilt of the suspect.²¹ Such ideas were in line with contemporary manner books, which often promoted a calm appearance and stressed the need to “control” bodily behaviour.²² In any case, however, clues of the body alone were never sufficient for a conviction, unless they were accompanied by other, serious evidence, such as a confession or reliable eyewitness statements.

Despite the importance legal scholars attached to the body, their exhortations to write down bodily behaviour and their suggestions for questions, the body does not seem to have played a very important role in pre-revolutionary legal practice. For starters, the spatial and procedural organization of French criminal justice did not give judges much opportunity to observe the body of the suspect. Most of the investigations were conducted by a delegate, examining judge, who carried out witness hearings and suspect interrogations. A clerk wrote down these procedures, and the judges of the competent court would examine the case on the basis of this written evidence. The examining judge was one of the judges, but only one of them.

¹⁹ Jean-Pierre Sartoris, *Elémens de la procédure criminelle, suivant les ordonnances de France, les constitutions de Savoye, et les édits de Genève* (Amsterdam: G. Grasset, 1773), II, 445.

²⁰ Jousse, *Traité de la justice*, I, 796.

²¹ We should not understand “emotion” in the modern sense: in this context, the term refers to a more limited set of mostly vehement, agitated feelings: Georges Vigarello, “L’émergence du mot ‘émotion,’” in *Histoire des émotions. 1: De l’Antiquité aux Lumières*, ed. Georges Vigarello (Paris: Seuil, 2016), 223–24; Thomas Dixon, “‘Emotion’: The History of a Keyword in Crisis,” *Emotion Review* 4, no. 4 (2012): 338–44, <https://doi.org/10.1177/1754073912445814>.

²² Anna Bryson, *From Courtesy to Civility: Changing Codes of Conduct in Early Modern England*, Oxford Studies in Social History (Oxford: Clarendon, 1998), 72.

Only just before they reached a verdict would the whole court hear the suspect one last time.²³ This interrogation was often seen as a formality.²⁴ The setup of the space made it often difficult for judges to properly see or even hear the suspect. Suspects either sat on the *sellette*, a small stool, or stood behind the bar at some distance from the judges.²⁵ Only if they convicted a suspect to torture would judges witness the suspect's body in a greater detail, though in very specific circumstances.

The main way for judges to evaluate the bodily behaviour of the suspect would therefore be through the reports of the interrogations conducted by the examining judge. These were, as we have seen, written down by a clerk to serve as evidence for consideration by the judges. Hence, if the body of a suspect therefore displayed signs of guilt or innocence, this should have been written down, as the legal manuals recommended. However, remarks on the body of the suspect were nearly non-existent in interrogation records. Despite Jousse's and others' exhortations, in none of the interrogation transcripts in a sample of interrogations of 40 suspects in two Parisian courts I reviewed was there any reference to the bodily behaviour of the suspect.²⁶ There were no remarks about trembling, crying, sighing or emotion on the part of the suspect, nor were there any questions about such bodily movements. Studies of interrogation

²³ Nicole Dyonet, "Les paroles et les écritures. Fonctionnement et bénéfices de la procédure inquisitoire en France au XVIIIème siècle," *Déviance et société* 11, no. 3 (1987): 225–49, <https://doi.org/10.3406/ds.1987.1512>.

²⁴ See, for instance, Dupaty's complaints on this matter: Charles-Marguerite-Jean-Baptiste Mercier Dupaty, *Mémoire justificatif pour trois hommes condamnés à la roue* (Paris: Philippe-Denys Pierres, 1786), 97–98.

²⁵ Éric Wenzel, "La sellette... sur la sellette, ou les vicissitudes d'un séculaire instrument de la justice criminelle au siècle des Lumières," in *Gens de robe et gibier de potence en France du moyen âge à nos jours. Actes du colloque d'Aix-en-Provence (14-16 octobre 2004)* (Marseille: Images en Manoeuvres, 2007), 249–50.

²⁶ This sample consists of cases from the Châtelet and the Parlement courts between 1750 and 1790, spread evenly over the decades (five suspects from each court per decade). Archives Nationales Paris, *Parlement de Paris : Parlement Criminel – Minutes (X^{2b})*, 1307-1318; Archives Nationales Paris, *Châtelet (Y)*, 9534-10501.

practices in other French regions make no mention of such references either.²⁷ The body was never mentioned as an indicator of the suspect's state of conscience.

Even though these were normally a secret affairs, reliant on oral testimonies that left no written trace, reports of the definitive procedures of grand criminal trials were sometimes published. They were aimed at a general audience, to show the proper conduct of justice in high-profile cases. These reports give us some insight in the proceedings of the final trial, even if they might have been unusual by their very nature. Yet the reports do not greatly differ from the pre-trial interrogations as far as they concern the attitude to the bodies of the defendants: in most cases bodily behaviour was not commented upon, except sometimes in the form of a general description of the defendant's body. Occasionally, mention was made of a suspect's unexpected behaviour in court. It was noted in 1757, for instance, that during his trial, attempted regicide François Damiens "was not troubled at all by the sight of this majestic Assembly; he looked firmly at everyone."²⁸ Damiens portrayed the behaviour that legal scholars claimed was symptomatic of innocence, while he was clearly, and by his own confession, guilty. Such unusual behaviour merited mentioning. But that was about it. The body was not generally deemed of great importance in the trial reports.²⁹

²⁷ Maryvonne Lorcy, "Stratégie et tactique dans la procédure criminelle du XVIIIe siècle d'après les archives judiciaires bretonnes" (unpublished PhD dissertation, Université Lille 3, 1987); Christiane Plessix-Buisset, *Le criminel devant ses juges en Bretagne aux 16e et 17e siècles* (Paris: Maloine, 1988); Stéphanie Blot-Maccagnan, *Procédure criminelle et défense de l'accusé à la fin de l'Ancien Régime: étude de la pratique angevine* (Rennes: Presses Universitaires de Rennes, 2010).

²⁸ *Pièces originales et procédures du procès fait à Robert-François Damiens, tant en la Prévôté de l'Hôtel qu'en la Cour de Parlement* (Paris: Simon, 1757), xxxiv–xxxv.

²⁹ The same is not to be said of the *mémoires* lawyers produced to defend some suspects in so-called *causes célèbres*, which more frequently included remarks about bodies and emotions, particularly of sentimentalist outpourings, though not in the setting of interrogations: Sarah Maza, *Private Lives and Public Affairs: The Causes Célèbres of Prerevolutionary France* (Berkeley: University of California Press, 1993).

Despite the stress legal scholars put on the importance of observing the body of the suspect during interrogations, there are few indications that magistrates took this advice to heart. In legal records, the body was almost invisible, and therefore inaccessible to many judges. While the body may have influenced decisions of examining magistrates without leaving a written trace, if nothing was written down, the majority of the court was unaware of it when they examined the evidence. They had few opportunities to actually study the suspect's body.

2. The Controversial Body

Despite the limited attention that seems to have been given to the body during interrogations, some eighteenth-century criminal justice reformers, many of them lawyers and magistrates influenced by Enlightenment thought, argued that any such attention was dangerous. Joseph Servan, for instance, argued in 1767 that judges often misinterpreted suspects' bodies. When suspects appeared before their judges, he claimed, they were often afraid, afraid because the men before them would soon decide their fate. The judges, seeing suspects quiver and hesitate, hearing their weak voices, perhaps "ascribe this disorder to the trouble of the crime, while it is produced only by the terror of seeing them."³⁰ In a subsequent treatise published in 1782, Servan continued in this vein: judges often confound suspects during the interrogations, they entrap them. Once the suspect feels lost, "he turns pale, he trembles, he stutters.... What happens in the end? The judge believes to have discovered a culprit, but he has created one."³¹ Servan put the standard assumptions of legal scholars into question: the trembling body, the pale face, hesitations, stuttering and other failings of bodily control were not necessarily signs of a guilty conscience, but of fear and awe in the face of a majestic and powerful court.

³⁰ Jacques Pierre Brissot de Warville, ed., *Bibliothèque philosophique, du législateur, du politique, du jurisconsulte* (Berlin: Desauges, 1782), II, 169–70.

³¹ *Ibid.*, VII, 165–66.

While Servan would seem to favour less attention to the body of the suspect, other reformers argued that there should be *more* attention for the body. In a *mémoire* regarding a wrongful conviction, Jean-Baptiste Dupaty lambasted judges who found the final interrogation of the suspect “a frivolous formality” and “lost time”. At last, the accused appeared in person, rather than “mute, falsified, dead in lying or unfaithful papers”; at last, they appeared “pure, eloquent, vivid in their faces, in their looks, in their countenance, in their language, in those accents of nature which speak the truth better than any words.” When judges could finally “look the suspect in the face, & hear them close at hand”, they should see this as an invaluable opportunity, not as lost time.³² Similarly, Antoine Servin argued that interrogations should take place in public, the accused facing the audience, so that “everyone could read his soul.” Indeed, it is “by his air & his countenance that you will surely be able to recognise whether he is guilty or not.”³³ While Servan, Servin, Dupaty and others agreed on the need for criminal justice reforms, and in many respects also agreed on how these reforms should develop – they all argued against torture, for instance – they held different opinions on the ways in which the body should contribute to finding the truth.

During the French Revolution, legislators sought to implement many of the procedural changes criminal justice reformers had long proposed. The rules of evidence that magistrates had used during the old regime were abolished. Henceforth, in many cases jurors instead of judges would decide whether suspects were guilty or not; and they would do so by relying on their “conviction intime” and their common sense. Every kind of evidence could be decisive or disregarded for this conviction. During the discussions in the legislative assembly early in 1791, debate arose over the best way to conduct a trial: entirely orally, or partially written. In their arguments for and against both systems, the representatives regularly touched upon the body,

³² Dupaty, *Mémoire justificatif*, 97–98.

³³ Antoine Nicolas Servin, *De la législation criminelle* (Basel: Schweighauser, 1782), 387–88.

as Yann Robert has recently shown.³⁴ Proponents of a fully oral procedure argued that the body gave jurors important clues to assess whether a suspect or witness was speaking the truth. “The pre-eminence of oral evidence is beyond doubt,” Jean-Baptiste-Charles Chabroud claimed. “A movement, a gesture, may carry distrust and communicate to the juror a healthy circumscription.”³⁵ Precisely because the body was so hard to confine to paper, Jérôme Pétion de Villeneuve agreed that an oral procedure had advantages over a written or mixed procedure. “Posture, the gaze, gestures, all these living expressions of the soul, cannot be written down, but must nevertheless not be lost.”³⁶ For both representatives, the bodily behaviour of the suspect or witness provided vital clues to the truth. They appreciated that the exhortations of legal scholars to write down the body had been in vain and that only direct observation provided proper access to the truth of the body. Even so, they did not offer a clear view on what sort of bodily behaviour indicated innocence, and what behaviour indicated guilt.

This vagueness was cause for another representative, Joseph Prugnon, to question the great importance attached to watching the bodies of suspects and witnesses. While he agreed that the “conviction intime” should form the basis of a verdict, he distinguished between a “conviction sentie”, a felt conviction, and a “conviction raisonné”, a reasoned conviction. Several representatives, inspired by the ideas of sensibility and sentimentalism, hailed the superiority of the felt conviction: by seeing suspects and witnesses and feeling with them, they would be able to form a just conviction. But Prugnon doubted whether the body should be given so much truth value. Jurors would “yield to the first impression; but does this impression never deceive? Is the expression on the face always that of the soul?”³⁷ Two weeks later, Prugnon generalised

³⁴ Robert, *Dramatic Justice*, 207–11.

³⁵ J. Mavidal and E. Laurent, eds., *Archives Parlementaires de 1787 à 1860: recueil complet des débats législatifs & politiques des chambres françaises imprimé par ordre du Sénat et de la Chambre des députés* (Paris: Dupont, 1862), XXII, 297 (accessed via <https://frda.stanford.edu/>).

³⁶ *Ibid.*, XXII, 293.

³⁷ *Ibid.*, XXII, 4.

that some representatives seemed to believe that “the truth would come out of witnesses’ and the suspect’s every pore” and that through the “magic operation” of watching them “we will see no more innocents condemned nor criminals absolved.” In the place of such naïve beliefs, Prugnon argued that the felt conviction, obtained in the oral hearing of suspects and witnesses, should be complemented with the jurors’ reasoned conviction, which could best be obtained through the study of a written case record.³⁸

In the short run, the proponents of an oral trial won the plea. Their sentimentalist suppositions were still hugely popular at the time. But as the waning of sentimentalism set in during the 1790s, a mixed form of criminal procedure returned, with an extensive written pretrial procedure followed by a final oral trial.³⁹ This did not entail a return to the situation of the ancien regime, in which the body remained mostly invisible to the final judges. The written pretrial procedure was mainly used to decide on whether or not the case would be brought before the court; to inform the prosecution; and to guide the presiding judge. Jurors were not usually given access to the written records, but had to form their verdict on the basis of the oral declarations in the courtroom (though judges could, if they found this necessary, have relevant documents read aloud). Suspects were now extensively questioned in session, in the presence of judges, jury members and an audience who could all observe the suspect’s body.⁴⁰ This mixed form seemed to settle the debates for the first half of the nineteenth century: henceforth,

³⁸ Ibid., XXII, 306.

³⁹ On sentimentalism and its waning in revolutionary France, see William M. Reddy, “Sentimentalism and Its Erasure: The Role of Emotions in the Era of the French Revolution,” *The Journal of Modern History* 72 (2000): 109–52, <https://doi.org/10.1086/315931>; David Andress, “Living the Revolutionary Melodrama: Robespierre’s Sensibility and the Construction of Political Commitment in the French Revolution,” *Representations* 114 (2011): 103–28, <https://doi.org/10.1525/rep.2011.114.1.103>.

⁴⁰ On the new procedures, see Adhémar Esmein, *Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire depuis le XIII^e siècle jusqu’à nos jours* (Paris: Larose et Forcel, 1882), 417–558; André Laingui and Arlette Lebigre, *Histoire du droit pénal. 2: La procédure criminelle* (Paris: Cujas, 1979), 133–44.

most legal scholars and commentators would agree that the body gave judges and jurors important clues to interpret suspects' claims, but that it was not always straightforward to interpret.

3. The Frightened Body

In most manuals for magistrates or commentaries on criminal procedure, the advice regarding the body of the suspect during interrogations echoed the crude observations made before. Just like his ancien régime colleagues, legal scholar Jean-Baptiste Lombart claimed in 1824 that that a calm body signified innocence, while a troubled body indicated guilt. Hence, he suggested that judges and juries “have to look for the truth even in the suspect’s physiognomy, which the crime troubles, or which may present the calmness of innocence.”⁴¹ Twelve years later, Delamorte-Felines, a judge in Die, similarly followed ancien régime advice in suggesting that examining judges should observe the suspect’s attitude during interrogations, make note of any hesitation, sighing, paleness, trembling or weeping, and ask them for an explanation for such behaviour.⁴² In his famous 1844 manual for examining judges, examining magistrate François Duverger also wrote that an interrogator should carefully observe, inquire about and make note of the body of the suspect. His list of relevant bodily behaviour was the most exhaustive one yet, and included “troubles and movements of the soul”, “the alteration of his features or his voice”, “embarrassment or hesitation to answer”, “if the suspect trembles, turns pale, sighs or sheds tears”, “stuttering” and “if he falters, hesitates, meditates on his answers”. The interrogation transcript should mention all these instances in which the suspect “has

⁴¹ J.-B. Lombart, *Cour d’assises, ou Manuel de justice criminelle à l’usage des avocats, des avoués, des étudiants en droit et des jurés* (Bayonne: Lamoignon, 1824), 122.

⁴² M. Delamorte-Felines, *Manuel du juge d’instruction. Ouvrage également utile à tous les officiers de police judiciaire et notamment à MM. les juges de paix, maires et commissaires de police* (Valence: Marc Aurel, 1836), 280–81.

experienced sensations that he could not master” and try to explain them. But like his colleagues, Duverger did not offer guidance on what conclusions to draw from these behaviours.⁴³

In none of these manuals, mention was made of popular physiognomic ideas, nor of the new phrenological concepts that were being discussed.⁴⁴ Yet at least some legal scholars were aware of such knowledge about the body. In his well-attended and later published 1838 course on criminal justice, Joseph Ortolan argued that phrenology was a brilliant science of enormous potential for the legal scientist. But the science was still in its infancy, and hence should not be applied to legislation or jurisprudence.⁴⁵ While some magistrates may have ignored such advice and held different opinions, I have not found any explicit defences of the use of physiognomy or phrenology among legal scholars in early-nineteenth-century France.

But even without explicit recourse to physiognomy or phrenology, magistrates could get more detailed guidance on how to interpret the body in a criminal interrogation. Early in the nineteenth century, the English utilitarian philosopher Jeremy Bentham worked on a treatise on judicial evidence. The Swiss French editor of Bentham’s work, Etienne Dumont, assembled an adapted French version from Bentham’s manuscripts, which was published in 1823.⁴⁶ This treatise was well-read in France, and cited in many respected legal manuals, including those of Duverger, Hélie, Mangin and Berriat-Saint-Prix. It offered French magistrates a sophisticated view on the role of the body in criminal interrogations. This is not without some irony: in Foucault’s narrative of the shift in the focus of punishments from the body to the soul,

⁴³ François Duverger, *Manuel des juges d’instruction* (Niort: Robin, 1844), 429–30.

⁴⁴ Jan Goldstein, *The Post-Revolutionary Self: Politics and Psyche in France, 1750-1850* (Cambridge (Mass.): Harvard University Press, 2005), 276–81; Valérie Stiénon and Érika Wicky, “Un siècle de physiognomonie,” *Études françaises* 49, no. 3 (2013): 5–14, <https://doi.org/10.7202/1021199ar>.

⁴⁵ Joseph-Louis-Elzéar Ortolan, *Cours de législation pénale comparée: introduction philosophique. Méthode, et sommaire du cours de 1838* (Paris: Joubert, 1839), 131–37.

⁴⁶ Jeremy Bentham, *Traité des preuves judiciaires*, ed. Étienne Dumont (Paris: Bossange, 1823).

Bentham's concept of the "panopticon" played an important role. Yet as Bentham's work on criminal evidence shows, even if the goal was to reach the soul, this could only be realised through the body.

Bentham strongly recommended for judges to examine witnesses and suspects orally. Only then would the judge be able to know "by his own observations those sorts of truth, so salient and so natural, that are based in the physiognomy, in the voice, firmness, promptness, in emotions of fear."⁴⁷ "Tranquillity", Bentham claimed "is the part of innocence, fear is therefore the indicator of crime." But unlike many of his colleagues, Bentham followed this statement up with an in-depth analysis. Fear could manifest itself in the active behaviour of the suspect, for instance when he seeks to hide himself; or in his passive behaviour, when fear "acts against his own will, producing effects that announce the sentiments by which he is agitated." The correlation between symptoms of fear and guilt was, Bentham argued, a probability founded in experience and "the nature of the human heart". But it was only a probability. To assess whether a suspect's involuntary embodiment of fear was indeed the result of their guilt, magistrates or jurors had to consider a whole range of other possibilities.

First, the magistrate had to examine the suspect's body for symptoms of fear, including paleness, redness, trembling, fainting, "involuntary evacuations", hesitation, shaking, weeping, sighing, agitation of the feet, exclamations, convulsions of the limbs or the face or a muffled voice. But, Bentham warned after this long list, many of these symptoms could also be the result of other "emotions", such as sadness and anger; or they could be the result of some sort of illness or nervous agitation. Even if they were the result of fear, this fear was not necessarily the result of a burdened conscience: it could be the result of the knowledge that a friend had committed the crime, or the possibility of an unjust punishment – as Servan had suggested several decades earlier. Even if the fear was the result of a burdened conscience, this did not

⁴⁷ Ibid., I, 206.

necessarily mean that the suspect had committed the crime at hand, as they could misremember having committed the crime, or they could have committed another crime.⁴⁸ Magistrates and jurors had to take into account all these possibilities before they could properly interpret the meaning of a troubled body – and in many cases, they would not be able to conclusively link bodily behaviour to guilt. Interpreting the body was an important element in Bentham's evaluation of the evidence against a suspect, but certainly not a straightforward one. The body required careful attention and analysis.

The post-revolutionary legal scholars in many respects continued in the same vein as their pre-revolutionary colleagues. Observing the body, they advised, was a crucial means to access the truth. Manuals included lists with an increasing number of corporeal behaviours that suggested that a suspect was guilty. These behaviours were involuntary slippages that provided insight into the suspect's emotions, their conscience and their soul, where the truth was located. In contrast with the earlier period, the language of conscience had become less prominent and the language of fear, emotion and soul more prominent. There were more sophisticated approaches available than before. The main difference, however, lay not so much in the changing discourses of legal scholars and commentators, as in the everyday practices of criminal justice.

4. The Innocent Body

In the early nineteenth century, an increased attention towards the body became visible in published trial reports. These reports were a new genre, made possible because reporters could attend public trials and make note of what was said and done. They built on older genres, such as the reports of famous cases, popular newssheets and news ballads that usually included information from the verdict, but could include more minute observations and (partial)

⁴⁸ Ibid., I, 359–66.

transcripts of interrogations. They were aimed at diverse audiences: short, single sheet reports were often produced, distributed and consumed by lower-class people, whereas longer reports and newspaper articles aimed at a more well-to-do audience of both legal professionals and citizens.⁴⁹ These reports regularly contained not only a preliminary assessment of the suspects' bodies when they appeared in court, seemingly modelled after the identification methods that had been adopted by French administrations after the Revolution, but also occasionally commented on corporeal behaviour during their interrogations and confrontations with witnesses. Through such comments, reporters could alter the meaning of what was being said. Whether a defendant's bodily behaviour was described or not, and in what ways, often depended on the reporter's view on the case.⁵⁰

For instance, the report of the trial of Etienne-Prosper Bancal for murder in 1835 regularly noted that "the voice of Bancal is mastered by his emotion" and that he fell down multiple times during his interrogation, unable to control his emotions.⁵¹ In another example, in 1842, several published reports commented on the suspect's body during the trial of François Montely before the assize court in Orléans. At one point, the whole court and the jurors transported to the place where Montely had allegedly murdered his victim. One report noted that when Montely entered the room "his eyes are fixed on the floor. The paleness of his face is dreadful." He claimed that the victim had committed suicide. When experts testified that this was impossible, "Montely is troubled: abundant tears, the only ones that since the beginning of the debates have come to moisten his eyes, begin to flow in the midst of his painful moans."

⁴⁹ Thomas Cragin, *Murder in Parisian Streets: Manufacturing Crime and Justice in the Popular Press, 1830-1900* (Lewisburg: Bucknell University Press, 2006); Amélie Chabrier, *Les genres du prétoire: La médiatisation des procès au XIXe siècle* (Paris: Mare & Martin, 2019), 36–39.

⁵⁰ Chabrier, *Les genres du prétoire*, 85–92.

⁵¹ *Affaire Bancal. Meurtre d'une femme par son amant, du consentement de la victime* (Paris: C. Maurier, 1835).

Later, back in the court, it was reported that Montely denied all allegations, “but with such a weak voice, that Mr. President was obliged to summon him several time to speak up.”⁵²

In most cases, the reports did not explicitly interpret the meaning of the bodies of the suspects. They recorded many of the signs that legal scholars saw as symptoms of guilt, but they did not make explicit that these were indeed signs of guilt. As in the legal treatises, references to physiognomy were mostly absent.⁵³ Some observers, echoing earlier concerns, explicitly noted that the body was difficult to interpret. A report of a case of poisoning in 1803, for instance, mentioned that “the suspect appeared with all the firmness of an innocent person, firm in his conscience, or of a guilty person who has decided to deny everything in order to escape the scaffold that awaits him.”⁵⁴ Although almost all legal scholars argued that firmness was a sign of innocence, generally without much qualification, this report found that the same bodily behaviour could signify both innocence and guilt.

While the suspects’ bodies became quite visible in the public interrogations reported in the press, this was less the case in the (secret) transcripts of pre-trial interrogations by police officers or examining judges. The body remained less visible, though it was not as absent as in the ancien régime transcripts. Of a sample of interrogation records of 30 suspects held between 1790 and 1850 before the Douai assize court, only a few referred to the bodily behaviour of the suspect during the interrogation.⁵⁵ In 1832, for instance, Angelique Herbaux was interrogated on suspicion of poisoning and theft. In the interrogation transcripts, hesitations in her replies

⁵² *Arret de la Cour d’Assises du Loiret (Orléans), qui condamne à la peine de mort le nommé Montely, pour crime d’Assassinat suivi de Vol* (Paris: Chassaignon, 1842); *Cour d’Assises d’Orléans, affaire Montely* (Paris: Dupont, 1842).

⁵³ Cf. Cragin, *Murder in Parisian Streets*, 151.

⁵⁴ *Détail exact de la procédure criminelle intentée à la requête du ministère public, contre Henri-Augustin Trumot, marchand epicier [...] prévenu d’avoir empoisonné sa fille aînée avec de l’arsenic, pour lui ravir sa fortune ; et Marie Reine-Françoise Chantal Lavandiere, sa concubine...*, 1803.

⁵⁵ Lille, Archives Départementales du Nord (ADN), *Cour d’assises du Nord à Douai (2U1)*, 55-670. Sampling as for the old regime (see note 26). Records of the Paris courts after 1792 have been destroyed.

were made visible with three dots (“...”).⁵⁶ The interrogation transcript was more explicit in 1847, when Jean Baptiste Vanderschuren was interrogated on suspicion of homicide while smuggling. After being confronted with a witness, the transcript noted that the suspect “testified, by his attitude, of a great embarrassment, his face having changed in colour.” In a subsequent interrogation, before a different magistrate, the transcript recorded that after his initial answer, “the accused, hesitating,” added a correction.⁵⁷

These and other interrogation transcripts recorded bodily behaviour in a limited way, making visible certain emotions and hesitations, but refraining from recording gestures, tears, sighs, voice inflections, and many of the other behaviours that Bentham and others argued were extremely useful when assessing a suspect’s claims.⁵⁸ As before, such bodily behaviour may have influenced examining judges without leaving a trace. Unlike before, however, judges and jurors now had extensive opportunities to examine the suspects’ bodies themselves during the trial. If we can take published reports as a guide, they did indeed pay attention to them.

The body during the interrogation was perhaps more visible than before, especially in the published trial records, less so in pretrial transcripts, but mostly seemed to remain somewhat marginal to the proceedings. It may have influenced judges, jurors and the general public, but its influence often remained implicit. An exception that makes explicit the far-reaching importance ascribed to the body, at least in certain circumstances, was the case of Pierre Rousselet and Edouard Donon-Cadot in Paris in 1844, which I already alluded to in the introduction. The case is extraordinary in several ways, not in the least because it attracted massive public attention and the verdict sparked controversy, but also because (as a result) the preliminary proceedings were published. These proceedings seem to have been meticulously

⁵⁶ ADN, 2U1, 550, Interrogation of Angelique Herbaux, 28 November 1832.

⁵⁷ ADN, 2U1, 478, Interrogations of Jean Baptiste Vanderschuren, 23 April and 26 August 1847.

⁵⁸ I have observed the same in a sample of 62 court cases before the Brussels assize court, which followed French procedures, between 1795 and 1830: Brussels General State Archives 2, *Assize Court of Brabant*, 20-2326.

transcribed from the trial records: while the editor inserted comments on the course of the investigation, the reports and transcripts themselves do not seem to have been adapted to their new audience that no longer consisted of magistrates and lawyers, but of an interested public.

On the 15th of January 1844, magistrates were called to the house of André Donon-Cadot, a banker in Pontoise, a town 30 kilometres North of Paris. They found Donon-Cadot's corpse in his study, bathed in blood. The available cash and money orders had been stolen. A bloody footprint was the only trace of the perpetrator. This theft and the gruesome murder of a respectable citizen commanded the utmost attention of the judicial police. Family, personnel and clients were interrogated. One of the banker's sons, Edouard, who had been the only one at home at the time of the murder, drew the investigators' suspicion. A month later, however, Pierre Rousselet, 52 years old, was found in possession of the money orders and arrested. He soon confessed his participation in the murder. But he said to have had an accomplice: Edouard Donon-Cadot, the victim's eighteen-year-old son.

Rousselet's body was already made visible in these early police interrogations. When Rousselet related the events leading up to the murder, he did so, the report noted, "in an assured manner. Sometimes Rousselet was tender, and shed tears when he heard his thoughts expressed."⁵⁹ Donon-Cadot was subsequently arrested and interrogated several times. As the interrogations became increasingly confrontational, reports began to comment on Donon-Cadot's bodily behaviour. At one point, for instance, the transcript noted that "here, the accused has shed abundant tears." Or, a few questions later, that "at this moment, the accused cried out, weeping abundantly, and covering his face with his hands: 'Oh! My God! I'm not guilty, I urge and desire that the truth be known. It is certain that I am not guilty.'"⁶⁰

⁵⁹ Eugène Roch, *Études sur les causes des erreurs judiciaires. Affaire Donou-Cadot, ou l'Instruction d'un grand procès criminel au XIXe siècle* (Paris: Bureau de L'Observateur des Tribunaux, 1845), 160.

⁶⁰ Ibid., 275–77.

The visibility of the body was even greater in the report of the confrontation between both suspects. It was a vehement confrontation, in which Rousselet directly accused Donon-Cadot, infuriating the latter. Immediately after Rousselet had claimed that Donon-Cadot had engaged him to commit the crime, the report noted that “Edouard Donon has stood up in fury and has cried out with violence: ‘How! Wretch! You accuse me...! I am not guilty...’ He has thrown himself on his knees, crying out: ‘My God! My God! Accuse me of the death of my father!’” The two guards present during this confrontation, the report noted, required much effort to contain Donon-Cadot, who alternately cried and got up to threaten Rousselet. As the confrontation went on, the report continued to comment on Donon-Cadot’s behaviour. As in the previous instances, what, exactly, this bodily behaviour meant was not made explicit. But the contrast with Rousselet’s body, which remained invisible in this record, is striking. With its silence, the transcript seemed to imply that Rousselet’s body was calm and reasonable. Rousselet, who had confessed and cooperated with justice, seemed to be in control of his body to the extent that his statements appeared as disembodied, as pure text. Donon-Cadot, who denied the allegations and in this way obstructed the course of justice, had lost control of his body, which was made visible in order to contextualise his claims.⁶¹

The case came to court in June 1844. It seemed as if all of Paris wanted to attend – at six in the morning, people started queuing for a place in the room; among the attendees was the already famous novelist Honoré de Balzac. In press reports, both suspects were described – Rousselet had “a remarkable air of firmness and resolution”, Donon-Cadot looked like a child, “frail and delicate”. The papers noted that the latter momentarily blushed when he stood in the centre of the attention while entering the courtroom.⁶² After the reading of the accusations,

⁶¹ Ibid., 288–306.

⁶² *Procès des accusés Rousselet et Edouard Donon-Cadot. Assassinat de Donon-Cadot, banquier à Pontoise* (Paris: Pagnerre, 1844), 34–35.

Rousselet and Donon-Cadot were alternately interrogated. Most questions and answers, both of Rousselet and of Donon-Cadot, were reported without reference to their bodily behaviour. During the public trial, for which they had been prepared by their lawyers, both suspects seemed to be in control of their bodies once again.

After several days of interrogations and witness statements, the suspects' lawyers held their pleas. Rousselet's lawyer stressed that Donon-Cadot had been the instigator of the crime and called for mitigating circumstances. And then Donon-Cadot's lawyer, Chaix d'Est-Ange, held the plea I quoted in the introduction. In line with legal scholars' long-standing tradition of advice regarding the body of the suspect, Chaix argued that calmness, here particularly right after the crime, indicated an unburdened conscience and therefore innocence. Guilty suspects *always* embodied remorse or at least fear of getting caught (Chaix explicitly made this point, confirming Bentham's claims), by trembling, sweating, or a shaking voice. It was somewhat curious course to take, as magistrates had made Donon-Cadot's restless body so visible in the transcripts of his interrogations and confrontations and as Rousselet appeared to be the calmer of the two. But Chaix parenthesised this in order to focus on Donon-Cadot's supposed calmness immediately after the murder. Edouard Donon-Cadot had stayed at home and appeared quite calm when others came into the house and when the police arrived. This calmness could only signify his innocence. As we have seen, Chaix' plea was successful: while Rousselet was convicted, the jurors declared Donon-Cadot innocent.

The Rousselet and Donon-Cadot case was an exceptional *cause célèbre*. But it does reveal reigning ideas about the links between the body, truth, guilt and innocence. The body's importance to criminal justice was made explicit by Chaix, who claimed that the body constituted a definite proof and articulated its meanings; but it was also put into practice by the selective practices of making the body visible in interrogation transcripts and published reports of the trial. The body was rendered visible especially when it transcended expected behaviour;

when it seemed to be out of control. It could contextualise a suspect's claims and justify magistrates' interpretations. Above all, the case makes clear that the body had not disappeared from the concerns of criminal justice in the early nineteenth century. Lawyers, judges, jurors and the audience could and had to attend to the suspects' bodies. If anything, the body merited *more* careful analysis and was made *more* visible in writing than before. This may relate to the new principles of proof: as jurors now had to decide on guilt or innocence on the basis of their "conviction intime", common understandings of human behaviour and the body replaced legally sanctioned rules of evidence. The body and the emotions it displayed were no longer noncommittal clues, but could in some cases become essential keys to access the guilty or innocent mind of the suspect.

Conclusion: The Truth of the Body

In contrast with the thesis of the declining importance of the body for criminal justice, the history of the body in French criminal procedures between 1750 and 1850 shows many continuities. Legal scholars built a tradition of advice regarding the body: from Bruneau over Muyart de Vouglans and Jousse to Lombart, Duverger and Bentham, virtually all scholars noted that interrogators should pay attention to the body of the suspect during the interrogation. For them, the body of the interrogated suspect could not so much indicate whether a suspect was lying or speaking the truth, but betrayed the suspect's guilty conscience or fear of getting caught. While there were some differences in the sorts of bodily behaviour they listed, they generally agreed that a calm and firm body signalled the suspect's innocence, while a body that seemed to be out of control – common symptoms included shaking, paleness, redness, weeping and sighing – was a sign of guilt.

Legal scholars rarely explicitly referred to other traditions of knowledge about the body, such as physiognomy or phrenology, and indeed, they rarely inferred the ideas propagated in these traditions. They were more interested in the movements of the body, rather than stable

bodily characteristics. Moreover, while late-eighteenth- and early-nineteenth-century physiognomy primarily focussed on the face, and phrenology on the skull, legal scholars attended to the whole body, generally without special attention for the face. Instead, they discussed the body by relying on previous legal advice, as well as their own “experience”. This experience seemed to be informed (though never explicitly) by knowledge about the body from the tradition of manner books, which stressed the necessity and moral superiority of a calm and controlled body.

There was thus continuity in the advice for interrogators to examine bodies and in the meanings that they should give to these bodies. Similarly, there was continuity in the advice as to how they should take the body into account: they should have the clerk make note of the suspect’s behaviour and confront the suspect with this behaviour, asking for an explanation. In practice, these sorts of questions were almost never asked (or at least almost never recorded), not before and only rarely after the revolutionary reforms. If suspects’ bodily behaviour influenced magistrates’ or jurors’ decisions, the suspects themselves were almost never explicitly made aware of this.

In spite of these continuities, the history of the body in criminal interrogations between 1750 and 1850 was also marked by change, especially after the revolutionary reforms in the 1790s. Most notably, the abolition of judicial torture meant the official end of an approach to the body as a means to destroy the will of the suspect. Instead, the opportunities to *observe* the body of the suspect increased: while most judges before the revolution could only observe the suspect’s body for a short time and from afar, jurors and judges afterwards gained more extensive opportunities, at least in serious cases, to study suspects’ bodies during their trials. This related to new conceptions about how to decide on guilt or innocence, which was no longer determined by rules of evidence, but by the intimate conviction of jurors. As a result, the impression a suspect’s body made could have a larger impact. Moreover, some of the available

legal advice in the first half of the nineteenth century, such as Bentham's, was more sophisticated than the advice during the eighteenth century. Above all, however, the body became much more visible in texts in the early nineteenth century than it had been during the eighteenth: in interrogation transcripts, in lawyer's pleas, but especially in the burgeoning print culture surrounding famous trials, the body of the suspect gained a more prominent place – and could hence be given more meaning – than it had held before. For the general public too, the bodily behaviour of a suspect became a means to assess their guilt or innocence, even if its interpretation was rarely straightforward.

Although it is never easy to compare across different countries and different legal systems, I believe that with this continued, if not increased attention for the body in the first half of the nineteenth century, French criminal justice was not alone. Katie Barclay has recently found that in early nineteenth-century Irish courts, “the body was an important cultural signifier of guilt or innocence,” even if “reading the body was not straightforward” and could provide mixed messages, reinforcing or destabilising other evidence according to specific circumstances.⁶³ Barclay has less attention to changes in practice over time, indeed, she suggests that in general, in both the eighteenth and nineteenth century, “the importance of the body to determining “truth” still remained a central idea within European society.” Nevertheless, she argues that the increasing popularity of knowledge traditions such as physiognomy imbued the body with new meanings. I have not found any evidence of such a direct influence in France.⁶⁴

In spite of Antje Schumann's thesis of the shift from body to mind being based on German material, scholarship on criminal justice in the German territories, especially by

⁶³ Barclay, *Men on Trial*, 113.

⁶⁴ Katie Barclay, “Performing Emotion and Reading the Male Body in the Irish Court, c. 1800–1845,” *Journal of Social History* 51 (2017): 293, <https://doi.org/10.1093/jsh/shx017>.

Michael Niehaus, similarly corroborates some of my findings on France. Niehaus has found that in the course of the eighteenth century, magistrates increasingly started to make the body visible in interrogation transcripts, culminating in the recommendation of so-called “Gebärdenprotokollen”, separate documents in which interrogators wrote down the bodily behaviour of the suspect during their interrogations. As in France, the body thus became more visible, and its meanings more explicit, around 1800, than it had been before. Also as in France, the precise meanings of the body were not detailed, but left to the experience of the interrogator.⁶⁵

I believe it is therefore safe to say that we must correct the narrative that the focus of European criminal procedures – or, indeed, of finding truth in general – shifted from the body to the mind of the suspect around 1800. While torture indeed declined and was officially abandoned, the body remained important in a different way, as something that could betray the state of a suspect’s mind, the state of a suspect’s conscience. Putting the body through pain to destroy the will to lie was no longer necessary. The body, legal scholars and magistrates assumed, could also be *read* in an attempt to circumvent the will. It was expected to reveal involuntary signs of guilt or innocence that no willpower could overcome. While this idea was not entirely novel, it became more important after the revolution, as inner conviction became the prime means to decide on guilt or innocence, as judges and juries were able to observe suspects more profoundly during the oral trial, as interrogation reports included observations on the body of the suspect, and as some legal scholars developed more advanced theories on how to interpret the body. The interpretations of the suspect’s body were never straightforward, but could form important elements in the never-ending judicial quest to find an acceptable truth.

⁶⁵ Michael Niehaus, *Das Verhör: Geschichte-Theorie-Fiktion* (Munich: Wilhelm Fink, 2003), 244–64.