exhortation and an equally developed conclusion containing precepts and remedies under the heading of "Remedies appropriate for medicine of the soul" ("Quels sont les remèdes qui conviennent au médecin des âmes"). Indeed, the author essentially considered the confessor to be a doctor of spiritual life, and this comparison dominated the directives that governed his attitude and actions.

Sommes de casuistique et manuels de confession au Moyen Âge, pp. 15–27.
30. See Alain de Lille, Liber pensionum, cap. XX: La tradition longue, ed. J. Lancé, Analecta historica monasticorum (Louvain-Lille: Éditions Nauwelaerts et Giard, 1968), p. 32: "Considerandum est, eadem corporis gestus, vel facies habitas, ut per exteriora comprehen-
dantur interiora, quia cum vultus sit quasi animi signum, et figura, per vultum pos-
test perpendi quae sit voluntas interna; quia si vultus est in terra deserta, sedebus irigione, interneos significat cruciatum; si vero facies fuerit erecta, nulla tristitia gerens vestigia, minor videtur esse peneostrata."

SIXTH LECTURE
May 20, 1981

Jurisdiction in ecclesiastical and political institutions. • From God as judge to a state of justice: sovereignty and truth. • Avowal, torture, and inquisitorial tests of truth.
Avowal, torture, and legal proofs. • Avowal, sovereign law, sovereign conscience, and punitive engagement. • Auto-verdict, evidence, and penal dramaturgy. • Hetero-verdict, examination, and legal psychiatry. • Relating the act to its author: the question of criminal subjectivity in the nineteenth century. • Monomania and the constitution of crime as psychiatric object. • Degeneration and the creation of the criminal as object for social defense. • From responsibility to dangerousness, from the rights-bearing subject to the criminal individual. • The question of criminal subjectivity in the twentieth century. • Hermeneutics of the subject and the meaning of crime for the criminal. • Accident, probability, and indices of criminal risk. • Verdict of the subject and the breach in the contemporary penal system.

What I would have liked to have done, since I had tried to show you how the practice of avowal had formed within Christian institutions, is to continue by showing you how the recourse to avowal took on an increasingly important role in medieval judicial practice. This important role—of greater and greater importance—of avowal in the judicial institutions of the Middle Ages, of course, was the result of the contamination by the penitential practice, whose importance I tried to emphasize last time and which had its origin in the scriptural practice of confession. I think it is worth noticing that the richness and variety of the practice of avowal and confession reflect the complexity of the social order they were intended to support.
think that the increasing importance of avowal in the judicial practice of
the Middle Ages resulted from modifications within the institutions of
justice themselves. And it is this integration, this development, this solidi-
fication of the practice of avowal in judicial institutions of the Middle Ages
that I would have liked to present to you. I then would have liked to ex-
change the paradoxical effects of the introduction and development of this
practice of avowal on modern and contemporary [. . .] penal theory and
practice, and the introduction of what one might call the avowing subject
through the development of this practice of avowal. I believe that these
effects were so paradoxical that they have unsettled in part the penal ma-
chine that we now know, or at least introduced a series of impasses that, I
believe, we are far from overcoming.

Indeed, it seems to me—and this is the point that I would like to come
to—that by introducing the avowing subject, it was no doubt believed that
it could bring about the fortunate coincidence between the author of
the crime and the subject who had to account for it. And, in fact, I believe that
a third party was introduced—or let’s just say that a new order of reality
was introduced that could not be assimilated into penal practice or even
the theory behind it. This new object, the avowing subject, showed itself
to be a cumbersome figure in that it was both indispensable to the func-
tioning of the penal machine and at the same time somehow in excess—a
third party constantly solicited to say what was asked of him, yet always
saying less than what was expected, always saying something other than
what would allow the machine to function properly; such that this charac-
ter of the one who tells the truth, who tells the truth of his crime, far from
being the keystone of the penal system—as had no doubt long been hoped
for—instead, I believe, opened an irreparable breach in the penal system.

But in saying this, I do not want to give you the impression that in my
view the penal institution somehow carelessly introduced a little foreign
element into its own mechanism, which then ultimately caused it prob-
lems. Avowal was not the black sheep in the sheeplad of penalit: avowal
had been a cultural form; it had been and remains a social practice outside
of the judicial institution. This cultural form, this social practice did not
remain stable across the centuries. And it is no doubt the transformation,
the evolution of the very practice of avowal, the very practice of the avow-
ning subject, that no doubt produced a certain number of countereffects on
penal practices within which the penal machinery itself got caught and be-
came obstructed. If avowal, or rather what is said in and through avowal,
has caused such problems for penal justice, it is not because avowal is in
itself a nasty and perverse little machinery: it is because the status and
the forms of veridiction of oneself have been profoundly modified in our
societies. And if the avowal—let’s say the one that was introduced in the
Middle Ages, or in any case institutionalized in the Middle Ages in penal
practice—if that avowal no longer functions today, it is no doubt because
it is an entirely different avowal, within an entirely different penal ma-
chine.

Such is the broad arc of what I had hoped to present: on the one hand,
the institutionalization of avowal in judicial practice, and on the other,
the disordering of the penal machine through the impact of the practice
of avowal—let’s say there is an upward and a downward arc. But my rather
clumsy organization of the lectures up to this point, and the fact that I
have dragged my feet recounting stories about the young monks of early
Christianity and a whole set of histories that enchanted me and perhaps
bored you, but in any case have slowed us all down—all of that means that
now I must choose between a discussion of the upward or downward arc:
I must either show how the practice of avowal was inscribed and solidified
in penal law from the Middle Ages on, or show how the veridiction of
the subject has introduced a crisis into penal law since the nineteenth cen-
tury from which, it seems, we have yet to escape. And since I was invited here
by the institute of criminology (and I thank them for this invitation), it
seemed to me that it would be perhaps more appropriate, given what may
be expected of me, to insist on the second aspect, that is to say, to study
more closely the appearance of the criminal—as of the avowing criminal—as
a destabilizing factor in punitive institutions: to study, if you will, the
problem of the regime common to the punishment of crime and the mani-
festation of the criminal. This, then, will be the focus of tonight’s lecture.

However, before moving on to this, I would nonetheless like to take a
few moments to offer a rather schematic outline of what should have been
another lecture on the institutionalization of avowal in medieval crimi-
nal justice. I would have liked to show you, in effect, that the privileging
of avowal in penal practices was inscribed, in a general manner, in a sort of
broad juridification of Western society and culture in the Middle Ages, a
juridification that could be perceived—as I tried to show you last time—in
the institutions, the practices, the representations that were part of Chris-
tianity. We saw it precisely with regard to penance: how penance became
at once a sacrament, and received the value and the meaning of a

ment by taking on a more juridified form. I evoked this process as well with regard to the new dividing lines that were so carefully and laboriously drawn between penitential jurisdictions and disciplinary jurisdictions in the Church. It could also be seen, of course, with regard to the infinite debates between ecclesiastical and civil jurisdictions. It could be seen as well with regard to the Inquisition, which represented a considerable advance in this juridification of ecclesiastical practices. It could also be seen with regard to the set of representations through which one tried to define and manifest the relationships between God and men: God as judge, God sitting on his throne at the head of his tribunal, the last judgment. Of course, these were all very old themes that did not stem from Christianity itself, but were inherited from Judaism; however, they are themes that re-emerged with renewed intensity as of the twelfth century, and then were accompanied by the appearance of other themes that were entirely new—such as, for example, the theme of purgatory or the system of indulgences.

All of this juridified, if you will, the whole set of relationships between man and God. This juridification, which can be felt so acutely in the ecclesiastical institutions and religious representations, can equally be felt throughout the Middle Ages, especially as of the twelfth century, in political institutions. Without going into detail, let's just briefly say that the affirmation and growth of monarchical power in the context of feudal institutions, this affirmation and this growth were built on the exercise and development of judicial power. It was in his capacity as judge, as arbiter, as the one called upon to settle legal disputes, or as the one who himself chooses cases to judge, that the king established his power on top of feudal power or within the interstices of feudal power. It was through a jurisdictional form that the king made and enforced his decisions. In short, according to a well-known formula, the first form of the modern state was a state of justice.

And yet, as political and jurisdictional power thus interpenetrated, the forms of juridical procedures, of course, were undergoing change. In particular, the accusatory procedure through which someone—whether it was the victim or someone representing the victim—accused another of having wronged him, this procedure, as you know well, centered the entire penal mechanism on the confrontation between two adversaries or two partners. And these two, the accuser and the accused, then had to settle their litigation according to rules and sometimes through arbitration, or eventually they had to pursue their vengeance in a private war. And as you well understand, this particular way of resolving a dispute raises issues that could no longer be posed in the same terms once it was the sovereign who intervened, either at the behest of a complainant or by intermediary of one of his prosecutors. The problem was no longer simply one of allowing the two adversaries who confronted one another to settle or end their conflict according to a given number of rules that needed to be respected. Once it was up to the sovereign to settle the dispute, the problem was one of establishing the truth and of determining a sanction based on the established facts. The necessity of a veridiction was inscribed in the displacement that had the effect that penal justice would rise, if you will, from a resolution of a conflict in the form of a struggle between two individuals to a resolution of a conflict in the form of a decision by a sovereign court or by a decision of the sovereign himself. Recourse was thus made, for the establishment of this truth, to means of inquiry more or less akin to those that were used at that time—and that had been for some time, for that matter—in administrative and fiscal inquiries. And as soon as the establishment of truth became an essential element of the procedure, the affirmation of the truth by the accused himself would become an important element. Avowal became—or rather, became again, because in fact, throughout Roman law, proof by avowal was recognized and admitted, but this type of procedure had almost disappeared, or in any case had declined in a massive way from the seventh or eighth centuries on—the establishment of the truth through the avowal of the culprit became once again an important piece of the procedure.

Yet it is interesting and, I think, noteworthy in this history that avowal was not simply called upon as a privileged form of testimony in the process of inquiry during this period. Avowal was not simply an element of proof that would be all the stronger because it was provided by the very one who committed the crime. The importance of the role of avowal came from the fact that it was located on the boundary between traditional accusatory procedures and the new procedures of inquisition. You will remember that one of the means used in accusatory procedure was precisely the test [épreuve], the test that was proposed either by the accuser to the one he accused or by the judge. It was the ordeal of water, of fire, the judicial duel, that allowed one to determine, not exactly what was the truth, but rather who should be considered the victor in this confrontation, in this struggle, in this joust, between the two partners.

And yet the extortion of an avowal came to constitute in the inquisito-
rial procedure — and [...] in that particular form of inquisitorial procedure that can be found precisely in the Inquisition itself — [...] a sort of strange mix between the establishment of an element of proof [and] the establishment of a truth by means of a system of demonstration: as it happens, the testimony of the subject about himself was both the establishment of a truth and at the same time a test. The torture that allowed the truth to be extracted should be envisaged not at all as the most rapid means to arrive at the truth. It should be understood, in reality, as a test: "If I subject you to the test of torture, if I subject you to such and such suffering, will you win or lose, will you give in or, to the contrary, will you be able to resist by saying nothing, like the one who is not burned in the ordeal of the red-hot iron, like the one who does not drown in the ordeal of water, like the one who wins the judicial duel?" We see clearly why avowal became intimately tied to torture, or to the threat of torture, and remained so for such a long time in inquisitorial procedure: it was one of the remnant of the accusatory procedure that was transferred into the inquisitorial procedure — obtaining the truth by a test of avowal that was obtained by torture, this torture to which one could resist, to which on the contrary one could cede. Avowal under torture could produce the element of truth that was necessary for the new inquisitorial procedure; and it allowed it to be produced as a sort or at the end of a sort of judicial test, almost of a duel, though admittedly one with an obvious inequality between the accused and one who tortured him, that is to say the one who represented the power that pursued him. The extortion of the avowal was, at bottom, what could be called the inquisitorial test of truth. And I think that [...] this particular role that the avowal played at that precise moment, when it reintroduced itself within criminal procedure, I believe that we can, at that precise moment, understand well the broad traits of this practice.

On the one hand, of course, the importance it had in the Inquisition. The fact as well — and this must be remembered — that it was not at all an untamed practice, but rather a well-regulated one: as opposed to the torture as it may be practiced by our police today, torture in the Inquisition, torture in that type of procedure did not employ any and all means possible to extract from an individual the truth that he might know. It was in reality a well-defined exercise, in which the judge had the right to employ such and such torture with such and such an instrument during a certain period of time; beyond that, he could do no more, and he needed to stay strictly within the given framework, to stay within the prescribed tests. This explains the fact that the accused himself could in some sense win if he resisted the test. And if he resisted the test — so, according to the types of procedures, it varied; I will pass over the details, but roughly speaking, if he resisted the test — he was cleared and the prosecutor was forced to abandon his pursuit. I say this once again, keeping in mind that there was a whole series of other modifications; but in general, when one resisted torture, it was the prosecutor who lost, which clearly shows the test-like structure of this avowal.

This also explains, I think, the difficulty of situating exactly such a test within the inquisitorial procedure. What exactly was the status of the truth of an avowal obtained in this way? What value as proof could be given to this declaration that had been extracted through avowal? There was here a whole series of difficulties that jurists discussed often and at great length. So it was considered that an avowal obtained through torture had no legal value and could not have any effect unless it was repeated without torture, as if it were testimony that had been given by the individual about himself. Of course, when the individual denied an avowal obtained through torture and his new testimony did not correspond to what he had said under torture, then he was tortured again, so that the threat of torture might ... In the end, things were complicated, but I think it is interesting to note [...] the significance of torture in this procedure of avowal, its place within the confines and at the interface [...] of accusatory procedures (with the practice of the test) and of the inquisitorial procedure (with the inquiry and the search to establish the truth).

I will say nothing of the evolution, displacements, and decline of this practice of extracting an avowal in criminal justice in the period leading up to the eighteenth century, because I must move on. I will only mention, first, the fact that this procedure went through a period of decline and then it reappeared. In particular, the practice of extracting an avowal through torture reappeared in the sixteenth and seventeenth centuries with the development of the great state structures. As examples, I would point to the Constitutio criminalis Carolina of Charles V at the end of the first third of the sixteenth century, and various criminal ordinances in France — that of Francis I, as well as that of 1670. I would also like to mention that the system of avowal was tied to a curious system referred to as legal proofs — it was within the system of legal proofs that the avowal needed to take place. This system of legal proofs
defined exactly the relative weight of each element of proof within the total quantity of proof considered necessary for establishing perfect certainty. This is what was called a complete proof. So you had — until the middle of the eighteenth century and even at the end of the eighteenth century — an entire table on how one could establish the truth of an infraction, with a certain number of principles, some of them well known, but whose consequences were rather curious and oftentimes paradoxical. For example, there was the principle that two eyewitnesses of a fact constituted a complete proof, but that one eyewitness, contrary to the principle of Roman law, constituted not an absence of proof but a half-proof, and a half-proof corresponded to being half guilty, such that a fact established by half of a proof would entail half the punishment. This was a very complicated system in which there were what were called complete proofs, what were called semi-proofs, there were indices, there was a whole series of graduated elements of proof, signs of the capacity to produce a proof that were different from each other and that one had to add together to arrive at a complete proof. Once again, if the sum did not amount to a complete proof, this did not mean that the proof had not been established and therefore one could not condemn: rather, it authorized the judge to impose a condemnation that was proportional in its gravity to the quantity of proof that had been produced. And avowal played an essential role in this, evidently; it had a privileged position insofar as avowal was obviously a proof of great value. But it is noteworthy that this avowal could never be entirely sufficient in itself, and that there needed to be at least one supplementary sign that confirmed the avowal. In short, there was a whole calculus that bound the judge, in a way, and that allowed him to compute the judicial value, the judicial truth, that he needed.

If I have emphasized these two aspects that characterize, I believe, the practice of avowal in judicial institutions from the Middle Ages to the eighteenth century — these two aspects, namely its connection with torture and its privileged place in the bizarre system of legal proofs — if I emphasized these two aspects, it is because these two elements would disappear from the juridical system, legal codes, and penal practice in the second half of the eighteenth century, in general, or in some cases at the beginning of the nineteenth century. And yet, in spite of the disappearance of these two elements which sort of accompanied and served as the context to the practice of avowal — torture and the system of legal proofs — in spite of this disappearance, the importance of avowal was not undermined. To the contrary, avowal would acquire an importance, and a decisive importance, in an unprecedented way, in these new legal codes that are the modern codes and whose structure, frame, and general architecture remain in place today. And this, for several reasons.

The first, which is the most implicit, is also without doubt the most important. It has to do with the general meaning of the penal system, the very foundations of the right to punish exercised through this penal system. For in modern and contemporary legal codes, as you know, the foundation of the law is or is supposed to be the will of all, which is supposed to express itself in this law, decided and validated by an act of the legislative body in its capacity as a sovereign body. So what serves as the foundation of the law is the will of all. And, as a consequence, one of the most frequent and most essential themes in the penal theory of the eighteenth century, but also in contemporary penal theory, is the principle that when someone has committed a crime, he himself punishes himself — through the law to which he is supposed to have consented or that he is supposed to support of his own free will — and punishes himself through the institution of the tribunal that delivers the sentence in conformity with the law that he supposedly has willed. In the modern penal system, the one who commits a crime is, in a certain way, the one who punishes himself. This fiction that you must recognize yourself in the law that punishes you — which is equally, for that matter, a necessity — this fiction explains both the symbolic and the central role of avowal. Why, at bottom, is the avowal there? Not only so that the individual might say, "Well yes, I committed such and such a crime," but so that in saying this, he manifests in a way the very principle of the penal law; he takes on the role of the guilty party and recognizes through his avowal the sovereignty both of the law and of the tribunal that will punish him and in which he recognizes himself. In the modern system, avowal consists not simply of recognizing one's crime, [but] at the same time recognizing, through the recognition of one's crime, the validity of the punishment that one will suffer. In this sense, avowal is a rite of sovereignty by means of which the guilty party provides a foundation for his judges to condemn him and recognizes his own will in the decision of the judges. Avowal is in this sense the reminder of the social contract, it is its restoration — such that through these words of avowal, the guilty party can at the same time (and in the strict terms of the law, not by any means in psychological terms) seal the punishment that separates him from the social body or deprives him of his rights; and at the same
time, the avowal marks the first step of his reintegration (since through avowal, one recognizes that one has broken the fundamental pact, but in recognizing this, one takes the first step, one makes the first move, in the direction of this reintegration). Avowal, from this perspective, is an act that draws its meaning from the very root of the punitive system. It is a theoretical and functional act. It is an act that must manifest in truth the exercise of the right to punish. This is the first reason why avowal is so important in the modern and contemporary penal systems.

The other reason why avowal is important is the regime of truth to which both the inquiry and the sentence must be subjected. The system of legal proofs had more or less disappeared by the second half of the eighteenth century. […] This meant that since then, it has been up to the judge to look deep within himself in order to determine what is probative and what is not probative among the elements of proof that are submitted to him, whether by the prosecutor, the accused, or those who defend him. The probative value is not determined by a prior code; it is simply the conscience of the judge or the juror that—by itself, of its own authority, in its own sovereignty, whether Cartesian or empirical, as you wish—has to decide that in effect, this constitutes proof, that this establishes a truth that is absolutely irrebuttable and evident. It is no longer a question of that calculus that adds up the elements of proof that had been previously measured; it is accepted—and it has been accepted, for that matter, for political reasons, for philosophical reasons also, and equally because of institutional motivations—that truth can no longer be weighed according to units of measurement that had been defined in advance, that we are dealing with (and must deal with) a sort of indivisible truth in penal practice that cannot be calculated according to criteria proper to juridical practice, that the truth operative in penal practice is a matter that is common to everyone. Every citizen, as long as he is of course an adult, that he is reasonable—and, depending on the period and its codes, as long of course as he is a man—every citizen must be able to recognize what is true or false in his soul and conscience: it is a question of the sovereignty of any conscience in relation to sovereignty. From this emerges, as you can well understand, the importance of avowal as irrebuttable proof that serves as an equivalent of evidence in penal matters. As soon as it is no longer a question of adding calculable fragments of truth, but of producing a truth that can be perceived by all—and in particular, by the judges and the jurors—avowal becomes the most sought-after form of proof.

Finally, the third reason why avowal became so important is that punishment took on the dual function in these new codes of punishing, of course, but also of making amends and correcting. That is to say, it is a question of ensuring, by means of the punishment, that the subject be transformed in relation to the offense committed and thanks to the punishment to which he is subjected. The subject is to be transformed with regard to the offense committed; transformed as well in relation to the possible offenses he might commit. The punishment thus needs to be corrective—and avowal, as a means of recognizing oneself to be guilty, constitutes the first element or, let us say, if you will, the first pledge of the punitive pact: "By avowal, I receive the punishment as something that is just and I agree to participate in the corrective process that the judges expect of my punishment."

In sum, and to synthesize all this, you see that avowal first recalls and restores the implicit pact upon which is founded the sovereignty of the institution that judges. Second, avowal constitutes a sort of contract of truth that allows the one who judges to know with indubitable knowledge. Third and finally, avowal constitutes a punitive engagement that gives meaning to the imposed sanction.

We can easily surmise, on this basis, the extent to which the modern legal codes and the penal institutions, throughout the nineteenth and twentieth centuries, were in need of and still today need avowal. Avowal by the guilty party has become—besides, of course, all the ease and conveniences it provides the inquiry, which naturally should not be neglected—avowal by the guilty party has become a fundamental need of the system. And when I say "fundamental," it is not for mere rhetorical emphasis; rather, it is because the very foundations of the system were put on the table in the case of avowal, and they called for avowal. The Romans used an expression to celebrate a case that was as simple as one in which the accused avowed: "habemus resum confitemur." For us, we need an accused who confesses. We need an avowal for the system to function to its fullest. It is true that avowal can resolve some uncertainties and complement missing knowledge; avowal thus plays a very important role in the procedure of inquiry. But it serves as well—and, I believe, above all—to fulfill the punitive system in general, the penal system in general. It plays an important role in ensuring that jurisdiction—the fact of pronouncing the sentence—is carried out to its fullest.

I am familiar, of course, with the resonance of the word "symbolic." And
perhaps one might be tempted to say that avowal plays a symbolic role with regard to the penal system. But it seems to me that in fact something slightly different is taking place, because avowal does not refer to anything else than what effectively takes place in that judicial scene. It exerts its effect, within, through, and in that judicial scene—and to that extent, I do not think it is a symbolic element. Should one then say that it is a performative element—that is to say, a verbal act constitutive of a modification defined in reality? I don’t think this is exactly right either. There is indeed a performative element in the penal procedure, but it is, for example, when the court declares that the accused is guilty and constitutes him, from the point of view of the law and the institutions, as effectively guilty. There is performativity when the court declares that someone is condemned, because indeed, after that moment, he is condemned. To the contrary, when the accused declares his guilt, it is more than symbolic; if you will, and it is not performative: the accused who declares his guilt does not thereby transform himself into the guilty party. And yet avowal is, I think, essential in this whole system. Neither performative nor symbolic, I would suggest instead, in changing the usual meaning slightly, that avowal is of the order of drama or dramaturgy. If one understands the “dramatic” not as a mere ornamental addition, but as every element in a scene that brings forth the foundation of legitimacy and the meaning of what is taking place, then I would say that avowal is part of the judicial and penal drama. It is an essential element of its dramaturgy, in the full sense of the term. And if we accept that there cannot be degrees of the symbolic or the performative, while dramaturgy—the dramatic—is, on the other hand, susceptible to various intensities, we could say that avowal is one of the most intense elements of the judicial drama and one of the most necessary. The appetite for avowal—the appetite for veridiction of the crime by its perpetrator—is central to our criminal jurisdiction. And you remember, perhaps, the anecdote with which I began, or that I evoked in any event, in the very first lecture that I presented to you: that story of a magistrate who, interrogating the culprit, asked him, "Well, in the end, who are you?" And since the accused did not respond, the tribunal, the presiding judge asked him: "But how do you expect us to judge you if you will not tell us who you are?" The need for avowal, I believe, is absolutely fundamental to the penal system: one cannot judge—that is to say, the judicial dramaturgy cannot be fully realized—if the accused does not avow in some way.

In fact, the moment the need for avowal was renewed—created, to some extent, or in any case renewed—by the modern systems, those of the eighteenth century and the early nineteenth centuries, [ . . . ] the renewal and the permanence of this need for avowal made the entire penal system deviate toward something completely different from what is aimed for when it established itself or tried to found itself on rational and universal foundations in the eighteenth century—and for which, for that matter, it had recourse to avowal. It was as if there were a trap of avowal within the modern and contemporary system.

To show some of the effects of this need for avowal in modern criminal jurisdiction, I would like to take as my guiding theme, somewhat paradoxically, what takes place, or what we see happen, or better, what impasses and derailments are produced when this need for avowal is not satisfied and when something escapes within this very procedure—when, to the question we pose to the one who has committed his crime, he cannot respond or gives a different response than the one we expect.

We might say, as a general matter, that this need for avowal was experienced early on and soon recognized, in fact, to be so essential and so fundamental that, in a certain number of cases to which I will now return, where avowal was impossible or could not fill the required function which it was asked to fulfill, [ . . . ] it was necessary to substitute or to double the deficient or insufficient avowal with something else. And this other thing that was substituted for the auto-veridiction of the subject—this sort of hetero-veridiction, if you will—was the examination: the psychiatric examination, the psychological examination of the criminal, which was substituted for the avowal, filled its lacunae, filled the white or black spaces left by the avowal, and tried to bring forward the truth of the criminal that the criminal himself was not capable of formulating. And it seems to me that through the process by which the psychiatric and psychological examination of the criminal developed in the nineteenth century, we can see, as if we were looking through a magnifying glass, what was present but half-hidden in the need for avowal that had been inscribed in the legal codes put in place in late eighteenth and early nineteenth centuries. It seems to me that we see emerge here [ . . . ] the point of diffraction that would derail the entire system: in asking the subject to avow, in fact, we were not simply trying to make appear the legal subject who was asked to account for the infraction committed, but we were also trying to have emerge a subjectivity that maintained a significant relationship to his
crime. It is from this moment, I think, that the question of the knowledge of the subject as a criminal subject begins; and this is what derails avowal and blocks the contemporary penal system.

How was the question of criminal subjectivity posed? It was posed at the beginning of the nineteenth century in connection with a series of cases that all had about the same form and that took place between 1800 and 1835. The first case, which took place in Germany and for which I have few details, for that matter, really constitutes the princeps case and was briefly reported by Hoffbauer. It is the story of a servant who took a little girl to the market in her little cart and, during the course of her errands, killed the little girl. Metzger recounted another case. It is the story of a retired officer who lived a solitary life in a lodging house and who became very attached to his landlady's child. And then, one day, to cite Metzger, "without motive, without any passion such as anger, pride or vengeance, he threw himself onto the child and stabbed, without killing, the child twice with a knife." The third affair is that of Sélestat, which took place in 1817 in Alsace during a harsh winter that threatened famine. A peasant took advantage of her husband's absence, while he had left for work, to kill their little daughter, cut off her leg, put it in a kettle, and cook it with cabbage. In Paris, in 1827, a servant named Henriette Cornier went to find the neighbor of the family with whom she was staying. She asked insistently that the neighbor leave her young daughter in her care so she could look after her. The neighbor hesitated and finally consented because she had work to do and needed the help. When she returned a short while later to collect the child, Henriette Cornier had just killed the little girl, cut off her head, and thrown it out the window. In Vienna, not long after, a woman named Catherine Ziegler killed her illegitimate child, explaining that she was driven by an irresistible force. She was acquitted on grounds of insanity and released from prison, but she declared that it would be better to keep her in prison because she would certainly do it again. And indeed, ten months later, she gave birth to a baby and killed it immediately, declaring at the trial that she had become pregnant for the sole purpose of killing her child. She was then sentenced to death and executed.

In Scotland, a certain John [Howison] entered a home where he killed an old woman whom he did not know. He left without stealing anything and without even hiding, and when he was arrested he denied against all evidence. The defense argued that it was a case of insanity because it was a crime without motive. [Howison] was executed, and it was considered in retrospect a sign of madness that he had said to a civil servant who was present that he wanted to kill him. I will end this enumeration of cases, each one of which had its own importance and repercussions during the period of thirty years from 1805 to 1835, with a case from the United States. In New England a certain Abraham Prescott killed, in plain sight, his foster mother, with whom he had always maintained a good relationship. He returned home, began to cry in front of his foster father, who then asked him why, at which point Prescott without hesitation avowed his crime. He explained afterwards that he was overcome by a sudden acute toothache and that he remembered nothing. Prescott was condemned to death, but the jury at the same time asked for his commutation. He was executed nonetheless.

These cases, a few others of the same type, but these cases as the princeps cases, became the themes of reference, the reference cases for psychiatrists and penal specialists of the period. Among the psychiatrists were Metzger, Hoffbauer, Esquivel, Georgot, William Ellis, and Andrew Combe.

The problem or first question: Why, among all the crimes committed, were these crimes understood to be of such importance? Why were these cases objects of endless discussion among doctors and jurists? Why were these the cases that forced the system of penal justice to call itself into question and dislodged it from the rational structure within which it had developed at the end of the eighteenth and beginning of the nineteenth centuries? First, I think it should be noted with regard to all these cases that they presented a very different picture from the one that had hitherto constituted the jurisprudence of criminal madness. Let's say that up to the end of the eighteenth century, the problem of madness had indeed been raised in penal law, but the question of madness was raised in precisely those cases, and almost solely in those cases, where civil or canon law raised [the question] as well—that is to say, in cases where madness took on the form of a definitive state or of a momentary explosion, madness was only proven and was only admitted by the court when it was accompanied by a whole series of numerous signs that were easily recognizable and, in any case, external to the crime itself. Madness had to be proven outside the criminal act. And yet what is important in all of the cases I just discussed is that the subject

* Foucault said "twenty."
gave almost no sign of madness outside of the actual crime itself. So the problem could not simply be resolved by asking: "Had the subject in fact shown any earlier sign of madness that could lead one to suppose [. . .] that he was not responsible for his crime?" Now, we were presented with cases in which madness was suspected solely because, first, the crime was committed for no reason—there was no motive, calculation, or passion—and second, because the subject was incapable of telling anything whatsoever about his crime. The subject is, in a sense, mute in relationship to his crime.

So, first of all, these are crimes without reason. This is, I believe, why they were of interest and what they had in common. They are crimes without passion, without motive, without interest. They are not even driven by a delirious illusion. In all of the cases I mentioned, the psychiatrists and judges struggled with the fact that there was no relationship between the partners of the tragedy, between the one who killed and who was killed, or the one who killed and the parents of the child who was killed—because it is also interesting to note that in almost every case, or at least quite often, they were stories about murdering children. Between the partners of the tragedy, there was no relationship that would make it possible to render the crime intelligible. In the case of Henriette Cornier, for example, who had decapitated her neighbor's young daughter, there was a long inquiry to find out if, by chance, she had not been the father's mistress and thus acted out of vengeance. And they discovered that there was no connection. In the case of the woman from Sélestat—you recall, the one who boiled her daughter's thigh with the cabbage—the important element of the discussion had been: "Was there a famine during this period? Was the accused poor or not, famished or not?" And the prosecutor said: if she had been rich, then, there was no material interest for her to eat her daughter (since she could have purchased meat from the butcher), so she could have been considered deranged [aliénée]. But she was miserably poor, and, as a result, in these times of famine, she must have been hungry; and since she was hungry, cooking her daughter's leg with the cabbage was a motivated act; and since it was a motivated act, it was reasonable behavior; and since it was reasonable, she was mad.**

*The audience laughed. Poucet's spoken words, faithfully reproduced here, differ from the other published versions of this scene, in which Poucet consistently concluded: "She was not mad." For a discussion of this discrepancy, see infra p. 231 n. 12.

To play on words, I would say that these crimes—and this is the other aspect—these crimes without reason were crimes without avowal. They were crimes about which one could say nothing, in the following sense. They were, of course, perfectly flagrant crimes. All of the possible proof of guilt was gathered. The authors, in most cases, recognized their crime. There was only one case in which the guilty party tried to deny the crime; all the others recognized their crime easily. So, juridically speaking, if avowal were simply the material confirmation of a truth that was otherwise established, it should have sufficed and satisfied the judges. And yet the avowal was made, but it is clear that this was not what the judges were seeking: what they demanded was that the guilty party say something about his crime—that he say why he committed his crime, what meaning he gave to his gesture. And if he could not say anything about it, if the accused could say nothing about his crime, this is where the difficulty began. This is where the penal machine began to stumble and to jam.

In this type of case, we see clearly that the avowal, in all of its materiality, is insufficient: we demand an avowal that fulfills the dramaturgical role that I spoke of earlier. And we see clearly that here, the recognition by the sick person or by the criminal who states, "Yes, I committed this murder. Period. That is all I have to say," does not function properly. The avowal does not function within the dramaturgy that is demanded.

I am not at all suggesting that this series of cases that I have cited—and this series is interesting because the cases took place in Germany, Austria, England, France, the United States, and their similarity shows that it was the same type of problem that was being encountered everywhere—I am not in any way suggesting that these cases created the situation I am about to analyze. Let's simply say that they brought out, through their singularities and their paradoxes, an entire series of questions that were implicit in the functioning of penal justice. They brought to light the question of the criminal subject behind the author of the crime and behind the juridically legitimate mechanisms of imputation. They brought out, from behind or rather interlaced between them, the discursivity of the inquiry that sought to establish the truth of the fact and the discursivity of the examination that sought to establish the truth of the criminal. Let us say that the judge essentially told the accused: "Don't simply tell me what you did, without telling me, at the same time and through this, who you are." Finally, this series of cases brought forward the need for another type of knowledge than the one that allowed them to establish the facts. I have
done nothing more here than indicate a vague point of departure, from an historical-anecdotal point of view, of a vast shift that we can now see develop. My aim was simply to show the general roots and the historical emergence of the problematic through which modern penal law entered, I believe, its endless labyrinth. The doubling of avowal and its opening onto another type of questions—that is to say, the questions of subjectivity—are, I believe, inscribed here.

An analysis that stopped here, of course, would be entirely insufficient to account for everything that took place in the nineteenth century concerning the principle of this truth-telling on subjectivity. And in order to project two spotlights on two periods, on two important moments in this history, I would like to take, in the middle of the nineteenth century—more exactly, at the end of the first half of the nineteenth century—the question of monomania and of the constitution of crime as a psychiatric object. Then I will place myself at the end of the nineteenth century and speak briefly about the notion of degeneration and of the constitution of the criminal as object for social defense.13

First, monomania and the constitution of crime as a psychiatric object. As you know, the psychiatrists responded to the question raised by these great crimes that I described for you earlier—these great monstrosities and muté crimes, these crimes without motive and without avowal—with the notion of monomania, of homicidal monomania.14 This is a strange notion since, for psychiatrists, the peculiarity of this illness resided in the fact that it had practically only one visible symptom: the crime itself. At the same time, it was a strange notion from the point of view of penal law because the crime was entirely devoid of motivation, interest, or passion; its only raison d'être was the illness itself, an illness consisting of nothing but having committed the crime. "Crime-madness"—this is the paradoxical notion that the doctors of the 1830s through the 1850s [put forward]. In fact, the notion began to fall out of usage in the 1850s and then reappeared briefly before, let's say, the 1870s. Well, let's say that for about thirty to forty years, this notion of homicidal monomania as "crime-madness," as crime that was entirely equivalent to madness and madness that was entirely equivalent to a crime, this notion was central, I believe, to the question of the criminal subject or of the crime as an object for a psychiatric science of the subject: a crime that was entirely madness, madness that was nothing other than a crime.

It is out of the question, of course, to retrace the theoretical background of the notion, or the reasons why this notion developed. I would simply like to pose the question of why this great fiction of homicidal monomania became the key notion in the proto-history of criminal subjectivity. I believe that one must start by searching for the reason why doctors proposed, as it were, this notion of monomania to the judicial institution—why did they thus hold out their hand to the judicial institution? I believe that the reason is tied, [in the end], to the role and to the definition of psychiatry at that particular period. At the beginning of the nineteenth century, the task of psychiatry was essentially to define its specificity within the realm of medicine and to gain scientific recognition among the other medical practices. Why did they attempt to intervene in the domain of justice, and of penal justice, at the moment when mental-health medicine was trying to establish its own scientific grounding and to define its specificity and its own domain with regard to all the other medical disciplines?

I do not think that we should try to explain this attempt, this temptation, this move to penetrate penal practice, by some vague form of imperialism on the part of psychiatrists seeking to annex a new domain; we should not seek to explain it by a dynamic that was internal and specific to medical knowledge, trying to rationalize this confused domain where madness and crime mixed. If crime became at that precise moment such an important matter for psychiatrists that they sought to enter, to push open the door of the judicial institution, it is, I believe, because it was less a field of knowledge to be conquered than a modality of power—than the modality of their own power that had to be guaranteed and justified.

Indeed, if psychiatry became so important in the nineteenth century, it was not simply because it applied a new medical rationality to mental and behavioral disorders. The importance of psychiatry at the beginning of the nineteenth century was that it functioned as a sort of public hygiene. The development in the eighteenth century of demography, of urban structures, the problem of industrial manpower, among others—all this had raised the biological and medical question of human populations, including their conditions of existence, of habitation, of nutrition, and the question of birth and mortality rates. The social body ceased to be in the nineteenth century, I believe, a simple juridico-political metaphor and became instead a biological reality as well as a field of medical intervention. The doctor from that moment on became a technician of the social body, and medicine became a public hygiene. And if psychiatry, at the turn from the eighteenth to the nineteenth century, established its autonomy and
assumed at the same time such prestige, it was because psychiatry was able to inscribe itself within the framework of a medical discipline that was conceived as a reaction to apparent or potential dangers inherent in the social body. The psychiatrists [alienist] of the period could discuss ad infinitum the organic or psychic origin of mental illnesses, they could propose physical or physiological therapy; through their theoretical and practical differences they were all conscious of treating a social danger, whether they considered madness the result of unhealthy living conditions (many psychiatrists argued that overpopulation, promiscuity, urban life, alcoholism, sexual debauchery were all at the origin of mental illness) or whether they perceived madness itself as a source of danger for oneself, for others, for one’s company, for one’s descendants through the path of heredity. In any case, the psychiatrists were conscious that by manipulating madness they were manipulating of course an illness, but above all a danger. And what authorized them to intervene in this dangerous situation was, of course, that they could give this danger the status of illness.

Psychiatry in the nineteenth century, or in any case at the beginning of the nineteenth century, seems to me to have been far less a medicine of the individual soul than a medicine of the collective body. We can understand, from this point of view, why psychiatry was so driven to demonstrate the existence of something as fantastic as homicidal monomania, this surprising madness that would only manifest itself in the crime. We can understand from this perspective, I believe, how this notion remained operative for a period of thirty to forty years in spite, evidently, of its weak theoretical justification. For homicidal monomania, if indeed it existed—what did it show us? It was the living proof—or deadly proof, I should say—that in some of its more extreme and intense forms, madness could become entirely crime, and nothing but crime. So, at least at the furthest edges of madness, there was crime—and thus madness and crime belonged to one another essentially, they were cousins, there was an essential kinship. Homicidal monomania revealed, moreover, that madness was capable of leading not only to behavioral disorders, but also to the ultimate crime, the one that broke all the laws of nature and society: murdering children, murdering one’s own child [. . .].

*This break corresponds to a change in the audiovisual tape. As there is no original typescript of this course, there is no way of filling this lacuna.

They resisted it, of course: there was a whole series of very interesting discussions. But nonetheless, through these refusals and these hesitations, they did not entirely reject this notion and slowly let themselves be convinced. One cannot say that they were violated by the discipline of medicine; they finally made, with more or less good will, this notion of homicidal monomania function within their practice. Why did they ultimately accept it? It is because of the new codes—and above all, the reforms of these new codes, with the mitigating circumstances and all the modulations of punishment which they were to administer themselves within these new codes (all these measures concerning mitigating circumstances, you know, well, these reforms dating from about the 1830s and 1840s). Well, from the moment they began to manage the punishments, the quantity if not the nature of the punishments, as a function of something that was not simply the crime but the criminal—well, at that point, with these psychiatric notions, they had an instrument at their disposal. Neither the great theoreticians, such as Beccaria and Bentham, nor those who actually had written the new penal legislation had sought to elaborate anything resembling the knowledge of the subject. But as soon as the reform of the penal system had proposed around the 1830s these modulations concerning the application of punishment, they needed to equip themselves with a new instrument. Hence the fact that while the legal code, in France in particular, the Napoleonic Code only had the famous article 64, that is to say simply dementia or rage, magistrates began in the 1840s—after the period 1835 to 1840, since mitigating circumstances were added in 1832 [. . .]—to accept the usage of this notion of madness, of homicidal monomania. And as a result, they found themselves faced not only with a new notion, but also a new subject, that is to say the criminal subject. They no longer simply had to punish a crime, they had to treat, that is, they had to manipulate, they had to index their judicial practice not only on the crime, but on the criminal individuality.

What begins to be put into place in the 1840s took on an infinitely greater importance and breadth in the last years of the nineteenth century and the first years of the twentieth. What happened between these two periods, roughly between the years 1840 and 1850 and the years 1880, 1900, and 1910? The notion of monomania was abandoned by psychiatry proper. It was abandoned for two reasons: first, because the negative idea
of a partial madness that only touched upon a given point and only broke out in certain moments was replaced by the idea that a mental illness was not necessarily a breach of thought and conscience, but could also attack the sentiments and emotions, the instincts, behaviors, et cetera. Second, monomania was also abandoned for another reason, which is that the idea of mental illnesses with a complex evolution came of age: the idea that mental illnesses could present one particular symptom or another at one stage or another of their development, and this, not only at the level of the individual, but also at the level of generations. In other words, the idea of degeneration.

Once it was possible to define this vast evolutionary tree, there was no longer any need to oppose the great, monstrous, and mysterious crimes that could be ascribed to an incomprehensible and essential violence of madness against the minor criminality that was too frequent and too familiar to necessitate recourse to the pathological. From then on, whether it was a question of these incomprehensible massacres of which Henriette Cornier and others had provided examples at the beginning of the century, or whether it was a question of little misdemeanors concerning property, sexuality, et cetera, in either and any case there was now an instrument—an instrument that allowed one to suspect a more or less serious disruption of one's instincts or the development of an uninterrupted march toward illness. And it is in this manner that we see appear, in the field of forensic psychiatry, new categories such as necrophilia, which first appeared around 1840; kleptomania, around 1860; and exhibitionist, in 1876; as well as the consideration by forensic psychiatry of behaviors like pederasty, which will be called homosexuality after 1869; sadism, et cetera. We have then, at least in principle, a sort of psychiatric and criminological continuum along which it is possible to interrogate in medical terms any and all degrees on the penal scale. The psychiatric question was no longer simply confined to the pinnacle of criminality. It was not located, it was not posed simply with regard to a few great crimes. Even if it called for a negative response, one could legitimately pose the question in every case across the entire domain of infractions: between a woman who steals lingerie in a store and a mother who cooks her daughter's thigh in a cauldron, in the end one must, in either case—or one may in one case as in the other—pose the question: "Is there not madness here?"

Now this clearly had extremely important consequences for the juridical theory of responsibility. In the conception of monomania, the suspicion of pathology arose precisely when there was no reason for an act. Madness then appeared to be the cause of that which made no sense, and the lack of responsibility established itself within that gap. But with this new analysis of instinct and emotions, there arose the possibility of a causal analysis of all conduct, whether criminal or noncriminal and whatever its degree of criminality. At this point, the juridical and psychiatric problem of crime entered an infinite labyrinth: if an act was determined by a causal nexus that the analysis of the criminal subject could uncover—if, then, an act was determined by such a causal nexus, could it be considered to be free? And, in that case, could the responsibility of the subject be recognized? And was it necessary, in order to be able to condemn someone, that it be impossible to restore the causal intelligibility of the act?

So you see that behind this new way of posing the problem, we can recognize the impact of a certain number of transformations that were its conditions of possibility. In order for the problem of the continuous and multifloral relationship between psychiatry and criminality to be able to establish itself, in order to be able to suspect that there is madness across behaviors that are even the most simple and the least intensely criminal, it was first necessary for there to be an intensive development of a police network [quadrillage policier] in most European countries; which entails in particular a new organization and surveillance of urban space, which also entails a far more systematic and efficient pursuit of minor delinquency. We should also add [...] the social conflicts, the class struggles, the political confrontations, the armed revolts—which of the revolutionaries of 1848, of the communards of 1870, of the anarchists of the last years of the century, including all the violent strikes—all of these social conflicts prompted the authorities to assimilate political infractions with common-law crimes in order to better discredit them. And gradually an image was constructed of an enemy of society: an enemy of society who could be the revolutionary just as he could be the assassin, since, after all, revolutionaries do sometimes kill. In response to this, there was an extraordinary development throughout the second half of the century in literature on criminality (I mean literature in the largest sense, including local crime stories in the newspapers, as well as detective novels and all the romanticized writings that developed around crimes): glorification of the criminal, of course, but also confirmation that criminality was omnipresent, that it was a constant threat and a menace of which one could find worrisome traces throughout the entire social body.
The general fear of crime, the dread of this danger that seemed to be as one with the social body itself [was] thus perpetually inscribed in the conscience of each and everyone. And Garofalo, in his preface to the first edition of Criminology—his treatise, his text entitled La criminologie and published in 1887—evoked the nine thousand murders that were recorded annually in Europe, not counting Russia, and declared: "Who is the enemy that has so greatly devastated this region?"—Europe. "Who is the enemy that has wrought such great destruction? It is an enemy who has remained mysterious and unknown in history up until now: his name is the criminal."

And to this, another element must clearly be added: namely, the continuing and incessantly reported failure of the penitentiary system. As you know, the eighteenth-century reformers and the philanthropists of the following period dreamed that incarceration, provided that it be rationally organized and directed, would serve as a penal therapy. The correction of the condemned was supposed to be the result of the punishment. But, as you know, from early on it was observed that the prison led to precisely the opposite result, that the prison was on the whole a school of delinquency, and that even the most refined methods of the police and judicial apparatus, far from ensuring a better protection against crime, led, to the contrary, through the medium of imprisonment, to a reinforcement of the criminal milieu.

There was, then, for a whole series of reasons, a situation that gave rise to a very strong social and political demand to respond to crime and to repress it. And this demand concerned a criminality which, in its totality, could be thought of in juridical and medical terms. Yet the central piece of the penal institution since the Middle Ages—namely, responsibility and the practice of avowal as being an enunciation by the individual that he effectively accepted this responsibility—all this seemed, in effect, inadequate to think through the vast and thick terrain of medico-legal criminality.

This inadequacy became apparent both at the conceptual and at the institutional levels in the conflicts of the 1890s and 1900s that opposed what was called the school of criminal anthropology and the association for penal law. Confronted with the traditional principles of criminal legislation, the Italian school (or the anthropologists of criminality) sought nothing short of exiting the realm of law. They called for a veritable depenalization of crime through the creation of an apparatus that was entirely different from the one prescribed by the legal codes. I would say, in very schematic terms, that criminal anthropology aimed to completely abandon the juridical notion of responsibility, to pose as the fundamental question not at all the degree of the individual's liberty, but rather the level of danger that the individual constituted in society. For criminal anthropology, it was a question of emphasizing that the accused whom the law recognized as lacking responsibility (because they were ill, mad, abnormal, or victims of irresistible impulses) were precisely those who were the most dangerous in reality. It was a question of insisting that what was called the penalty did not have to be a punishment, but rather a mechanism for the defense of society; and, then, of noting that the relevant difference was not between those who were responsible and needed to be condemned and those who were not responsible and needed to be released, but between subjects who were absolutely and definitively dangerous and those who could cease to be so after certain treatments. In sum, it was a question of concluding that there had to be three main types of social reaction to crime, or rather to the danger constituted by the criminal: definitive elimination by death or confinement in an institution, provisional elimination with treatment, or a sort of relative and partial elimination such as sterilization or castration.

We see clearly the series of displacements that the anthropological school called for: from the crime to the criminal, from the act committed to the danger that is potentially inherent in the individual, and from a modulated punishment of the guilty party to the absolute protection of others.

We entered at that precise moment, I believe, an entirely different regime: that of security. All of these displacements implied quite clearly an escape from a universe of penal law that was in fact centered on the act itself: an escape from a universe of penal law in which the essential piece was the imputability to a rights-bearing subject of acts that had been committed and which breached the law. Neither the criminality of an individual nor the index of his dangerousness, neither his potential or future conduct nor the protection of society in general from these possible perils—all of these things that had now become so essential in this society of security, in this society with securities: none of this could be integrated as such into the system of juridical principles and notions around which the legal codes of the end of the eighteenth century and beginning of the nineteenth century were organized. And the judges, magistrates, or jurors, if they had to use these notions, were incapable of determining how they could articu-
late them within the institutional system that gave them the right to pun-
ish. These notions of the criminality of the individual, of dangerousness,
of potential criminal conduct could be made to function in a rational way
only within something that was entirely different from a juridical code,
only within a technical knowledge [on savoir technique]: a technical knowl-
edge that was able to characterize what a criminal individual was in him-
self and in some sense beneath his acts. What was needed was a form of
knowledge capable of measuring the degree of danger present in an indi-
vidual. What was needed for all this was a form of knowledge that could
determine the protection that was necessary and sufficient in the face of
this danger that was represented by an individual.

Hence, there emerged the idea that crime should not be handled by the
judges—or could not be the sole responsibility of judges unless the juris-
diction effectively exercised by the judge be doubled by an entirely differ-
ent type of verdict from the one obtained and defined either through
inquiry or through the avowal—in the sense which I discussed with you
and which functioned so intensely in the codes of the early nineteenth
century. Knowledge became a necessity: the subject and its truth required
a type of competence [connaissance], a type of knowledge [savoir], a type of
experience, and a type of exchange and of dialogue that could only come
from psychiatry, criminology, psychology.

And I believe that we [see] here—having arrived at the moment when
the notion of social defense began to emerge, a notion that would be so
important throughout the twentieth century—we see appear at this very
moment an entirely different form of the truth of the subject, or of the
verdict of the subject, that was far removed from the one that was
associated with the traditional verdict of avowal. And it seems to me
that we can grasp the effects of this new demand for a knowledge of the
subject that is of an entirely different type from the one that could mani-
fest itself in avowal—that we can grasp the manner in which this new de-
mand inscribed itself in penal law and the manner in which it continues
to function today—by recalling two things that, fittingly, did not so much
come from the internal history of penal law as from transformations pro-
duced elsewhere.

The first took place at the end of the nineteenth century, at the moment
when—within penal law and for the reasons that I just told you about,
that is to say the necessity to defend society—what I referred to last time
as a hermeneutics of the subject was constituting itself, or perhaps re-
constituting itself: a hermeneutics of the subject that clearly was, in its
forms and in its objectives, extremely different from what we found in
the practice of Christian spirituality. In the practice of Christian spiritu-
ality, you will remember, the hermeneutics of the subject consisted essen-
tially in bringing to light the secrets of conscience—the arcana conscientie—
through the process of the permanent examination of oneself and of
the exhaustive verbalization in the direction of another. Through a whole
series of efforts in which, naturally, Freud and psychoanalysis occupied a
central place, the hermeneutics of the subject opened itself at the end of
the nineteenth century to a method of analysis far removed from the prac-
tice of the permanent examination and exhaustive verbalization about
which I spoke to you regarding ancient Christianity. A hermeneutics of the
subject opened up, weighed down or burdened, having as its instrument
and method principles of analysis that bore a far greater resemblance to
the principles of textual analysis. This hermeneutics of the subject, which
took the form of deciphering a text, was supposed to make it possible to
root the behaviors of a subject in a meaningful whole.

Once the hermeneutics of the subject took this form, crime would
emerge as a meaningful act. This new practice of the subject was clearly
very different from the one that could be delineated in criminal anthro-
pology or in the pathology of degeneration—but from the point of view of
penalty itself, this new practice did not and still does not resolve the prob-
lem of these notions, even if the [latter] have been abandoned. Rather,
this new practice doubled [the problem] because, with the hermeneutics
of the subject, penal practice itself would internalize the problematic rela-
tionship between the responsibility of the act and its intelligibility. The
relationship was transferred into penal practice itself, since it showed that
the relationship between the act and the subject was not simply a ques-
tion of imputing responsibility with a more or less determined notion of
causality, but that it was also, at the same time, a question of giving mean-
ing. The causal relationship dispossessed the judge, whereas the relation-
ship based on meaning [signification] restored the judge's hold, but in an
equally ambiguous way: what should be done with the meaning of a given
crime? This was the first axis of transformation, outside of penal practice,
but that weighed and still today weighs on contemporary penal practice.

The other mutation can be located, I believe, within the juridical sys-
tem, but with regard to the notion of responsibility in civil law. It seems
to me—and here again I am going to be very schematic—that there was
a very important transformation in civil law at the end of the nineteenth century and beginning of the twentieth. This transformation revolved around the notion of accident, of risk, of responsibility. In a general way, I would say it is important to underscore the salience of the problem of the accident, especially at the end of the nineteenth century and not only in the realm of law for that matter, but also in the economic realm—the problem of the accident, of its probability, of how to reduce its probability, how to compensate for its effects, et cetera. With the development of the wage system, of industrial techniques, of mechanization, of means of transportation, of urban structures, two very important things appeared. First, the risks that were imposed on third parties: the employer exposed his salaried workers to work-related accidents; carriers exposed not only their passengers to accidents, but also innocent bystanders. Next, there was the fact that these accidents could often be linked to a sort of error, but a minimal error—such as inattentiveness, lack of precaution, negligence—committed, moreover, by someone who might be in a position neither to carry the civil liability nor to assure the payment of the ensuing damages (the type of situation, if you will, that involves the negligence of an employee who brings about a mine disaster or a railroad accident).

Now, all this implied that the notion of civil liability had to be elaborated anew. It was necessary to erase the heritage of Roman law that was still present—this idea that responsibility was necessary to assign fault and that the payment of damages should constitute a sort of civil penalty. It was necessary to de-penalize, to remove guilt from civil responsibility, to cut it off from any reference to a subjective fault, to release it from the burden of having to demonstrate the existence of a personal fault. Concretely, in the case of a work accident, it was necessary that the workers who were affected by a work accident could be compensated without having to prove that their boss had committed a specific fault in violation of a law or of a precise regulation. In sum, the problem was to establish in law the concept of no-fault responsibility. This was the effort of Western jurists—and especially German jurists, who were pressed by the demands of Bismarckian society, a society not only of discipline but of security. And it seems to me that this arrangement of a responsibility without culpability was, along with the new hermeneutics of the subject that opened with psychoanalysis—or let’s say, more generally, with psychiatry or with psychology—the other great mutation that allowed for the question of criminal subjectivity to be posed in new terms.

In a rather strange way, this extraction of culpability (déculpabilisation) from civil liability would constitute a model for penal law—on the basis of the very propositions formulated by criminal anthropology. After all, what does it mean to be a born criminal, what is a degenerate, what is a criminal personality, if not someone who, according to a causal chain that is difficult to reconstruct, has a particularly high level on a criminal probability scale? Someone who is, deep down, a risk of crime? Just as one can determine civil responsibility without establishing fault, but solely by estimating the possible risk against which one must defend oneself without being able to remove it entirely—in the same way, one can render an individual responsible as a matter of penal law without having to determine if he was acting freely and thus whether there was fault, but rather by tying the act that was committed back to the risk of criminality that his very personality constituted. He is responsible since, by his sole existence, he is a creator of risk, even if he is not at fault because he did not choose evil over good of his own free will, even if he did not choose to be neurotic or psychotic over being healthy. The purpose of the sanction, therefore, will not be to punish a rights-bearing subject who voluntarily broke the law. Its role will be to diminish as much as possible—either by elimination, by exclusion, or by various restrictions, or again through therapeutic measures—the risk of criminality represented by the individual in question.

This represents an important moment in the history of penal thought: it is the moment when the need for avowal—this dramaturgical piece that was so essential and whose role was so fundamentally stamped into the codes of the eighteenth and the beginning of the nineteenth centuries—found itself replaced and doubled by a demand of a different type. It was no longer a matter of the judge stating what he implicitly stated at an earlier time: "Tell me whether, indeed, you committed the crime of which you are accused. Tell me if, indeed, you recognize deep within your will the soundness and the legitimacy of the condemnation that I will pronounce against you." Now, the judge implicitly posed the following question to the one who was accused: "Tell me who you are, so that I may make a judicial decision that will have as its measure both the crime that you have committed, of course, but also the individual that you are."

Let’s return to the dialogue that I evoked at the beginning of these lectures, the dialogue in which the judge asked the accused to speak of himself: "Tell me why you raped those girls. Tell me why you wanted to kill them. Tell me who you are, so that I may judge you." This demand of an
sessed by a French lawyer, who has the case and who is a legal expert in the French legal system. It is an argument that was used in the prosecution against the defendant, who had kidnapped and killed a child. He was planning on behalf of someone who had killed the child. He simply wanted to make a profit.

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