

Chapter 3

John Locke's Noose

This chapter joins two issues. The first concerns the generic accounts of the modern state offered by Max Weber and Michel Foucault, and the second concerns the principal method employed by the specifically English state to execute its citizens. Some argue, as I shall indicate, that the Weberian and Foucauldian readings of the state are categorically opposed, an argument that in turn suggests quite different ways of making sense of capital punishment and, more particularly, the noose. My aim is to challenge this opposition by offering a Foucauldian genealogy of this political practice, but to do so in a way that demonstrates how transformations internal to its history contribute to formation of a state that is well understood in Weberian terms.

The rationalization of hanging in England between the late sixteenth and late nineteenth centuries plays a crucial role in the constitution of a state that can credibly present itself as monopolist over the means of legitimate violence and hence as the sole body authorized to kill subjects with impunity. Generation of that representation depends on the state's incremental expropriation of the power to punish wrongdoing from civil society and so in time its conversion into something akin to the "private" possession of a bureaucratized state. Articulation of an unambiguous line of demarcation between governmental and nongovernmental affairs, which I take to be liberalism's primary contribution to the emergence of the modern state, is in turn a condition of the apparent impartiality and hence legitimacy of the laws that mandate death as a rightful form of punishment. However, because this boundary is never finally secured and so never entirely immune to challenge, it must be fortified periodically, and it is in these terms that refinements in the art of state-sponsored hanging can be profitably read.

What emerges from my tale of hanging's rationalization is a conceptualization of the modern liberal state that does not, as some say

Foucault does, occlude its rootedness in threats and acts of violence, including that of killing. But nor does this conceptualization reify the liberal state and so occlude, as some say Weber does, the perpetually problematic character of its efforts to distinguish its acts of violence from those it seeks to contain and punish.

Foucault versus Weber?

To indicate how my primary sources of theoretical inspiration are sometimes opposed to one another, I begin with brief expositions of Michael Ignatieff's Foucauldian critique of Weber and Nicos Poulantzas's Weberian critique of Foucault. In an essay titled "State, Civil Society, and Total Institution" (1983), Ignatieff criticized recent revisionist histories of punishment, including his own earlier work (1978), that remain too much fixated on the state and, more particularly, the state conceived in Weberian terms. Although Ignatieff does not offer a detailed exegesis of Foucault on punishment (and nor will I), it seems clear that his critique is informed by Foucault's claim that, "in political thought and analysis, we still have not cut off the head of the king" (1980a, 88–89). By this, Foucault means to suggest that theoretical and political projects that treat the state as a privileged object of inquiry remain trapped by a conception of sovereign will, as well as a representation of criminal law as its paradigmatic mode of articulation, that emerged during the heyday of monarchical absolutism. The stubborn persistence of this "juridico-discursive" (82) representation of political power, even after its generative context has passed into the dustbin of history, has deflected attention from the web of extralegal disciplinary powers that, since the late seventeenth and early eighteenth centuries, ever more fully secures the mundane order of liberal political regimes. In contrast to juridico-discursive power, which takes the form of legal prohibitions enunciated by the state and backed by coercive sanctions directed at disobedient bodies, disciplinary power is productive in the sense that it fashions the very souls of subjects through meticulous and incessant regulation of their everyday conduct in numerous extrastate contexts (schools, families, churches, professional associations, factories, etc.). As such, "[T]his type of power is in every aspect the antithesis of that mechanism of power which the theory of sovereignty described or sought to transcribe" (Foucault 1980c, 104).¹ Accordingly,

Foucault concludes, "[W]e should direct our researches on the nature of power not towards the juridical edifice of sovereignty, the State apparatuses and the ideologies which accompany them, but towards domination and the material operators of power, towards forms of subjection and the inflections and utilisations of their localised systems, and towards strategic apparatuses. We must eschew the model of Leviathan in the study of power" (102).

In addition to embracing Foucault's exhortation to investigate the subterranean workings of disciplinary power rather than the more arresting commands of sovereign authority, Ignatieff implicitly endorses a second and more radical Foucauldian claim about their relationship. In an important sense, Foucault sometimes appears to contend, the state does not exist; or, better, what we call the "state" is merely an articulation of the work accomplished by formally nonpolitical mechanisms of disciplinary power:

I don't want to say that the State isn't important; what I want to say is that relations of power, and hence the analysis that must be made of them, necessarily extend beyond the limits of the State. In two senses: first of all because the State, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations, and further because the State can only operate on the basis of other, already existing power relations. The State is superstructural in relation to a whole series of power networks that invest the body, sexuality, the family, kinship, knowledge, technology and so forth. (1980b, 122)

If indeed "the state is no more than a composite reality and a mythicized abstraction" (Foucault 1991a, 103), then any analysis that treats it as the originating source or preeminent locus of power will fail to appreciate the complex practices of discipline, dispersed throughout the body politic, upon which its existence essentially depends. Correlatively, to draw a strict line of demarcation between "state" and "civil society," or between "public" and "private," as liberal political doctrine does, is to reify this epiphenomenal reality, to reinforce its self-proclaimed but illusory status as power's monopolist, and, by extension, to distract attention from the insidious workings of discipline.

From this deconstruction of the state, Foucault draws the appro-

priate methodological precept: "The important thing is not to attempt some kind of deduction of power starting from its centre and aimed at the discovery of the extent to which it permeates into the base, of the degree to which it reproduces itself down to and including the most molecular elements of society. One must rather conduct an *ascending* analysis of power, starting, that is, from its infinitesimal mechanisms, which each have their own history, their own trajectory, their own techniques and tactics" (1980c, 99). Effectively affirming this precept, Ignatieff argues that the modern prison is best understood as a consolidated expression of the relations of disciplinary power that permeate school, workplace, family, and so on. The crimes punished by the state should therefore be regarded as "the tip of the iceberg, as the residue of those disputes, conflicts, thefts, assaults too damaging, too threatening, too morally outrageous to be handled within the family, the work unit, the neighbourhood, the street" (Ignatieff 1983, 205).² It would appear to follow, accordingly, that the distinctive form of punishment that is capital "can only be understood once its position within a whole invisible framework of sanctioning and dispute regulation procedure in civil society has been determined" (205).

What presently obscures this "invisible framework," what most contributes to our fetishism of the state, Ignatieff concludes, is the abiding influence of Max Weber and, more particularly, his account of the modern state. In his essay, Ignatieff merely alludes to that account;³ and so, before turning to Poulantzas, I briefly recall its essential elements. Unlike its medieval Catholic predecessor, Weber argues, the modern state cannot be specified through reference to any immanent or essential ends. Rather, it can only be defined in terms of its assertion of hegemonic control over the means that distinguish it from other associational forms; and the "decisive means for politics is violence" (Weber 1958a, 121). Accordingly, Weber defines the state as follows: "A compulsory political organization will be called a 'state' insofar as its administrative staff successfully upholds the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order" (1978, 1:54). This, Weber would be quick to remind Ignatieff, is not to say that the state is the only agent that can engage in authorized acts of violence; but it is to say that within a state-centered regime "the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it" (1:56).

The state's monopolistic status, which finds its theoretical articulation in the doctrine of sovereignty, is an accomplishment made possible via the expropriation of nonstate actors by rulers aspiring to absolutism. "Everywhere," Weber argues, "the development of the modern state is initiated through the action of the prince. He paves the way for the expropriation of the autonomous and 'private' bearers of executive power who stand beside him, of those who in their own right possess the means of administration, warfare, and financial organization, as well as politically usable goods of all sorts" (1958a, 82). Just as the emergence of a capitalist economy involves the gradual dispossession of small independent producers, so too does creation of the modern state turn on its incremental appropriation of the resources of power hitherto deployed by the Catholic Church, the aristocracy, craft guilds, independent cities, and so forth. Once expropriated, however, these resources do not become the property of any specific individual or group: "No single individual personally owns the money he pays out, or the buildings, stores, tools, and war machines he controls. In the contemporary 'state'—and this is essential for the concept of state—the 'separation' of the administrative staff, of the administrative officials, and of the workers from the material means of administration is completed" (82). The bureaucratic state thereby becomes the distinctive locus of that which is public; and what is public, that is, official, is known to be so only because it is distinguishable from what is private, that is, that which has not undergone comparable dispossession.

In order to distinguish its violence from that which it transcends as well as that to which it responds, the state's use of coercive force is folded within legal forms whose legitimacy is sustained by their claim to maximal realization of the values of impersonality, neutrality, and predictability. No matter how well folded, however, criminal law can never entirely escape its origins in the harsh imperatives of violence. Accordingly, Weber defines law as follows: "An order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied by a staff of people holding themselves specially ready for that purpose" (1954, 5). A sentence of death offers the ultimate manifestation of this definition, and that sentence can become something other than an abstract judicial pronouncement only via deployment of the state's concrete instrumentalities of killing: "[O]rganized domina-

tion requires the control of those material goods which in a given case are necessary for the use of physical violence" (1958a, 80). The noose is a paradigmatic example of such a good, an instrumentality with which the state translates its avowed monopoly over the disposition of legitimate force into the terms of effective practice.

Although chiefly animated by neo-Marxist aspirations, Nicos Poulantzas adopts this Weberian representation of the modern state in his effort to check the waxing influence of Foucault and, more particularly, the "aberrations" advanced in *Discipline and Punish* (Poulantzas 1978, 77).⁴ In his *State, Power, Socialism*, Poulantzas insists that Foucault "underestimates the role of the State itself, and fails to understand the function of the repressive apparatuses (army, police, judicial system, etc.) as means of exercising physical violence that are located at the heart of the modern State" (77). When Foucault suggests that modernity is defined by disciplinary power aimed at the production of docile bodies and exercised at sites scattered throughout the body politic, he effectively conceals the systematic role of the state in reproducing class relations and, more important for my purposes, occludes its expropriation of the instrumentalities of coercion.⁵ While it may be true that modernity has witnessed a decline in the degree of overt physical violence exercised in extrastate domains, and while it may be true that this can be explained in large measure through reference to the insidious spread of technologies of disciplinary power, that possibility is itself conditional upon the state's successful pacification of these domains via its acquisition of hegemonic control over the means of legitimate violence: "State-monopolized physical violence permanently underlies the techniques of power and mechanisms of consent: it is inscribed in the web of disciplinary and ideological devices; and even when not directly exercised, it shapes the materiality of the social body upon which domination is brought to bear" (81).

Foucault's blind spot, Poulantzas continues, is aggravated by his representation of the state's claim to sovereignty, as well as the articulation of that claim in the form of law, as more or less irrelevant residues of absolutist regimes. As we saw above, Foucault's juridico-discursive conception of power, which he (sometimes) claims we must now reject, involves reading law as a formally articulated prohibition issued by a supreme source of authority and backed by threats of bodily harm. But, Poulantzas contends, this narrow conception ignores the

productive role of constitutional and administrative law, first, in providing a framework within which conflicts may be resolved without recourse to state violence or its threat (although the invisibility of that threat should never be confused with its absence); and, second, in codifying and regulating the exercise of organized public violence:

By issuing rules and passing laws, the State establishes an initial field of injunctions, prohibitions and censorship, and thus institutes the practical terrain and object of violence. Furthermore, law organizes the conditions for physical repression, designating its modalities and structuring the devices by means of which it is exercised. In this sense, law is *the code of organized public violence*. Those who neglect the role of law in organizing power are always the ones who neglect the role of physical repression in the functioning of the State. (1978, 77)

Moreover, because Foucault does not see how the state's monopoly over the means of violence is "concealed by the displacement of legitimacy toward legality and by the rule of law" (Poulantzas 1978, 81), he cannot appreciate the legal order's role in manufacturing the sort of social consensus that, arguably, accounts for his failure to perceive the (usually but not always) veiled reality of state coercion. "Max Weber," Poulantzas concludes, "must be given the credit for establishing this point and for demonstrating that the legitimacy of its [the state's] concentration of organized force is a 'rational-legal' legitimacy based on law" (80).

Although Poulantzas does not expressly indicate how his Weberian account of the state might inform a criticism of Foucault's (and, by extension, Ignatieff's) reading of capital punishment, were he to do so, he might say something like the following: Because Foucault is persuaded that premodern punishments (e.g., torture) sought to reaffirm the integrity of injured sovereign power by inflicting pain upon the body of the condemned, and because he is convinced that distinctively modern penalty takes shape not as "an art of unbearable sensations," but rather as "an economy of suspended rights" (Foucault 1979, 11) aimed at fashioning docile as well as useful bodies, he cannot help but view capital punishment as an awkward anachronism. That view is presupposed when Foucault affirms that

justice no longer takes public responsibility for the violence that is bound up with its practice. If it too strikes, if it too kills, it is not as a glorification of its strength, but as an element of itself that it is obligated to tolerate, that it finds difficult to account for. . . . [T]he execution itself is like an additional shame that justice is ashamed to impose on the condemned man. (9)

Perhaps, Poulantzas might concede, Foucault can cite the vestigial character of capital punishment in order to explain why the contemporary state must hide or sanitize its violence, for example, by removing its conduct from public view and by abandoning more graphic methods of killing. But the fact remains that for Foucault, no matter how or where it is conducted, capital punishment must appear incongruous within a regime whose self-understanding demands “a slackening of the hold on the body” (10) and whose order is chiefly a product of extrastate disciplinary mechanisms, not of state violence or criminal law. For Poulantzas, by way of contrast, execution under cover of law is that which most tellingly discloses the reality of the modern state and its success at achieving order through expropriation and consolidation of the means of violence.

Rationalization without Reification

Must we, as Poulantzas and Ignatieff appear to suggest, now choose between Weber and Foucault? Ought we to embrace the state as a privileged object of analysis, or should we dissolve this fiction into the relations by which “it” is constituted? Should we adopt an “ascending” or a “descending” method of reading power? Should we regard the practice of capital punishment as a relic of monarchical absolutism, one whose inconsistency with disciplinary power anticipates its eventual demise? Or, should capital punishment indeed disappear, as it has in most industrialized nations, including England, should we read its very superfluity as definitive evidence of the state’s success at monopolizing the means of violence? I propose that we grasp neither horn of these dilemmas. Instead, I wish to recommend that we circumvent these antitheses, and that we do so via a critical appropriation of Weber’s category of rationalization.

To some, such an exercise will appear suspect at best. Echoing the

disagreement between Ignatieff and Poulantzas, but specifically with regard to the category of rationalization, Barry Smart (1985) insists that the claims of Weber and Foucault are irreconcilable. Informing this contention is a teleological reading of Weber's most significant conceptual innovation, one that represents rationalization as an irreversible force whose march necessarily culminates in the dystopia that is the iron cage. On this reading, the term *rationalization* invokes a monocausal account of the world's wholesale secularization as a result of the universal triumph of instrumental reason and its bureaucratic and technological incarnations over the powers of magic, myth, and mysticism. (Incidentally, it is this reading that Ignatieff tacitly presupposes when he asserts that, because so many customs of the ancien régime persisted within the modern era, "the revolution in punishment" that took place during the late eighteenth and early nineteenth centuries cannot be understood as "the generalized triumph of Weberian rationalization" [1983, 190].) But, Smart proceeds, Foucault will have no truck with such totalizing theoretical constructs; and, as evidence, he cites passages in which Foucault expressly declares that "the word 'rationalization' is dangerous" (Foucault 1982, 210) as well as his refusal, in a later interview, to identify himself as a Weberian:

If one calls "Weberians" those who set out to take on board the Marxist analyses of the contradictions of capital, treating these contradictions as part and parcel of the irrational rationality of capitalist society, then I don't think I am a Weberian, since my basic preoccupation isn't rationality considered as an anthropological invariant. I don't believe one can speak of an intrinsic notion of "rationalization" without on the one hand positing an absolute value inherent in reason, and on the other taking the risk of applying the term empirically in a completely arbitrary way. I think one must restrict one's use of this word to an instrumental and relative meaning. (1991b, 78–79)

In light of these claims, Smart concludes, any effort to identify an orientation common to Weber and Foucault cannot help but obscure the "substantial over-riding differences between the two" (1985, 138).

I cannot deny that Weber, in his more apocalyptic moments, sometimes invites the teleological construction of rationalization ascribed to

him by Smart (see, e.g., 1958b, 181–83). At his best, however, he gives little cause to regard rationalization as something akin to a secularized surrogate for the providential hand of God. Consider, in this regard, Weber's contention that "the continuum of Mediterranean-European civilizational development has known neither an enclosed cyclical movement, nor an unequivocally mono-linear evolution" (1976, 366). By the same token, Weber gives little cause to think that he regards reason, to quote Foucault, as an "anthropological invariant." Indeed, I would argue that, in general, Weber's deployment of the concept of rationalization is quite consistent with the exhortation Foucault advances in order to *distinguish* his approach from that of Weber: "What we have to do is analyze specific rationalities rather than always invoke the progress of rationalization in general. . . . It may be wise not to take as a whole the rationalization of society or of culture but to analyze such a process in several fields, each with reference to a fundamental experience: madness, illness, death, crime, sexuality, and so forth" (1982, 779–80). In much the same spirit does Weber, in *The Protestant Ethic and the Spirit of Capitalism*, offer the following methodological precaution:

There is, for example, rationalization of mystical contemplation, that is, of an attitude which, viewed from other departments of life, is specifically irrational, just as much as there are rationalizations of economic life, of technique, of scientific research, of military training, of law and administration. Furthermore, each of these fields may be rationalized in terms of very different values and ends, and what is rational from one point of view may well be irrational from another. Hence rationalizations . . . of the most varied character have existed in various departments of life and in all areas of culture. (1958b, 26)⁶

Whatever their differences on other matters, these passages suggest that the theoretical perspectives of Weber and Foucault on the question of rationalization are more complementary than antagonistic. As such, against Smart, but with Dreyfus and Rabinow, I would argue that Foucault's account should "be seen as an advance, not a refutation of the Weberian project" (1983, 133).⁷

But in what ways exactly does the Foucauldian conception of ratio-

nalization represent an "advance" over the Weberian? What Foucault brings to Weber, which is more a matter of emphasis than of substantive revision, is twofold. First, much more consistently than does Weber, Foucault insists that we must forgo the temptations of teleology as well as any reading of rationalization that might nurture such temptations. Emergence of the defining features of modernity is not governed by any single cause and follows no singular trajectory of development. The rationalization of modern life is therefore not progressive in any simple linear sense; and one must be careful not to presuppose such an account when invoking this concept in order to supply retrospective coherence to a disparate set of contingent events. The intent to rationalize, for example, should not be ascribed to agents whose conduct is better explained through reference to the imperatives of everyday dilemmas and localized events, as those imperatives are understood in terms of the discursive categories currently available to them.

Second, and again much more emphatically than does Weber, Foucault insists that we must always ask "how forms of rationality inscribe themselves in practices, or systems of practices, and what role they play within them" (1991a, 79).⁸ As I shall show in this chapter, the rationalization of hanging follows a practical rather than a theoretical logic in the sense that its mutations are forged in the concrete business of problem solving conducted, for the most part, on so many parochial fields of political contestation. The strategies and tactics explored here are not invented *ab initio*. Rather, they are so many exigent improvisations fashioned through the appropriation and rearticulation of whatever materials are currently at hand, including inherited institutional forms, specific technological devices, received vocabularies, renegotiated patterns of human conduct, and so on. Because these strategies and tactics are almost never afforded any sort of formal articulation (until, as we shall see, the final quarter of the nineteenth century), the rationality they evince remains squarely embedded within the conduct they inform.

In light of these Foucauldian refinements, why do we still need Weber? What Foucault cannot do as well as Weber is to show how various incremental changes sometimes coalesce into larger structures of domination, how transformed modalities of practice, although neither intended nor foreseen by anyone, sometimes come together to create obdurate formations of power that are more than the sum of their indi-

vidual parts. Granted, immediately following his exhortation to embrace an “ascending analysis of power,” Foucault invites us to ask how its “infinitesimal mechanisms” are sometimes “invested, colonised, utilised, involuted, transformed, displaced, extended etc., by ever more general mechanisms and by forms of global domination” (1980c, 99). But, as we have seen, given his rejection of the discourse of sovereignty as well as his conviction that the mechanisms of discipline have now rendered juridico-discursive modalities of power largely superfluous, Foucault is disinclined to acknowledge and investigate the recalcitrant formation of power that is the modern liberal state. Or, to put this point somewhat differently, because Foucault never develops the conceptual categories needed to identify the “general mechanisms” whereby relations of power are “colonized” or “globalized,” which Weber gets at via his notion of expropriation, he is not well-equipped to identify the structured pattern of effects that issues at least in part from the rationalizing tactics I investigate in this chapter. To refer to these tactics as so many instances of “rationalization,” as I do, is not to violate Foucault’s nominalism by ascribing to them some singular essence, underlying coherence, or unitary source. But it is to contend that, over time, these tactics generate various sedimentary effects, including a state that can credibly present itself as monopolist over the means of legitimate violence.

My representation of the emerging liberal state as an *effect*, which echoes Foucault’s genealogical representation of the self, avoids the reification that, according to Ignatieff and others, is encouraged by Weber’s formal definition. On my account, the state is not some privileged first cause that stands apart from the order it is said to rule. Rather, it is a relational effect whose appearance of freestanding reality is produced and sustained by the reiterated and combined working of the various practices that serve to demarcate “it” from the complex of practices that come to be deemed “external” to it. Timothy Mitchell, drawing on Foucault, provides a useful example of such a state-generating practice:

One characteristic of the modern state . . . is the frontier. By establishing a territorial boundary and exercising absolute control over movement across it, state practices define and help constitute a national entity. Setting up and policing a frontier involves a vari-

ety of fairly modern social practices—continuous barbed-wire fencing, passports, immigration laws, inspections, currency control and so on. These mundane arrangements, most of them unknown two hundred or even one hundred years ago, help manufacture an almost transcendental entity, the nation-state. This entity comes to seem something much more than the sum of the everyday activities that constitute it, appearing as a structure containing and giving order and meaning to people's lives. . . . What we call the state, and think of as an intrinsic object existing apart from society, is the sum of these structural effects. (1991, 94)

On the one hand, with Poulantzas, I believe that Foucault's antipathy toward the modern liberal state as an object of analysis, especially when joined to his claim that power always moves upward from the local to the global, has discouraged inquiry into its aggressive participation in expropriation, concentration, and deployment of the powers afforded hyperbolic articulation in the legal doctrine of sovereignty. That state is not merely "superstructural," if by that term Foucault means to suggest that it has no reality apart from so many constellations of nongovernmental power; to decompose state into society is to fail to see, for example, how the designation of an agency as an arm of the state affords it access to specific legal, economic, military resources as well as a claim to a distinctive sort of authority. On the other hand, when I bring the state back in, I mean to recall its status as a relational artifact, that is, a complex of powers whose alleged unity requires continual reproduction of the mechanisms that generate this reified appearance.

The analytic task thus becomes one of figuring out how the state is discursively codified, thereby distinguishing it from the formally non-political spheres to which it is necessarily related. As I shall argue below, the rationalization of criminal law in early modern England, which includes the gradual refinement of hanging, is one of the more significant vehicles through which monarchical absolutism detached itself, however haltingly and unevenly, from the complex of feudal powers in which it was previously enmeshed. That project is given a substantial boost via the doctrine of liberalism. Understood not so much as an abstract political theory, but rather as a vital component of a more comprehensive program of governmental rationality, it is liber-

alism that most persuasively articulates the distinction between public and private; and that boundary is of no less political moment than are those marked by barbed wire. Securing that distinction is essential to the never finished and ever-contestable project of expropriating the means of violence from society and reconstituting its exercise as so much "official" business, whether conducted by the professional soldier, the tax collector, or the executioner. What lends that expropriation the appearance of legitimacy, to complete the circle, is the state's adherence to the formal requirements of legal rationality.

To bring this section of my argument to a close, and to do so in a way that anticipates the terminus of the tale I tell here, I wish to indicate one additional reason why we should not altogether abandon Weber in favor of Foucault. A distinction internal to Weber's concept of rationalization enables me to give my inquiry a critical twist that is unavailable to Foucault. For Weber, ascriptions of rationality are necessarily relational in character. From the standpoint of causal relations, for example, an action is rational if it proves efficacious as a means toward a given end, but irrational if it does not; thus to one whose end is the maximization of hedonistic pleasure, ascetic conduct is irrational. From the standpoint of logical relations, however, an action is rational if it is consistent with some belief or structure of beliefs, but irrational if it is not; thus to one who believes in the possibility of salvation via the performance of good works, ascetic conduct is rational, and that is so even if such conduct proves causally inefficacious in achieving its specified end. In sum, "a thing is never irrational in itself, but only from a particular . . . point of view" (Weber 1958b, 194).

Weber's perspectival approach to rationalization undergirds his distinction between substantive and formal rationality. Substantive rationality involves assessing action in terms of its capacity to satisfy concrete needs and/or ultimate ends; think, for example, of a regime whose economic arrangements are deliberately organized and judged a success or failure in light of their capacity to augment that state's international prowess or, alternatively, its realization of some determinate conception of distributive justice. By way of contrast, formal rationality involves assessing action in terms of its achievement of the values of predictability and calculability, absent any consideration of its success in maximizing ends other than these same abstract values; think, for

example, of the use of various accounting techniques to quantify and so render homogeneous each element that enters into the production process.

With this distinction in hand, Weber suggests that what is rational from the perspective of formal rationality may prove irrational from the perspective of substantive rationality, and vice versa. Indeed, Weber argues, the claims of formal and substantive rationality may prove not merely inconsistent, but actively subversive of one another. For example, the belief that one can, at least in principle, master all things via the application of instrumentally rational conduct undermines the value universalism of traditional religious and mythological worldviews as well as their population of the cosmos with mysterious forces and otherworldly gods. In doing so, instrumental reason's advance dispels belief in transcendent sources of meaning, and so fosters the conviction that the ends animating value-rational action are unavailable for objective determination. When that happens, as when Weber's Calvinist becomes a godless capitalist, the quest for efficiency and calculability, once considered a means, becomes an end in itself, while those values that were once ends in themselves are consigned to the dustbin of irrational preference. As a result, social practices and institutions become more instrumentally effective but also less emotionally compelling and meaningful for those engaged in them, leading in time to what Weber dubbed the "disenchantment" of the world (1978, 1:506).

As the preceding example suggests, the conflict between formal and substantive rationality is not simply an abstract axiological affair. Especially in economic and political domains, it often takes shape as very real conflict between competing interests and groups. Because the advance of formal rationality is never neutral in its effects, for example, its institutionalization may violate substantive ends of economic justice. To see the point, consider that essential mechanism of formal rationality in a capitalist economy, the free contract. Precisely because its concrete operation favors some while harming others, economically privileged groups typically seek to maximize the range of conduct subject to its imperatives, while disempowered groups often seek to check the spread of the contractual form in the name of specific distributional norms. In much the same way, of course, does institutionalization of

the liberal legal order's promise of equality under the law, that central component of its claim to legitimacy, advance the cause of some, but not of all:

Formal justice is thus repugnant to all authoritarian powers, theocratic as well as patriarchic, because it diminishes the dependency of the individual upon the grace and power of the authorities. To democracy, however, it has been repugnant because it decreases the dependency of the legal practice and therewith of the individuals upon the decisions of their fellow citizens. Furthermore, the development of the trial into a peaceful contest of conflicting interests can contribute to the further concentration of economic and social power. In all these cases formal justice, due to its necessarily abstract character, infringes upon the ideals of substantive justice. (Weber 1978, 2:812–13)

"Among those groups who favor formal justice," Weber concludes, "we must include all those political and economic interest groups to whom the stability and predictability of legal procedure are of very great importance, i.e., particularly rational, economic, and political organizations intended to have a permanent character" (2:813). The institutionalization of formal rationality is most perfectly achieved via that bastion of organizational permanence, the modern bureaucracy. As the administration of public justice in early modern and modern England, including the conduct of hanging, becomes ever more informed by the bureaucratic norms of depersonalized authority, perfected techniques of calculation, the supremacy of specialized knowledges, and the ideal of unfettered instrumental control, the rationality of the liberal state becomes ever more clearly demarcated from the formally irrational realm of the unofficial. To the extent that this is so, the substantive rationality of democracy, with its affirmation of the value of popular control over and participation in the administration of justice, grows ever more hollow.

"Primeval Barbarism"

In the remaining sections of this chapter, after a brief consideration of hanging as it was practiced during the initial millennium following its

introduction to England, I explore this art with greater care, first, as it was conducted from the late sixteenth to the late eighteenth century on the west end of London at Tyburn; second, as it was practiced outside the walls of London's Newgate Prison, beginning in 1783; and, third, as it was performed when finally removed to Newgate's interior in 1868. My aim throughout is to identify the rationalizing practices, including their discursive, technological, and institutional elements, that either frustrated or contributed to the relational constitution of a state that is credibly construed in the modified Weberian terms suggested in the preceding section; and to do so in a way that indicates how the categories of liberal political doctrine, and especially its distinction between public and private, encouraged and facilitated that accomplishment.

"If the identity of the man who first thought of killing another by putting a rope around his neck and hanging him from a tree were not lost in the mists of primeval barbarism, his name would be honored nowhere more than in England where, until quite recently, the noose remained a symbol second only to the cross in denoting a tradition and a way of death upon which our society was founded" (Bailey 1989, 1). Although the historical record is not entirely clear, it appears that hanging was first introduced to England by the Germanic tribes whose members invaded around the middle of the fifth century.⁹ From the Anglo-Saxon incursion to the end of the eighteenth century, the basic method of hanging remained quite straightforward. At its most elementary, a slipknot formed at one end of a rope was placed around the neck of the condemned, that rope was passed over the branch of a tree, and the victim was then hauled upward, left to die of asphyxiation caused by strangulation, although no doubt interruption of oxygen and blood flow to the brain, combined with nerve damage, often played a role as well. To compensate for the occasional refusal of trees to bend to the hangman's imperatives, a surrogate branch in the form of a crossbeam was sometimes placed between the limbs of one or, in some instances, two trees; and, by the early twelfth century, if not before, in many English communities, those trees had been replaced by manufactured uprights as well. Typically, in deploying this more refined apparatus, the hangman's assistant would mount a ladder in order to straddle the crossbeam. The condemned, hands bound and neck noosed, would then be required to climb several rungs of this same ladder, at

which time the assistant would tie the rope's far end around the horizontal bar. When the hangman proper would twist the ladder, "turning off" the victim, the latter would fall not more than a few inches, insufficient to achieve cervical dislocation, and so the principal cause of death remained asphyxiation. By custom, the corpse would typically remain dangling in what came to be known as the "sheriff's picture frame" for an hour or so afterward, partly for the purposes of public edification but also to assure against the possibility of resuscitation.

The limited technological rationalization of hanging over the course of its first millennium in England was matched by a relatively low level of political rationalization. Recall that for Weber the modern state is defined by its successful claim to the status of monopolist over the means of legitimate violence, either in the sense that it alone exercises such violence or, as a qualification to that claim, in the sense that it alone determines under what conditions others are permitted to do so. But, as J. M. Beattie (1985) and Lawrence Stone (1977) have noted, prior to the centralization of state power in England, the resolution of everyday disputes by means of violence was exceedingly common but only rarely considered worthy of attention by local authorities; and, in all contexts where authority was exercised, whether that be the family, the school, or the workplace, discipline was routinely maintained by means of unregulated physical punishment, typically whippings and beatings. Moreover, recall that for Weber what distinguishes the modern state's violence is its articulation in specifically legal form; the task of modern law, he argues, is achievement of "a form of permanent public peace, with the compulsory submission of all disputes to the arbitration of the judge, who transforms blood vengeance into rationally ordered punishment, and feuds and expiatory actions into rationally ordered legal procedures" (1978, 2:908). Yet very little of the violence committed in premodern England ever became a legal matter. Instead, what eventually comes to be labeled criminal conduct (e.g., assault or homicide) was routinely handled as a matter of private vengeance or settlement between the parties immediately involved, and fines were the most common means of dispute resolution. Only when such means failed were cases sent on to trial; and, even as late as the mid-eighteenth century, it was not uncommon for assault convictions to conclude with imposition of a minimal fine whose amount had been determined in private negotiations involving the prosecutor, the defendant,

and the accuser. In sum, the administration of justice in medieval England was characterized by the routine employment of violence, an absence of uniform laws, and a proliferation of private dispute resolution mechanisms under the control of no single authority.

To grant this characterization is not, however, to gainsay the modest steps taken by the Crown in late medieval England to secure some measure of centralized control over the administration of justice in the interest of internal pacification. Perhaps most notable in this regard were the reforms of Henry II (1154–1189). By assuming royal jurisdiction over all homicides, at odds with prevailing custom, the Angevin reforms undercut Anglo-Saxon traditions that mandated payment by kin or, failing that, a feud between kinship groups; as a result, many homicides that were not previously considered capital were now made punishable by hanging (Green 1972, 1976). However, and although the right of an abbey, town, or manorial lord to erect a gallows was technically granted by the Crown, administration of the death penalty was usually a parochial affair. That this was so is suggested, albeit indirectly, by the variability of customs governing the selection of hangmen. While the sheriff in late medieval England was formally responsible for supervising the execution of convicted felons, only rarely did he perform the act of killing itself. How his surrogate was selected can be taken as a rough indicator of the degree and form of political rationalization in any given locality.

On many medieval English estates, it was not uncommon for hangmen to hold land on condition that they act as executioners when called upon to do so; and, in such cases, a principle of hereditary succession typically governed the identification of future executioners (Robin 1964). However, with the gradual disappearance of land tenure on the basis of service, new ways of securing hangmen were required. In Romney, for example, until very late in the fifteenth century, it was generally the responsibility of successful appellees in capital cases to perform their own executions or, alternatively, to locate a substitute. Failing to do either, the accuser was sometimes jailed, along with the convicted felon, until the former agreed to comply with the imperatives of local custom. What we see here, to invoke Weber's terms, is neither simple "blood vengeance" nor "rationally ordered punishment." While capital disputes are resolved by a public authority, a judge, rather than by the aggrieved party or that party's kin, execution of the

sentence that follows conviction is assigned to the latter, and so there is no clearly demarcated official monopoly over the means of violence. In other localities, felons were occasionally offered commutations (and sometimes even pardons) on condition that they agreed to serve as executioners. In the royal burgh of Wigtown, for example, local law required that the hangman be a criminal under sentence of death; execution of his sentence was delayed, however, until old age rendered him unable to perform competently, at which time he was hanged. The task of punishment was thereby foisted onto a party other than the plaintiff; but, because this practice entailed no clear differentiation between the legal status of the person being turned off the ladder and the person doing that turning, it too left ambiguous the distinction between the law's violence and that which it branded criminal. Finally, in Kent, during the reigns of Henry II and Henry III, the porter of the city of Canterbury served as executioner for the entire district, for which he received an annual allowance from the sheriff of twenty shillings. Expropriated from the aggrieved party or his kin, the right to punish is here exercised by an agent who is compensated for his services via tax revenues extracted by other public authorities. In contrast to the customs of Romney and Wigtown, the assignment of this duty to a paid city official, albeit as a task auxiliary to his primary responsibilities, effectively draws a neater distinction between the acts of violence performed by those holding positions of public authority and the acts of violence those persons punish.

Tyburn's Triple Tree

In 1571, Dr. John Story, a Roman Catholic noted for his prosecution of Protestants during the reign of Queen Mary, was drawn "from the Tower of London unto Tiborn, where was prepared for him a newe payre of Gallowes made in triangular maner" (Laurence 1971, 43).¹⁰ Perhaps best known in virtue of its appearance in the upper-right-hand corner of William Hogarth's *The Idle 'Prentice Executed at Tyburn* (fig. 2), the infamous "Triple Tree" replaced a gallows, which, like many of its medieval kin, consisted simply of a beam placed across the branches of two trees. Whereas the older device could only handle ten persons at a time, this new contraption, in virtue of its three interlocking cross-beams, made it possible to hang as many as twenty-four felons simul-

taneously, eight to a side. If instrumental efficiency is one of the distinguishing marks of formal rationalization, then Tyburn's "deadly never-green," as the gallows came to be dubbed, represents an impressive advance in the economy of violence as well as a fitting emblem of the monarch's ongoing struggle, especially in Tudor and early Stuart England, to secure public acknowledgment of its status as monopolist over the legitimate use of physical force.

Between 1327 and 1509, prior to erection of the Triple Tree, only six capital statutes were enacted in England. Although precise figures are exceedingly difficult to determine, it would appear that in comparative terms actual executions were relatively infrequent during these centuries. However, between 1509 and 1660, a span that includes Tyburn's heyday, thirty new capital statutes were adopted, and hanging became the Crown's preferred means of answering the dislocations engendered, above all else, by the enclosure movement. Although some have claimed that seventy-two thousand thieves were hanged during the reign of Henry VIII alone, and that under Elizabeth as many as four hundred vagabonds were simultaneously strung up, more credible is Douglas Hay's estimate that in the century following 1530 somewhere between five hundred and a thousand persons were hanged annually, the vast majority for offenses against property (1993, 145).¹¹ No matter what the exact number, it seems evident that the noose was inseparable from the absolutist state's effort to consolidate its authority; and so it is not altogether implausible, as does Peter Linebaugh, to label the English political order during this era a "thanatocracy" (1992, 50).

It is important, though, not to exaggerate the extent to which the English state's claim to a monopoly over the means of legitimate violence was in fact realized at this time. Indeed, one may argue that frequent public executions in sixteenth- and early-seventeenth-century England were, or so authorities hoped, a surrogate source of the order that would later be secured far more effectively by centralized agencies for the prosecution of crime and a unified police force. As late as the eighteenth century and even into the nineteenth, law enforcement in England remained a largely decentralized affair conducted by amateurs (see Sharpe 1980). Its principal agent was the local constable who, because he occupied an unpaid position, exercised extremely limited powers of arrest, received virtually no professional training or legal guidance, and returned to his local parish following a prescribed period of service, was poorly suited to stand as an autonomous agent of

state control. As such, his role in the administration of justice was largely confined to providing assistance to private citizens who, as victims of theft, assault, or other crimes, still found it necessary to take the initiative in securing and paying for the prosecution and trial of alleged malefactors. Under these circumstances, only the army could claim to stand as an agent of distinctively national political power, although even it was organizationally ill-equipped to do more than respond, at best sporadically and never without encountering local resistance, to riots and other exceptional crises.

If, as Mitchell (1991) recommends, the state is a structural effect generated by the complex of practices that create its apparent demarcation from that which is subject to its authority, its reality must have appeared uncertain at best in early modern England. Public hanging, I have suggested, was one means by which the absolutist state sought to render this self-representation credible. But, because the conduct of this practice was unevenly rationalized in the sense that it incorporated a mix of preabsolutist customs, sovereign pretensions, and incipient liberal aspirations, its contribution to this end could not help but be qualified. The account of a Tyburn execution recorded by a certain M. Mission, traveling through England in 1698, indicates one reason why this was so:

They put five or six in a Cart . . . and carry them, riding backwards with the Rope about their Necks, to the fatal Tree. The Executioner stops the Cart under one of the Cross Beams of the Gibbet, and fastens to that ill-favour'd Beam one End of the Rope, while the other is round the Wretches Neck: This done, he gives the Horse a Lash with his Whip, away goes the Cart, and there swing my Gentlemen kicking in the Air: The Hangman does not give himself the Trouble to put them out of their Pain; but some of their Friends or Relations do it for them. They pull the dying Person by the Legs, and beat his Breast, to dispatch him as soon as possible. (Quoted in Gatrell 1994, 52)

Prior to the thirteenth century, persons destined for execution, after being stripped of all but their shirts, their arms tied behind their backs, were typically dragged on the ground from Newgate jail to Tyburn, a distance of a little under three miles; at least occasionally, the result of such rough transport was death in the streets. To avoid cheating the

hangman in this fashion, as early as 1295 and possibly before, the condemned were placed on an ox-hide, which eventually gave way to the hurdle, the sledge, and, finally, the cart. As Hogarth's *Idle 'Prentice* makes clear, by the time the Triple Tree was installed, those sentenced to death made the journey from Newgate, in the company of a chaplain, while seated facing backward in a cart atop their own coffins, with neck noosed and hands manacled. Once at Tyburn, the noose was attached to one of the three crossbeams and the cart was removed from beneath the victim or victims by whipping the animals—usually, a team of horses—to which it was yoked. While this innovation did away with the complications caused by those who either would not or could not climb the ladder of the traditional medieval gallows, and while it made it possible to hang several simultaneously rather than successively, it also had the effect of eliminating the short drop that followed when one was “turned off.” Because this in turn made it even less likely that “Jack Ketch’s Pippins” would quickly lapse into unconsciousness at rope’s end, deployment of the cart often extended the duration of visible suffering; and that in turn encouraged the practice, noted by Misson, whereby executioners, or more often relatives and/or friends, would swing from the legs of these “gallows apples” in order to hasten their expiration (or sometimes, executioners claimed, to support them and so delay their demise).

The intervention of friends and kin suggests the absence at this time of any unambiguous distinction between those who were officially authorized to take part in state-sponsored killings and those who were not. The uncertainty of that line was confirmed in a different way when Tyburn’s hangmen would sell used nooses, typically at a rate of sixpence per inch, to those who sought a souvenir or believed in the rope’s power to cure warts and tumors. Such a custom could persist only so long as the state’s expropriation of privately owned means, their transformation into inalienable public goods, remained unconsolidated. What these examples indicate, in sum, is the presence of a gap between the state’s sovereign pretensions and the grounding of those pretensions in the mundane world of material artifacts.

John Locke’s Death Sentence

The reform of practices that compromised the state’s claim to sovereign authority accelerated as the English body politic, especially after the

Glorious Revolution, grew more fluent in the discourse of liberalism. One of liberalism's foremost contributions to English politics, I would argue, was its articulation of a doctrinal framework that explained why such practices were indeed problematic and, by implication, how the liberal state might achieve a more consistent rationalization of its violence than was possible under its absolutist predecessor. To establish a context for this claim, let me begin by citing a puzzle first noted by Douglas Hay close to a quarter century ago: In the years between 1688 and 1820, the number of English capital statutes grew from about fifty to over two hundred, with the vast majority of newly enacted laws concerning offenses against property. As one would expect, during this same period, the number of capital convictions increased dramatically as well. Actual execution rates, however, began to taper off toward the end of the seventeenth century and then leveled off for the duration of the eighteenth, especially after 1750. How, Hay asks, are we "to explain the coexistence of bloodier laws and convictions with a declining proportion of death sentences that were actually carried out"? (1975, 23).

To explain the multiplication of statutes and convictions, Hay suggests that after the Glorious Revolution "men of property" found it essential to secure formal legal recognition of their rights of ownership, and that need was soon acknowledged by Parliament and court. However, because the Whigs did not believe that their hold on government was fundamentally threatened by either Crown or rabble, they were able to dispense with the large number of executions characteristic of the sixteenth and seventeenth centuries; indeed, the vast majority of those condemned to die found their sentences commuted to transportation. Thus, while the first earl of Shaftesbury insisted that the "mere Vulgar of Mankind" will "often stand in need of such a rectifying Object as *the Gallows* before their Eyes" (quoted in Hay 1975, 19), he also believed that the noose need not perform its work on a routine basis in order to induce adequate respect for the rights of private property. Accordingly, Hay concludes, "The law made enough examples to inculcate fear, but not so many as to harden or repel a populace that had to assent, in some measure at least, to the rule of property" (57).

Not surprisingly, as foremost apologist for the rule of property, Hay cites John Locke, who, on his account, "distorted the oldest arguments of natural law to justify the liberation of wealth from all political or moral controls" (1975, 18). I do not mean to dispute this representation of Shaftesbury's celebrated confederate. However, because Hay is

more indebted to Marx than to Weber, he fails to see that the service Locke performs for capitalism is achieved, in large measure, via the service he performs for the English state in its effort to extricate itself from a web of feudal entanglements and, in so doing, to render more credible its claim to monopolistic control over the means of legitimate violence. As Weber and Marx both understood, one of the distinguishing features of feudal orders was the absence of any clear differentiation between public and private realms; so long as aspiring monarchs billed themselves as fathers and mothers to their people, so long as the authority of an aristocracy was rooted in personal loyalties, so long as hangmen purchased and owned their own ropes, there could be no sharply demarcated public sphere and so, strictly speaking, no state. Yet that, to quote Paul Rock, remained the situation in England at the close of the seventeenth century and well into the eighteenth:

When the state could guarantee neither physical security nor legal control, effective government passed in large measure over to those who were independently powerful. Political order was mediated by webs and hierarchies which developed around local centres of influence. Those networks were structured by access to the Court and by the possibilities that were afforded by command over territory and people. Patronage bestowed order on the otherwise rudimentary structures created by a weak government and a weak system of communal control. Relations with a patron knit the client into a fluid system of power which substantially replaced formal state government. Positions within that system were personally awarded and personally exploited. Offices, prerogatives and franchises became items of property that were practically removed from external supervision. (1983, 199)

The modern state's claim to sovereign control over the means of legitimate force is premised on its formal abstraction from the "webs and hierarchies" of which Rock speaks, its autonomy from the private domains whose acts of violence it eventually comes to forbid, regulate, or sometimes permit. It is liberal doctrine that furnishes to that state certain of the key conceptual tools it requires in order to reform and justify the practices that effect the appearance of such disengagement.

As Locke understood, because the achievement of liberalism pre-

supposes the state's authority to impose binding law on the nation as a whole, it is inconceivable absent expropriation and consolidation of the means of its enforcement. The state of nature, we are told in the *Second Treatise*, describes a condition in which the power to punish crime is universally distributed in the sense that every individual is equally authorized to enforce the dictates of nature's law. But that condition leaves its members without a certain and impartial "Executioner of the Law of Nature" (Locke 1988, 351). Accordingly, entry into a political community requires that the power to punish be "wholly" ceded to the state. When that act of alienation is complete, those who have done so can think of themselves as private beings only because their identity is now sharply distinguished from that of the public bearers of the power to execute.

Locke ratifies this separation of private from public, while simultaneously identifying the latter with the rightful authority to kill, when he categorically differentiates paternal and political power. In Roman law, *patria potestas* included the right of the father to "dispose" of the life of his children and his slaves. In contrast, and excepting slaves, Locke denies that liberalism's father has any "Legislative Power of Life and Death" (1988, 323) over the members of the family he commands. Because, as we have already seen, the power to punish crime is altogether relinquished at the moment fathers enter into the social contract, only the state may exercise the power that now comes to define it as such. In short, theoretical articulation of the liberal state presupposes those complementary processes whereby the head of the household is stripped of a prerogative now reserved to the state, while at the same time the state's head is denied the title of father. The conceptual consequence, displacing medieval accounts that invariably subordinated state power to a theological end, is stark and, it should be noted, altogether congruent with Weber's understanding: "*Political Power* then I take to be a *Right* of making Laws with Penalties of Death, and consequently all less Penalties" (Locke 1988, 268). The hangman's art, on this account, is definitive of the liberal state.

As Locke's death sentence intimates, what distinguishes this art's violence from that which it seeks to contain is its expression in legal form: "[T]he Community comes to be Umpire, by settled standing Rules, indifferent, and the same to all Parties; and by Men having Authority from the Community, for the execution of those Rules,

decides all the differences that may happen between any Members of that Society, concerning any matter of right; and punishes those Offences, which any Member hath committed against the Society, with such Penalties as the Law has established" (Locke 1988, 324). As an umpire whose authority includes the right to kill wayward players, the state must appear to stand apart from the game whose rules it fashions and enforces. Crucial to its capacity to do so are the formal properties of law, and most particularly the abstraction that is an essential condition of its neutrality. More specifically, the legitimacy of state violence requires, first, that it be applied by officeholders who inhabit an unambiguously demarcated public sphere; and, second that it be applied without regard for the substantive particularities that distinguish one person from another. The law's commitment to impartiality, its "indifference," does not of course preclude its agents from drawing distinctions between persons, as when one is sent to the gallows, while another is transported to America. What the law cannot do, however, is to permit legally irrelevant features, those deemed private, to influence or dictate that official determination.

Securing the Official Domain

Liberalism's distinction between public and private is an invention. If that invention is to become an unquestioned premise of a liberal political order, a fact rather than an artifact, it must be rooted in the stubborn objectivity of tangible things. The more significant reforms in the technique of judicial hangings performed during the two centuries following the Glorious Revolution, considered collectively, exhibit a rough pattern of effects. Although intended by no one, that pattern is well understood in terms of the category of rationalization and, more specifically, in terms of the form of rationalization that characterizes distinctively liberal political orders. These reforms, however, were never adopted without provoking some measure of opposition; and that resistance explains, at least in part, why Weber eventually concluded that, in England, "the degree of legal rationality is essentially lower than, and of a type different from, that of continental Europe" (1954, 316).¹²

To appreciate Weber's point here, take another look at Hogarth's *Idle 'Prentice*. At Tyburn, hangings were public in the sense that they

were visible to all who chose to attend. From the perspective of the law's exponents, such events encouraged a bacchanalia of petty crime and vice, a festival of pickpockets and prostitutes, a holiday from the law rather than a grave affirmation of its majesty. What Hogarth expresses graphically Bernard Mandeville elaborates discursively in his 1725 pamphlet titled *An Inquiry into the Causes of the Frequent Executions at Tyburn*:

It is incredible what a Scene of Confusion all this often makes, which yet grows worse near the Gallows; and the violent Efforts of the most sturdy and resolute of the Mob on one Side, and the potent Endeavours of rugged Gaolers, and others, to beat them off, on the other. . . . If we consider, besides all this, the mean Equipages of the Sheriffs Officers, and the scrubby Horses that compose the Cavalcade, the Irregularity of the March, and the Want of Order among all the Attendants, we shall be forced to confess, that these Processions are very void of that decent Solemnity that would be required to make them awful. (1964, 24)

What Hogarth and Mandeville both recognize on some level is that the law's capacity to distinguish capital punishment from vengeance, its violence from that which it punishes, is compromised when liberalism's citizenry is not merely the consensual source of, but a vital participant in, the state's most dramatic affirmation of its Lockean essence. Mandeville is thus unwittingly prescient when, at the close of his pamphlet, he argues that "if no remedy can be found for these Evils, it would be better that Malefactors should be put to Death in private" (1964, 36).

The law's majesty does not fare much better when Mandeville shifts his sights from the Tyburn processional to the gallows proper. When a judge at the Old Bailey imposed a death sentence, he would don a black cap and then write next to the condemned's name the Latin abbreviation: *sus per coll*, that is, *suspendatur per collum* ("let him be hanged by the neck"). Whatever gravity accompanied this act of official recording was mocked by the countless misadventures that occurred when the word became flesh, ranging from snapped ropes, to necks that slipped out of nooses, to decapitations, partial and total, to posthanging revivals of the supposedly dead, to rescue efforts by irate

crowds, occasionally successful but more often not, to the theft of barely dead corpses by the hired agents of aspiring medical practitioners, and so on.¹³ The sorry contrast between the rational austerity of a death sentence pronounced from the bench and its actual imposition was amplified still more by the customary practice of permitting the condemned to address the assembled multitude and thereby, at least on occasion, to contest the state's claim to justice. As Mandeville lamented, that invitation encouraged convicts to die defiantly, in turn persuading those who witnessed such bravado "that there is nothing in being hang'd, but awry Neck, and a wet pair of Breeches" (1964, 37).

As histories of English criminal law routinely note, to the considerable relief of Mandeville and those of like mind, hangings at Tyburn came to an end in 1783 when executions were moved to a site just outside the walls of Newgate (see Griffiths 1987, 176–78). Less than a century later, in 1868, this uneasy compromise between the claims of popular justice and those of centralized state power was abandoned, as hangings were relocated deep within Newgate's interior. While the parliamentary and pamphlet debates concerning these reforms have been duly reviewed, much less often discussed are the various technological innovations that materially articulated the shift from Tyburn's rude ceremonials to Newgate's professional routines.

As the population of the west end of London swelled throughout the first half of the eighteenth century, as its permanent residents grew ever less tolerant of the commercial and traffic disruptions that attended the hangings conducted eight times a year at Tyburn, pressure mounted to move executions elsewhere. A halfhearted response was instituted in 1759 when the Triple Tree was demolished, its timbers sold to the proprietor of a local tavern for barrel stands. In its stead, and like the condemned themselves, a portable gallows was taken to and removed from Tyburn on a cart, thereby eliminating the time-honored tradition of using its beams for unofficial purposes; no longer, for example, could those unauthorized rework the semiotics of this most symbolically freighted sign of sovereign power by hanging persons in effigy.

This new gallows was additionally noteworthy because it was outfitted with a trapdoor whose inventor remains unknown. First employed in the execution of Lord Ferrers in 1760, the drop consisted of a yard-square hatch that was covered in black baize, raised about

eighteen inches above the floorboards of the scaffold, and set in motion when the executioner retired beneath the scaffold in order to pull on ropes attached to several support beams. Ferrers had originally petitioned to be beheaded rather than hanged on the grounds of his standing as a peer of the realm. This request denied, but still seeking to affirm his nobility, Ferrers arrived at the gallows in his own horse-drawn landau. Dressed in a wedding suit of white satin embroidered with silver lace, just before the noose was placed around his neck, he gave his watch to the sheriff, five guineas to the chaplain, and, mistakenly, another five guineas to the hangman's assistant rather than to the hangman, Thomas Turlis. When the row between hangman and assistant was finally resolved, in deference to his superior, Turlis begged Ferrers's forgiveness and then, by some accounts, attempted to hang him using a silken rope provided by the earl himself. Unfortunately, however, when its release was triggered, the hatch jammed part way down, permitting Ferrers's toes to defy the pull of gravity, and so the time-honored method of pulling on his legs was employed to finish him off. After an hour, his body was removed to Surgeon's Hall for dissection, at which time the crowd mounted the scaffold and fought one another for scraps of the black baize as souvenirs.

What I wish to highlight here is the tension between the particulars of this extraordinary execution and the imperatives of the liberal conception of justice, which, as I suggested earlier, plays a vital role in discursively facilitating the dissociation of the liberal state from the society it claims to rule. Realization of law's "indifference," which is essential to legitimation of the state's affirmation of its exclusive right to regulate the deployment of violence, demands the removal of all invidious distinctions differentiating executioner from executed, with the exception of course of the juridical fact that one is innocent and the other condemned. Yet the execution of Ferrers is defined throughout by markings of inherited status that compromise the abstract imperatives of liberal legal rationality. From the opposite end of the class spectrum, much the same deficiency is apparent when, immediately after its initial deployment, the trapdoor is abandoned because, to quote Sir Peter Laurie, mayor of London, execution by this means is "too aristocratic a mode for common vagabonds" (quoted in Gatrell 1994, 52). In other words, because the drop made it more likely, at least in principle, that the condemned would be rendered unconscious at rope's end, it

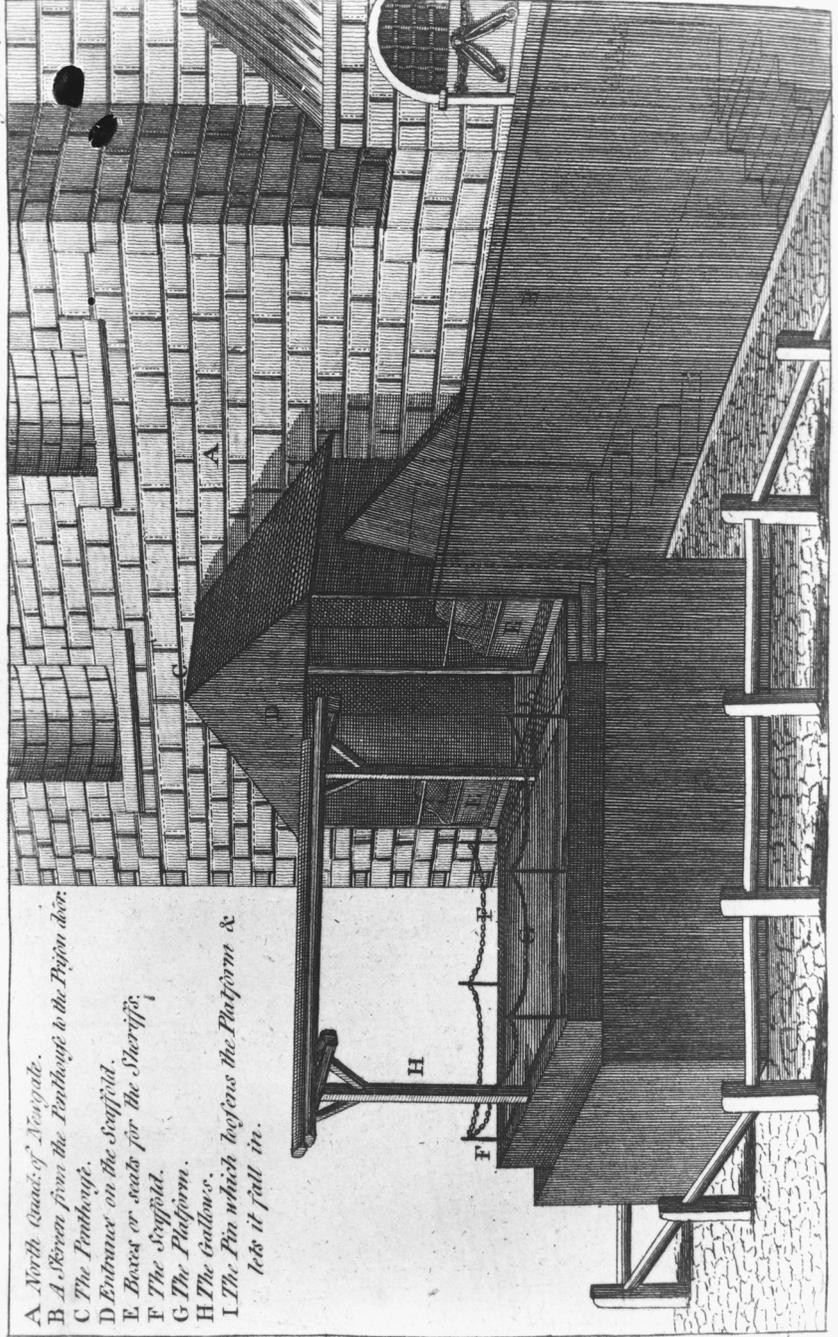
enabled the meaner sort to evade the tortured asphyxiation that typically followed removal of Tyburn's cart.

The performance of executions in the unconcealed, uncircumscribed, and unspecialized space that was Tyburn's rolling meadows additionally compromised the state's claim to autonomy. Echoing Mandeville, Barnard Turner and Thomas Skinner, sheriffs of London and Middlesex, respectively, cited Tyburn's failure to cultivate the appearances necessary to instill proper appreciation for the law's majesty as their primary argument in favor of removing executions to Newgate:

It has long been a subject of complaint that our processions to Tyburn are a mockery upon the awful sentence of the law and that the final scene itself has lost its terrors and is so far from giving a lesson of morality to the beholders that it tends to the encouragement of vice. . . . If the only defect were the want of Ceremony, the mind of beholders might be supposed to be left at least in a state of Indifference, but when they view the Meanness of the Apparatus, a dirty cart and ragged harness, surrounded by a sordid Assemblage of the lowest among the vulgar, their sentiments are More Inclined to Ridicule than Duty. The Whole Progress is attended with the same effect. Numbers soon thicken into a Crowd of followers and then an indecent levity is heard, the crowd gathers as it goes, and their levity increases till on their Approach to the Fatal Tree, the Ground becomes a Riotous Mass, and their Wantonness of Speech breaks forth in profane Jokes, Swearing, and Blasphemy. (Turner and Skinner, quoted in Ignatieff 1978, 88–89)

Their recommendation approved, Turner and Skinner designed a new portable scaffold, which was first employed on December 9, 1783, when ten persons were simultaneously hanged (although it was capable of handling twice that number). Ordinarily housed inside a shed in the prison yard, this device was drawn by horses into the street on the eve of each subsequent execution, where it stood some eight feet above the pavement.¹⁴

A detailed description of this apparatus, composed by Turner and Skinner, published in *Gentleman's Magazine*, and accompanied by the diagram reproduced in figure 3, is worth quoting at some length:



A North Quadr. of Newgate.
B A Screen from the Penthouse to the Prison door.
C The Penthouse.
D Entrance on the Scaffold.
E Boxes or seats for the Sheriff.
F The Scaffold.
G The Platform.
H The Gallows.
I The Pin which supports the Platform & lets it fall in.

Fig. 3. The new platform and gallows in the Old Bailey (1783). (*Gentleman's Magazine* (53), courtesy American Antiquarian Society.)

The east part of the stage, or that next to the jail, is enclosed by a temporary roof, under which are placed two seats, for the reception of the sheriffs, one on each side of the stairs leading to the scaffold. Round the north, west, and south sides are erected galleries for the reception of officers, attendants, etc., and, at a distance of five feet from the same, is fixed strong railings, all round the scaffold, to enclose a place for the constables. In the middle of this machinery is placed a moveable platform, in form of a trap-door, 10 feet long by 8 feet wide, over the middle of which is placed the gibbet. . . . Being thus constructed, the platform is raised to its proper height, and the slider, drawn out a little, is firmly supported thereby. At the head of this slider is fixed a lever, whose handle comes above the platform; and the convicts, standing on the platform, being tied to the gibbet, when the signal is given, the executioner, by a very small force applied to the handle of the lever, slides the bar into its place, and the platform falls from under them; and, by the quickness of the motion, it is observed to put the unhappy objects out of pain in much less time than was usual at Tyburn. (Turner and Skinner 1783, 990–91)

At Tyburn, as we have seen, the cart carrying the condemned had to travel through a throng of private persons; doing so, this unexceptional manifestation of quasi-official power was always in danger of being swallowed up within and by that crowd's irrationality. At Newgate, absent the processional, prisoners emerged from darkness into the domain of public visibility after passing through a screen that some likened to a theater curtain. Hemmed in by the jail, the Old Bailey, and Surgeon's Hall, all of which demanded that any view of the condemned also acknowledge these obdurate signs of official power, the number of spectators was limited to about five thousand, and so the likelihood that the state's agents could insure their orderly conduct was considerably enhanced. From Newgate's scaffold, painted black and draped in crepe, the body politic was excluded in the sense that its hands (but not its eyes) were kept at a salutary distance by the railings that "enclose a place for the constables"; "no other persons," explained Skinner and Turner, are "permitted to ascend it than the necessary officers of justice, the clergyman, and the criminal" (1783, 990). No longer, consequently, could friends and relatives abridge the suffering caused

by slow suffocation, and no longer could they contend with surgeons' hirelings over the ultimate disposition of marketable corpses. Moreover, because these permanent railings relieved the constables of the need to actively discharge their embodied force in drawing and sustaining this line of demarcation, they were now free to stand at attention as so many inert incarnations of the liberal state's claim to authority. Unequivocally distinguished from those who bear the imprimatur of office, the members of the public were thereby transformed into a collective audience whose participation in this drama was ever more superfluous.

Whereas the gallows at Tyburn remained unenclosed, in a space that was neither unambiguously public nor private, the scaffold at Newgate afforded material form to liberalism's categorical distinction between these two domains. By elaborating the sense of Locke's distinction in the media of wood, iron, and rope, this structure rearticulated the meaning of law's violence by more squarely identifying that which is public with that which is official, that is, securely under state control, and that which is private with that which is not. That this realm of officialdom was informed by specifically liberal rather than absolutist premises is suggested by the dramatic decline in capital punishment statutes during the half century following the move to Newgate's north quad. As I noted in the preceding section, in 1800, at least in theory, capital punishment could be imposed on those convicted of any one of over two hundred offenses. Yet, throughout the eighteenth century, the actual number of executions was considerably lower than one might expect given this statutory reality, principally because the power of royal pardon was so often invoked in order to mitigate the severity of the law's formal imperatives. The net result of this incongruity, insisted Samuel Romilly in 1808, was a "lottery of justice" (quoted in McGowen 1983, 100) in which not law but arbitrary will dictated who would live and who would die. By 1841, however, the number of crimes punishable by death had dropped to eight, and in practice executions were carried out only for the crime of murder. A testament to the success of liberal reform efforts, argues Randall McGowen (1983), this reduction betrayed not so much an increase in humanitarian sensibilities, as a growing concern that the apparent capriciousness of capital punishment threatened to erode the law's legitimacy. In contrast to the Tories, who defended an image of discretionary justice, tempered by mercy and exemplified by

the Crown's intervention, the Whigs argued for elimination of all capital statutes that necessitated discretionary authority and so compromised the liberal ideal of formal equality grounded in the operation of an impersonal and impartial body of law.

The liberal conception of justice was afforded additional artificial articulation when, at some unknown date during the second half of the eighteenth century, it became the custom to drape a white hood over the head of the condemned after mounting the scaffold. That hood, speculates England's leading executioner for much of the twentieth century, was adopted in order to "mask the contortions of slow strangulation, which were considered too horrible even for the ghoul- ish British public to witness, although the logic that public executions were a public deterrent against crime might strictly have been followed by exposing the ultimate horror in order to achieve the maximum deterrence" (Pierrepoint n.d., 127). What is puzzling to Albert Pierrepoint—the failure of the state to maximize the deterrent effect of public punishment by augmenting its spectacular agonies—proves less so if we think of that hood as a manifestation of liberal law's commitment to impartiality. Recall William Blackstone's (1979) claim that a person sentenced to death is a *civilites mortuus*, a disembodied abstraction stripped of the rights and privileges retained by those who remain alive in the eyes of the law. The status of a rightless nonentity is artifactually secured when the seat of personhood, the head, is veiled; and that reduction achieves a complementary twist when, as was the case after 1864, the Newgate scaffold was itself draped in black cloth. By covering its naked skeleton, this innovation insured that nothing below the neck would remain visible after the body dropped. Confined to the sight of an immobilized and undifferentiated head, we might say that the practice of capital punishment at last realized its full etymological sense.

And yet it was precisely because those hanged were not in fact disembodied abstractions, precisely because their bodies remained indispensable but irreducibly irrational elements of this practice, that Newgate's public scaffold proved a source of ongoing official embarrassment. Because there was insufficient room to maneuver a cart in the street outside Newgate's north quad, the designers of the new gallows found it necessary to reincorporate the hatch that had been eliminated after Ferrers's botched execution. In certain respects, it is true, that device contributed to the law's formal rationality; dealing yet another

blow to the ideal of aristocratic privilege, its employment for all offenders, no matter how common, effectively articulated liberalism's ideal of equality before the law. In addition, the trapdoor rendered the administration of state violence far more economical: "[B]y a very small force applied to the handle of the lever," Turner and Skinner had promised, a force whose magnitude paled in comparison to that required to draw a cart out from under the Triple Tree's crossbeams, the executioner could now launch his victims into eternity using a single unaided hand. As such, the trapdoor's release mechanism effectively projected an ideal, one that affirmed the value of minimizing the expenditure of human energy necessary to set it in motion as well as the time elapsed between that expenditure and its intended result, death of the condemned.

However, and in spite of the sheriffs' assurances that "the unhappy objects" would be put "out of pain in much less time than was usual at Tyburn," Newgate's trapdoor did not in fact expedite expiration of the condemned. Because the distance of the drop remained somewhere between two and three feet, the primary cause of death continued to be, as it had been for over a millennium, asphyxiation caused by strangulation. Largely because the science of the human body in the late eighteenth century was considerably less developed than was the science of mechanics, whatever innovations were incorporated within this new machinery of death did not extend to the point of intersection between human bodies and the proximate cause of death, the noose. "Dancing at the end of a rope," these loci of protracted pain could not help but discomfit the state, deriding its pretensions to perfect calculability and efficiency in the administration of violence.

The Arithmetical Body Politic

The last person to be hanged publicly in England was the Irish Fenian Michael Barrett, who, in 1868, caused the deaths of fifteen people by blowing up a wall of Clerkenwell Prison in an unsuccessful bid to rescue his comrades. Newspaper accounts indicate that he died after repeated convulsions, his "protruding tongue and swollen distorted features discernible under the thin white cotton covering, as if they were part of some hideous masquerading" (quoted in Gatrell 1994, 46). On May 29, two days after Barrett's execution, Parliament passed the

Act to Provide for the Carrying out of Capital Punishment in Prisons; and, on September 8, Alexander Mackay, an eighteen-year-old coffee-house servant convicted of murdering his master's wife, was the first person to be hanged behind the walls of Newgate.¹⁵

Many who favored the abolition of public hanging did so on grounds that essentially recapitulated those advanced when Tyburn was abandoned. Echoing Skinner and Turner, for example, Lord Chancellor Cransworth argued that the privatization of executions "would put a stop to the saturnalia which occurred on the occasion of every execution in the Metropolis" (quoted in Cooper 1974, 168). Translating the desire for tranquil streets into a universal moral imperative, one member of Parliament declared that public hangings were "a disgrace not only to civilization but to our common humanity" (quoted in Gatrell 1994, 589). Just how exactly this practice undermined the cause of civilization was clarified when the *Daily Telegraph*, invoking a notion of progress that sat well with the humanitarian sensibilities of liberal reformers, insisted that this "fragment of medieval barbarism" must now come to a halt (quoted in Gatrell 1994, 589). The charge of anachronism, it should be emphasized, was directed not at hanging per se, but rather at the crowds whose attendance was now construed not as the assertion of a collective political right, but as the expression of an unseemly appetite for sordid amusement: "It was not a question," one MP insisted in 1864, "between privacy and publicity, but whether the community should call together a mob of the lowest character, acted on by a greedy and craving curiosity of the most savage nature, or should, on the other hand, make provision that the last solemn act of the law should be performed with solemnity, gravity, and decency" (quoted in McGowen 1994, 280).

A more intriguing brief on behalf of hanging's privatization was offered by Home Secretary Gathorne Hardy in his rearticulation of an argument first advanced by Henry Fielding in 1751: "If Executions," Fielding had recommended, "were so contrived, that few could be present at them, they would be much more shocking and terrible to the Crowd without Doors than at present, as well much more dreadful to the Criminals themselves, who would thus die in the Presence only of their Enemies; and where the boldest of them would find no Cordial to keep up his Spirits, nor any Breath to flatter his Ambition" (1975, 124). In much the same vein, Hardy suggested, the "mystery and indefinite-

ness" of executions conducted behind closed doors would surely contribute to the cause of deterrence, for "the criminal class have a greater dread of death on a private than on a public scaffold" (quoted in Gatrell 1994, 592). For many, however, it was precisely the "mystery and indefiniteness" of "private" executions that explained their opposition to the 1868 act. Not merely the "criminal class," but law-abiding citizens as well, had good reason to believe that secret executions violated the people's right to witness the punishments they ostensibly authored and, perhaps more important, eliminated one of the more significant impediments to the abuse of governmental power. The abolitionist *Eclectic Review* summed up this objection as follows:

The necessity which now exists for displaying before the public every exercise of the power of life and death is unquestionably a check upon the State. . . . We could not safely entrust the power of secret extermination to the State because of the likelihood that the power would be abused by over-exercise, by unconcern and by official hardness of heart. Not only should we suspect that many were hanged who ought not to be, but we should also suppose that many were not hanged who were sentenced to die. (Quoted in Cooper 1974, 69)

These concerns, presupposing that power's visibility is as essential to liberty as is its impartiality, did not go entirely unanswered. Specifically, the 1868 statute required that the jailer, the chaplain, and the prison surgeon attend all executions (although attendance by justices of the peace within the jurisdiction of the prison was optional); left the admission of relatives of the prisoner and other unofficial persons (e.g., representatives of the press) to the discretion of the sheriff; and required that the body of the deceased be examined by a surgeon whose declaration of death was to be signed by the sheriff, the jailer, and the prison chaplain.

As a result of these provisions, the character of the "public" present at executions shifted dramatically, as the heterogeneous throngs at Tyburn and the smaller but still diverse crowds outside Newgate were supplanted, almost entirely, by a minute circle of homogeneous office-holders. Given the vested interest of these agents in denying any mishaps that might undermine their credibility, the pens of the press

effectively became the eyes of the public. However, following several lurid newspaper accounts of executions gone awry, the presence of reporters was strongly discouraged by the Home Office; and so, after 1888, in the vast majority of cases, the only information issued at the close of an execution consisted of a terse notice to the effect that the affair had proceeded "without a problem and that death was almost instantaneous." To the extent that such deaths were no longer susceptible to rival readings generated by unofficial eyes, it proved ever easier to sustain the categorical distinction between the acts of violence committed in the name of the law and those punished by it; and to the extent that the condemned could no longer address an assembled multitude and so participate in fashioning the public meaning of their own deaths, it proved ever easier for officials to insure that the state's voice alone was heard. By moving executions within Newgate, in short, what was once the universal right to impose the death penalty within the Lockean state of nature was at last expropriated, consolidated, and sealed behind locked doors.

It is important to emphasize, however, that this statutory accomplishment could not have been realized had the path to this end not been paved long before. As David Garland (1985) has demonstrated in considerable detail, the English state's efforts at internal pacification advanced dramatically between 1780 and 1850. Key was replacement of the decentralized network of parish constables by a professional police force. The first full-time, paid, uniformed, and hierarchically organized police force was created in London and its environs in 1829; and, in 1856, the County and Borough Police Act made it compulsory for all communities to do the same. At about the same time, the central government adopted a deliberate policy of encouraging uniform prosecution of offenses in an effort to displace informal webs of discretionary social control; and, in order to try the rapidly growing number of cases, created a salaried magistracy, thus rendering largely irrelevant the parochial system of unpaid justices of the peace. Not surprisingly, it was during these same decades that the haphazard system of local jails and houses of corrections was supplanted by a system of penitentiaries, ultimately under Home Office control; and, in 1857, the national government began to compile statistics on criminal offenses throughout England, complete with detailed information on different types of criminal conduct as well as the number of acquittals, convic-

tions, and forms of punishment administered for each (see Gatrell 1990 and Philips 1980, 1983).

Roughly concurrent with hanging's privatization, which served to rationalize the political context of law's violence, was a series of technical improvements aimed at rationalizing its administration. Most noteworthy in this regard was the work of William Marwood, who first served as executioner in 1874. For much of his inspiration, although he publicly disavowed such indebtedness, he turned to Ireland. Conventional wisdom credits the Irish with invention of what eventually came to be known as the "long drop," a fall whose purpose was to cause a quicker death by dislocating the uppermost cervical vertebrae, thereby separating the spinal cord from the brain stem. This end was occasionally achieved using the short drop, especially when someone elected to jump from Tyburn's cart before it was removed, but the Irish were the first to make this an intended desideratum as opposed to an accidental by-product. Typically, in Ireland, drops ranged from ten to seventeen feet; while those lengths did sometimes hasten death, too often they did so by causing decapitation rather than cervical dislocation. Some progress in overcoming this defect was made, following consultation with Ireland's leading surgeons, through experimentation with various locations for the knot, including the occipital, the subaural, and the submental. But it soon became apparent that no amount of tinkering with the knot's placement could substitute for more precise calculation of the optimal distance of the drop; and so, after trying various lengths, Marwood eventually concluded that a fall of approximately eight feet would typically do the trick.

In time, Marwood's trial and error efforts prompted hanging's most sublime moment of rationalization, as the past's haphazard attempts to respond to local problems were supplanted by a deliberate program of centralized state action. Specifically, in 1886, Secretary of State Richard Assheton Cross appointed a committee "to inquire into . . . the existing practices as to carrying out of sentences of death, and the causes which in several recent cases have led either to failure or to unseemly occurrences, and to consider and report what arrangements may be adopted (without altering the existing law) to ensure that all executions may be carried out in a becoming manner without risk of failure or miscarriage of any sort" (*Report of the Committee* 1886, n.p.). In an attempt to navigate between hanging's Scylla and Charybdis, that is,

slow strangulation and instantaneous decapitation, the committee requested that calculations be made as to the most desirable length of the drop to be afforded convicts of different weights. After considerable research involving a dynamometer and sacks filled with varying amounts of sand, the committee prepared a table predicated on its assumption that 1,260 foot-pounds of energy would most often cause cervical dislocation but not decapitation, and hence that division of this number by the weight of the condemned, measured in stones or pounds, would dictate the correct length of the drop, measured in feet and inches (see table 1). The construction of this table, whose terms “may be fully depended upon to produce instantaneous loss of consciousness and the speedy death of even the most robust” (1886, x), marks a significant transformation in the character of liberalism’s reason of state. Much like an actuarial table, its cells presuppose that the heterogeneous population of England demonstrates predictable regularities that can be codified in quantitative terms. As such, this table participates in an immanent reconfiguration of the character of the violence inflicted by the liberal state. In speaking of executions performed behind Newgate’s walls and in accordance with this table’s imperatives, I cannot reproduce something analogous to Hogarth’s *Idle ‘Pren-*

TABLE 1. Scale of Drops

Weight of Culprit		Drop	Energy Developed (foot-pounds)
Stones	Pounds		
7	98	11'5"	1,119
8	112	10'0"	1,120
9	126	9'6"	1,197
10	140	9'0"	1,260
11	154	8'2"	1,258
12	168	7'6"	1,200
13	182	6'11"	1,259
14	196	6'5"	1,258
15	210	6'0"	1,260
16	224	5'7"	1,251
17	238	5'3"	1,250
18	252	5'0"	1,260
19	266	4'8"	1,241
20	280	4'6"	1,260

Source: Report of the Committee to Inquire into the Execution of Capital Sentences (1886).

tice or the schematic diagram of Skinner and Turner. This is literally so because the state's lethal instrumentalities are now hidden from view; but it is also metaphorically true in the sense that this table's arithmetic of the body politic engenders its own sort of invisibility, as concrete relations of domination, including acts of state violence, are reconfigured as reified correlations among so many things differentiated only in the terms provided by modern physics.

Adoption of this table also facilitates the consummate irony, as the expropriator is himself expropriated. If the hangman, as I have argued, was one of the principal instruments with which the early absolutist state in England sought to wrest the means of violence from its competitors, ecclesiastical as well as secular, adoption of this table went a long way toward transforming this agent into a dispensable technician. After complaining that "the whole of the details of the execution are practically in the hands of the executioner," the committee of 1886 recommended a standardization of the diameter and materials of hanging ropes, a standardization of scaffold structures, and even a standardization of the method of fashioning nooses (vi).¹⁶ Here, once again, it was Marwood who demonstrated an uncanny knack for rendering himself and his occupational kin obsolete. Into one end of his rope he worked a brass eyelet; through that eyelet the opposite end was passed in order to form a running noose, and that noose was secured under the condemned's jaw with a leather washer. As the art of noose tying thereby came to an abrupt halt, yet another human skill, once passed through generations from master to apprentice, was reconfigured in the form of an inanimate artifact. This progressive dispossession reached its logical culmination in 1890 when the central government began to supply a new rope for each execution and to burn each coil once its work was done. Doing so, the state simultaneously destroyed a potential source of revenue for the hangman as well as a tangible artifact, which, if preserved, might sully the abstract purity of its violence.

In bringing this section to a close, I wish to remind the reader that the changes charted in this chapter were never without their specifically English peculiarities and hence that the category of rationalization must always be read in culturally specific terms. To cite but one example, and contrary to what one might anticipate given Weber's account of the bureaucratization of the modern world, the English hangman never became an official in the strict sense of the term. In an ill-fated

gesture in that direction, in 1785, the sheriffs of London provided a uniform to a hangman by the name of Dennis; apparently unimpressed, he sold it to a fortune-teller. A hundred years later, James Berry wrote a letter to the 1886 committee in which he argued that, rather than working on commission, he should receive a fixed salary of £350 per year for service in the office of executioner. This request for regular compensation was denied, as was Berry's recommendation that a formal office be created for those serving in this capacity. Until the time of capital punishment's effective abolition in 1964, the Home Office continued to solicit applications from persons wishing to act as hangmen. Those deemed suitable were trained at Pentonville, and their names, usually numbering six, were forwarded to local sheriffs as the need arose. Never, in short, did the conduct of hanging in England become something other than a part-time occupation compensated on a piecework basis.

Postmodern Barbarism

In September 1953 the Royal Commission on Capital Punishment presented its report to Parliament. Among other things, the commission concluded that, of the various methods of execution, hanging best satisfied the criteria of humanity, decency, and certainty. By the term *humanity*, the commission meant, first, that executions should be "free from anything that unnecessarily sharpens the poignancy of the prisoner's apprehension" and, second, that the act of execution "should produce immediate unconsciousness passing quickly into death" (*Report of the Royal Commission 1953*, 253). The term *certainty* was intended to pose the question of which "method is most likely to avoid mishaps, due either to the complexity of the machinery or to an error of the executioner" (255). Finally, with the term *decency*, the commission indicated its expectation that executions should be conducted with "decorum," and that they should "avoid gross physical violence and should not mutilate or distort the body" (255). Informed by the Home Office that "there is no record during the present century of any failure or mishap in connection with an execution," the commission concluded that hanging, "whose special merit was formerly thought to be that it was peculiarly degrading," could now be "defended on the ground that it is uniquely humane" (1953, 247).

It is difficult to know exactly what to make of this endorsement of hanging. A cynic might contend that what one finds here is a masterly exercise in obfuscation, one that turns on its sly reference to the absence of any record of mishap or failure. After examining the skeletons of thirty-four victims of judicial hangings conducted between 1882 and 1945, Deryk James and Rachel Nasmyth-Jones (1992), forensic pathologists at Sheffield, determined that in only six cases did cervical dislocation, the so-called hangman's fracture, occur. However, official autopsy reports stated that death was wholly or partially caused by cervical fracture in nearly half of these cases. Given this discrepancy, we have good reason to wonder how many of the total number involved the "instantaneous loss of consciousness and the speedy death" promised by the committee of 1886. That question grows more intriguing when we learn from Harold Hillman, director of the applied neurobiology program at the University of Surrey, that contrary to popular perception hanging does not immediately arrest respiration and heartbeat: "They both *start* to slow immediately, but whereas breathing stops in seconds, the heart may beat for up to twenty minutes after the drop" (quoted in Abbott 1994, 263). If that is so, then it may be that what introduction of the long drop accomplished was not instantaneous death, but rather the immediate appearance thereof (an appearance no doubt facilitated by the leather straps Marwood invented in order to pinion the arms and legs of the condemned).

Once removed from public view, absent the sort of public verification that might otherwise make it possible to contest official proclamations of unqualified success, hangings become a phenomenon of the depoliticized imagination. Simultaneously salutary and sorry is the English public's refusal to acquiesce in the state's relentless efforts to transform Tyburn's unruly rabble into an orderly aggregation of Cartesian solipsists for whom hanging is a spectral affair constructed in the privacy of individual psyches. Following the move behind Newgate's walls, as many as thirty thousand persons would sometimes assemble in front of Madame Tussaud's Exhibition on Baker Street on days when celebrated criminals were to be executed. There, "quest[ing] for realism in a parody of itself" (Bender 1987, 251), the crowd would struggle to catch a glimpse of the Chamber of Horrors, augmented by life-sized wax statues of the murderer about to be dispatched as well as the executioner commissioned to accomplish this end.

Arguably, what one sees here is a sort of popular resistance to rationalization's meaning-eviscerating dynamic, which Weber seeks to capture with his concept of disenchantment. That concept leads us to expect that hanging's subordination to the imperatives of instrumental rationality will slowly strip it of the ritualistic and ceremonial elements that once saturated public hangings; gone, for example, is the construction of hanging as a drama of salvation, an opportunity for Tom Idle to confess his sins before the chaplain seated next to him on the cart bound for Tyburn. As formal rationalization demonstrates its irrationalism, as the claims of bureaucratic proceduralism and technical efficiency displace whatever substantive values once situated the act of hanging within more comprehensive textures of collective meaning, execution becomes ever more entirely a matter of making a live body dead, and that within an ever more secularized culture whose members increasingly think of death as nothing other than the cessation of biological existence. Yet, when the people of London congregate near Madame Tussaud's, they desperately seek to reclaim some public meaning from the state, something more politically vital than its formulaic declaration. That effort assumes a form, however, that leaves unchallenged what Weber calls "passive democratization," that is, the processes whereby realization of liberalism's promise of formal equality and procedural justice entails a substantive "*leveling of the governed* in opposition to the ruling and bureaucratically articulated group, which in its turn may occupy a quite autocratic position, both in fact and in form" (1978, 2:985). Their resistance, should it be dubbed such, takes place in the company of a noose that does no work, a body that suffers no pain, and a hangman who can never err.