In 1757, Joanne Catherine Janssens stood trial for breaking banishment and complicity to murder before the magistrates in Kortrijk. Janssens was involved with a band of vagrant ‘Egyptians’. According to witness statements, they had broken into the house of Joannes van Gampelaere near Tielt on 15 September 1757. Janssens, who was acquainted with Gampelaere’s wife, had talked her way in and then the rest of the band had burst in, robbed the house and stabbed the owners. The Kortrijk magistrates sent word to other cities to arrest all gypsies and two women were arrested in Ghent, one of whom was identified as Janssens. She was transferred to Kortrijk, where she denied that she had been involved in the robbery and murder.\(^1\)

The local magistrates soon found out that judges in Liège had previously convicted Janssens for robberies and branded her. She had been exiled from the Southern Netherlands. The magistrates seemed to agree that this allowed them to take harsher measures than usual. On 10 November, the prosecutor went to visit Janssens in prison. Having been imprisoned for almost a month, she asked him whether her case would come up soon. He replied that she could be imprisoned for a long time, as she had denied her presence in the murder. Janssens asked ‘if she had been present, and if she confessed this, would she need to die?’ The prosecutor said that he did not think so. She then confessed that she had been present at the murder scene, but had not been involved and had not been aware of what the others were up to.

Two weeks later, however, Janssens retracted this confession. She claimed that she had only confessed because the prison guard had recommended this. Nevertheless, the magistrates wanted their confession and condemned Janssens to torture. When she was brought to the torture chamber, Janssens immediately confessed that she had been present in the murder, but said that she had been forced by her companions to go along. A month later, the court condemned her to death by hanging.

In the quest for the truth, the judiciary personnel had threatened Janssens, lied to her and condemned her to torture.

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\(^1\) The self in court: procedures of conscience and confession

Elwin Hofman - 9781526153159
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How can we understand this criminal procedure? And what does it tell us about the self as practised in criminal procedures? In this chapter, I discuss the changing procedures of criminal investigation and criminal justice in the Southern Netherlands between 1750 and 1830 within their wider European context. My aim is not, however, to write a history of legal doctrines and practices – although that is a necessary part of my analysis. My aim is rather to analyse the underlying suppositions of the criminal justice system, looking for the conceptions of self that were inherent in the workings of criminal courts. The criminal trial was a technology for transforming the self, a technology that both legal staff and defendants used in different ways and to different ends. This chapter will provide an analysis of criminal trials as I argue that they became increasingly focused on people’s inner sides, thus deepening these inner sides and making them more important, especially for women and common people. To do this, I will subsequently discuss criminal procedures in general, the uses of torture, the reforms of criminal justice, confession and resistance to it and the effects of giving an account of oneself in criminal court.

Procedures of truth

The legal system of the eighteenth-century Southern Netherlands was, in many respects, similar to how it had been since the late Middle Ages. In contrast with France, where an ordinance from 1670 regulated criminal procedure, and many other Habsburg territories, where the *Constitutio Criminalis Carolina* (1532) did the same (though less strictly), there was no unified criminal code. Different towns, cities and counties had different regulations and legal procedures. There were central government regulations, regional state regulations and city regulations, local traditions and recommendations by legal scholars. This ‘legal pluralism’ gave the people involved in criminal justice a limited flexibility. Nevertheless, even though each court had its own procedural peculiarities, most continental European courts operated in a similar way, in part resulting from the fact that they all referred to similar legal scholars to guide them.

With some exceptions, urban courts monopolised criminal justice in the Southern Netherlands. Citizens could turn to informal or local means to resolve minor disputes, but major crimes were almost always brought before the aldermen of the nearest town or city. The ‘officers of justice’ (the *hoog-baljuw* in Kortrijk, the *schout* in Antwerp and the *amman* in Brussels) were generally responsible for the detection and prosecution of crimes. Because they had few staff, they most commonly only came into action upon a complaint, or when someone found a corpse (surveillance and occasional raids in larger cities notwithstanding).
Once an officer of justice had learned of a serious crime, caught someone in the act or received a complaint, he was to investigate and inform the magistrates of his findings. In some jurisdictions, the officer of justice conducted this preliminary investigation himself; in others a delegation of the magistrates did this. They inspected the scene of the crime, called for experts to conduct a post-mortem and heard witnesses. Clerks wrote everything down more or less diligently. If the initial investigation of a crime had been up to the officer of justice, the magistrates were to play a decisive role in the rest of the trial. The magistrates consisted of the mayor (in Kortrijk) or two mayors (in Brussels and Antwerp) and between seven and eighteen aldermen of a particular town or city, sometimes accompanied by additional councillors. The central government selected them from a shortlist of nominees submitted by the current bench of aldermen (or other city notables) and appointed them for a limited term. They were always men and always members of aristocratic families or wealthy merchants and had generally not received legal training. The magistrates based their decisions mostly on the written court records and acted as a single body. In the trial proceedings, as in most other documents, there are never indications of internal dissent. While magistrates undoubtedly held different opinions, they are difficult to retrieve.

To decide whether a suspect was guilty, judges were not simply to trust their own opinion. In the thirteenth century, after the abolition of the judicial ordeals, Roman-Canon legal scholars developed an intricate system of proofs to determine the degree of a suspect’s guilt. Most continental European secular criminal courts adopted this system by the sixteenth century. As a rule, judges needed ‘full proof’ to convict anyone to death. Such ‘full proof’ could consist of testimony by two independent and reliable eyewitnesses or of a confession corroborated by a few other indicators. For convictions of lesser sentences, lower standards of proof were required. For corporal punishment short of death, ‘semi proof’ – for instance testimony of a single reliable eyewitness – sufficed. Prostitutes could be expelled or temporarily confined on the flimsiest of evidence. Although courts officially still used the system of proof in the eighteenth century, they almost never applied the complicated arithmetic some legal scholars had proposed in earlier centuries. Most magistrates settled for the vague requirement that proof of guilt had to be ‘clearer than daylight’. This left the judges some room for appreciation of the evidence.

Like many of their French and German colleagues, judges in the Southern Netherlands almost always wanted a full confession before convicting someone to death – even if there was sufficient testimonial proof for a conviction. A confession was the ‘queen of proofs’. ‘However certain testimonial proof may be [...]’, wrote the local alderman J. G. Thielen in his commentary on criminal procedure in 1789 (plagiarising his French colleague Daniel.
Jousse), ‘we can nevertheless reasonably say that this proof may be in error [...]’; while a confession, and the knowledge of the accused, is incontestable’. The central government officially discouraged any reluctance to convict anyone who did not confess, but it continued up to the eighteenth century. In 1766, the council of Brabant argued that even when there was enough proof to convict a criminal, torture was a ‘humane’ instrument, for ‘it served admirably to tranquilise the conscience and the heart of the judge’, who was now sure he was not convicting an innocent man or woman.

To obtain a confession from recalcitrant suspects, torture could indeed be a solution. But everywhere in Europe, its use in a judicial context was strictly regulated. Before magistrates could apply torture, they had to convict the suspect by an interlocutory sentence. They could only issue this sentence if the material fact of the crime had been proven, if the crime was capitally punishable and if there were strong indications of the suspect’s guilt. According to most European jurists, the court needed a ‘half proof’ (e.g. one reliable eyewitness). The most common means of torturing suspects were flogging, stretching on the rack or the gradual tightening of a collar with metal pins on the inside. As in eighteenth-century France and Germany, if suspects confessed under these torments, their confession was only legally valid if they confirmed it afterwards, when they were free from pain or restrictions. If they did not confess or retracted their confession, they could not be convicted to death, but they could be convicted to a lesser sentence – or, in some cases, to another torture session.

When the court was of the opinion that there was sufficient evidence, they closed the case and pronounced a sentence. The judges could find the suspect innocent or guilty, or they could release the suspect under caution because they were undecided. In both cases, they could condemn the defendants to the payment of the legal costs anyway. The legal reasoning behind this was that they were partially guilty by portraying suspicious behaviour. If they found a defendant guilty, judges pronounced punishments ranging from fines and short-term confinements on water and bread, over declarations of infamy and public whippings, to banishment and death in many varieties. As in most German courts, but unlike in most French courts, defendants generally had no possibility to appeal. Convicts could only apply for grace, which I will discuss in the next chapter. If they did not, or if the monarch rejected their application, the court executed sentences as soon as possible.

The eighteenth-century criminal procedure did not generate much discourse on matters of the self or interiority. The ‘law of proof’, which guided criminal courts, aimed to find the truth about criminal acts, not about the criminals themselves. Criminal courts required proof that an individual had committed a crime and did not, at least in theory, care much
about motivations or explanations. The criminal justice procedures thus promoted an outward-oriented self, perhaps malleable but rarely explicitly so. Above all, however, the individual psyche was marginal to the criminal procedure.21

The temptations of torture

Although torture was relatively rare in the eighteenth century across most of Europe, the practice demonstrates the law’s attitude towards the self quite clearly. The justification of regulated judicial torture related to the Christian idea that pain and suffering were meaningful and productive. The classic idea behind torture was that by inflicting pain on suspects, their inherently sinful will would be crushed. While in severe pain, people would not be able to concoct false arguments. Pain – and not threats or promises, which defenders of torture decried – would lead to truth. A narrative revealed under torture – a spontaneous truth of the body – was therefore seen as more reliable than any voluntarily disclosed answer.22 This implied a specific view of the self: the mind was deceitful, but the body would reveal the truth when the self lost control. Magistrates should destroy the will – a form of the self – to access the truth of the body. They could access a true account through the body, not through reflection or persuasion, not through the mind.

Clerks often recorded interrogations under torture in great detail, showing the importance and care given to them and revealing much about the ambiguities of the system in practice. A well-documented case is that of Jan Bailliu in 1780.23 Bailliu stood accused of killing his wife, but he denied the allegations and claimed that she had died from natural causes. After a thorough investigation, the Ghent magistrates concluded that his story contained ‘lies, variances and manifest contradictions’ and found the evidence against him sufficient to warrant an examination under torture. On 4 September 1780, Bailliu was taken to the torture chamber. The executioner showed him the rack and the magistrates admonished him to speak the truth, but he persisted in his denials. The executioner stripped him naked and tied him to a chair with spikes. He put a collar with metal pins on him, which was attached to the walls of the room with tight ropes. Finally, the executioner attached heavy weights to his fingers and toes – but Bailliu continued to deny. At 15h30, the torture session began.

At 16h03, Bailliu ‘hailed the mercy of the Lord and the Holy Mother of God’. At 16h06, he said ‘to have been created for suffering’. At 16h15, that ‘justice has no place anymore’. At 16h24, ‘patience, if truth is no longer believed’. At 16h35, he shouted that ‘If I am guilty for the world, I am not guilty for God’. And so he continued. On the one hand, Bailliu sought solace
in his faith: suffering was justified in the imitation of Christ and divine mercy awaited him upon death. On the other, he discredited the criminal justice system and more particularly the magistrates who were interrogating him.

After an hour and a half, Bailliu joined in with one of the main critiques espoused by opponents of torture: ‘Dictate me how I should tell the truth, and I will tell it’, he repeated several times. ‘Dictate my death and I will sign’. Slightly later, he concluded that ‘being judge and being barbarian, it’s more or less the same thing’. But then he again turned to a martyr’s narrative: ‘O joy, that I have to suffer without guilt’.

As the night fell, Bailliu became more recalcitrant. ‘The more pain, the merrier’, he shouted at 21h20. ‘There is no pain that can be too much’, he said at 5h35. He mocked the magistrates and the executioner, complementing the latter on his bondage skills. At 7h30, he started playing with the weights attached to his fingers, knocking on the rack and exclaiming ‘Glockenspiel!’.

In between his defiant exclamations, Bailliu begged for mercy and promised that he would confess when released. When magistrates told him that he had to confess before his release, he always fell silent. But then, again, when the 24 hours were nearly over, he ironically expressed his sympathy with the executioner, telling him not to despair for it was almost over. After 24 hours of torture Bailliu was released – without a confession. As the magistrates could not convict him to death but were sufficiently convinced of his guilt, they sentenced him to thirty years of imprisonment in a house of correction.

Judicial torture is often interpreted as the epitome of the unbridled inquisitorial powers of the justice system over suspects. But in the interrogation under torture itself, the balance of power was not so clear. Indeed, the endurance of physical pain gave suspects a specific form of authority. The body in pain was a means of defiance. Tortured suspects could present themselves as martyrs, suffering unjustly and challenging their tormenters for it. Bailliu used his body in pain to assert himself as innocent: he remained in control of his self-narrative.

The Bailliu case was not exceptional. It has been found that in several regions in seventeenth- and eighteenth-century France, only between 3 and 15 per cent of those condemned to torture eventually confessed.24 We do not have similar statistics for the Southern Netherlands and my own sample of cases in which courts applied torture is too small to draw conclusions. It seems, however, that torture was not an effective means to obtain a confession. Even if suspects confessed under torture, they had to confirm this confession 24 hours after they had been released from the rack. While the threat of further torture may have stimulated them to do so, some suspects retracted their confessions nonetheless.
Let us take a look at another examination under torture, in the case against Jean-Louis Allard. Allard, a twenty-year-old man from Hainaut, had been exiled for thefts. He was again confined on suspicion of thefts in 1772, but escaped his holding cell (while leaving the officer of justice a letter with apologies for his escape). He was arrested again and brought before the magistrates in Brussels later the same year, on suspicion of having murdered an elderly couple. After five interrogations, Allard kept denying the murder. The court condemned him to torture.

On 10 May 1773 at 9h08, Allard was attached to the chair and collar. The magistrates admonished him to tell the truth, but he stuck with his story. Initially, he was silent, but at 10h10, he began sighing and at 10h18, his body started curling. At 10h31, he asked for a confessor, moaned and called upon God several times. When admonished to speak the truth, he persisted that he already had. At 10h44, he moaned that he wanted to die for his sins, persisting that he had spoken the truth. At 10h56 he broke and asked to be released from the rack, confessing that he had committed the murder.

After he gave some details on the murder, however, the magistrates did not immediately release Allard. They asked him to name his accomplices. Allard persisted that he had committed the murder alone. The magistrates were not convinced and repeated the question several times. Allard said, ‘that he had committed them alone, that he wanted God to throw him in Hell if he had an accomplice’. He noted that if he had had an accomplice, nothing would keep him from confessing, as he was to die anyway.

The torture continued. At 13h35, the prisoner begged to be released, insisting that he had spoken the truth. He again called upon God to have the torments stopped. ‘Take my life’, he shouted at 14h30, ‘so I don’t have to suffer any longer’. At 15h, he finally confessed that he had had two accomplices – two people who had also been apprehended. However, the magistrates still wanted to clarify some details. At 18h42, finally, he was released from the rack. The next day, Allard confirmed his confessions, but he excluded the declarations about his accomplices. Once again, he insisted that he had committed his crime alone.

The dynamics of the Allard case were wholly different to those of the Bailliu case. While Allard also took refuge in his faith, he was unable to use his pain to shift the balance of power and mock his interrogators. He could not assert himself in the way Bailliu did. The pain was so unbearable that he preferred dying – and he therefore confessed to the crime. Initially, however, he did not want to implicate anyone else. Only hours after he had confessed his own crime, he told the magistrates what they wanted to hear: the two other suspects, one of whom had already confessed, were his accomplices. When he had to confirm this afterwards, he retracted this part, even while
signing his own death warrant and risking further torture. Perhaps this was a sign of his exceptional loyalty to his accomplices. The judges interpreted it, however, as a sign of his exceptional loyalty to the truth. Allard’s reluctance to implicate his accomplices led magistrates to conduct an additional investigation. They concluded that the confession of one of the supposed accomplices had been false. Allard had acted alone. The value of torture as an instrument to produce truth was both confirmed and contradicted. It was confirmed, as Allard hesitated to implicate his accomplices and the magistrates interpreted this as an important clue. It was also contradicted, as Allard did actually implicate accomplices and told magistrates the story they wanted to hear, just to be released from torture. Torture led to the truth that was eventually accepted, but not because the body in pain necessarily spoke truth. The success of judicial torture hinged on its failure.

Both the Bailliu and Allard cases could be supplemented with other cases of judicial torture. In 1777, magistrates in Kortrijk interrogated Antoine Femmechon under torture. He persisted in claiming his innocence for eight hours. In 1792, the Antwerp judges tortured Philip Mertens seven times: he confessed each time, but retracted his confession after he had been released from the rack. Only the last time he confirmed his confession and was condemned to death. All of these cases testify to the ambiguous position of judicial torture. Magistrates still hoped that it would bring truth, but all too often it implied untruth. Torture was a means for magistrates to crush the self, but defendants could use it to assert the self.

Calls for reform

The criminal justice procedures as described above were – very broadly – how they were operating in the 1750s. Even then, already, legal practices all over Europe were changing under the influence of an Enlightenment climate of critique. To properly understand how the self was practised in criminal courts, I need to make a detour along the manifold reforms of criminal justice from the 1780s to the 1810s. Reformers sought to establish a criminal justice system that was fairer and more efficient, while magistrates softened the perceived harsh edges of the system in practice. Many eighteenth-century reformers focused their attention on punishment. They would contribute to the rise of imprisonment and discipline as a means to ‘correct’ criminals, rather than punish crimes, a movement that was particularly strong in the Southern Netherlands. This movement implied a stronger focus on the self on the part of criminal justice: they became more interested in the individuals before them, and not only in the specific crimes they had committed. Many reformers believed that criminals were not inherently evil,
but badly educated. Through a better penal system and better education, society could be perfected.³⁰

Besides cruel punishments, judicial torture was a thorn in the eye of the reformers. Their critiques of torture related to changing conceptions of pain, body and truth. They argued that pain did not lead defendants to speak the truth, but made them say whatever the interrogators wanted to hear, so that the pain would stop.³¹ Around 1787, an anonymous former councillor in the Southern Netherlands railed against torture: it was a ‘barbarous practice’, which ‘produces false confessions, for the desire to stop suffering leads to a deceitful declaration during torture, which is then confirmed afterwards out of fear of seeing the torture recommence’.³² As we have seen, Jan Bailliu echoed these sentiments during his torture session. While religious appreciations of pain continued to occur, some came to see pain as only negative, something which to avoid at all times.³³ Even proponents of torture no longer made explicit its traditional supporting doctrine – that pain destroyed the obstreperous will. Almost no one seemed to still accept that pain had truth value. To speak truth, one was to have presence of mind and free will – the free will that pain destroyed. The abolition of torture related to a greater appreciation of the self as the origins of truth, rather than an obstacle to the truth.³⁴

At the same time, the movement against torture was also linked to the culture of sensibility. Reformers framed their cries to abolish torture as a humanitarian movement, inspired by fellow feeling and sympathy. Many people came to accept that people ‘felt with’ the pain which they saw being administered to others. It is from this background that Goswin de Fierlant, the prime criminal justice reformer in the Austrian Netherlands, denounced torture as ‘injustice’ and ‘barbarism’; it is from this background he denounced that (possibly innocent) people had to endure such torments. Fierlant and other abolitionists, all sensitive men, sympathised with those who had to endure pain. Some abolitionists criticised judges who used torture because it showed their lack of sympathetic feeling.³⁵ As a result, through sympathy and sensibility, an orientation towards the body was supplemented with an orientation towards the feeling and thinking self.

The implementation of the proposed reforms was no easy matter. The central government in the Austrian Netherlands was eager to reform criminal justice, expecting that they would be able to curtail the power of local elites that still held a quasi-monopoly on the administration of criminal justice. They put Goswin de Fierlant to work developing a new criminal code, but his proposals, formulated in his *Premières idées sur la réformation des loix criminelles*, were unsuccessful, especially due to the resistance of provincial and local courts. Only some smaller reforms were implemented: in 1782 the government decreed that suicide would no longer be punished.³⁶
In 1784, it decreed that local courts could only apply torture after they had obtained permission from the Privy Council. The Council did not frequently deny this permission, however. The resistance of the provincial and local courts seems to suggest that they disagreed with the ‘modern’ legal ideas the central government propagated. However, while the courts heavily defended their right to use torture and capital and corporal punishments, their use declined throughout the country. It seems, therefore, that the resistance to the reforms from above was at least in part politically motivated: the courts and councils did not want to lose their autonomy.

Revolutionising criminal justice

Elsewhere in Europe, people proposed similar reforms. The debates were fierce in France, where many found a minor reform of criminal procedure in 1788 insufficient. Discontent about criminal justice contributed to the French Revolution. The Declaration of the Rights of Man and the Citizen stipulated that all men were born free and equal in rights, that limits on their rights were to be established in laws and that the laws should be applied to everyone in the same way. The declaration formally rejected arbitrary orders, unnecessary punishments and presumptions of guilt. These declarations proposed individual autonomy and clear boundaries between selves. More than in the old regime, the law was specifically interested in individuals.

The general principles were put into specific criminal laws between October 1789 and October 1791. Transparency, equality, legality and proportionality were the central aims of the criminal reforms. The new criminal justice system was very concerned with the rights of the accused and took inspiration from the English criminal justice system. The new laws forbade torture in all its forms and all defendants had the right to a solicitor. Out of distrust of the power of judges, the legislators decided that the government would no longer appoint magistrates, but that the people (i.e. propertied men) would elect them from among themselves for a limited period of time. Only actions explicitly defined by the law could be criminal, and the codes also stipulated the punishment for any given crime. There was no room for arbitrariness on the part of the judge. Moreover, popular juries, drawn for each case from a list of eligible citizens, would determine guilt in serious criminal cases.

Three degrees of courts were installed: police courts, which operated on the smallest jurisdiction and treated minor offences; correctional courts, with larger jurisdictions and more important cases, such as theft and public indecency; and criminal courts (later called assize courts), with the largest jurisdiction and the most serious crimes. In addition to these courts, there
was a court of cassation in Paris, to which all convicts could appeal if they thought their sentence was contrary to law or to their fundamental rights. In minor cases, judges only heard suspects and witnesses in court and then formulated a verdict. In cases before the criminal courts, the justice of the peace conducted a more extensive preliminary investigation and then a judge appointed as ‘director of the jury’ followed up. He drafted an act of accusation. A jury of accusation then had to judge whether the evidence was sufficient to conduct a trial, and to this end they heard relevant witnesses and the accused orally in session. If so, the case was brought before a jury of judgment, who again heard both parties’ witnesses. The public accuser and the defendant or his or her counsel then gave their pleas. The president of the court formulated a number of questions for the jury to answer. If found guilty, the judges then sentenced the accused to the punishment stipulated by the law.

A crucial change in the procedures of criminal justice was that juries were not to determine guilt on the basis of a system of proofs as in the old regime, but to trust their ‘inner conviction’ (conviction intime). The value of confessions, witness statements and all sorts of proof was no longer predetermined: juries had to weigh the evidence for themselves. In this way, the truth of the law was to be the same truth as the truth in society. This new evaluation of evidence again presupposed a changing conception of the self on the part of the legislators. Inspired by the ideas of sensibility, legislators based this system on a socially oriented self. By seeing and hearing witnesses and defendants during the trial, they argued, jurors would feel with them and be able to come to a just verdict. The whole concept of ‘inner conviction’ and its association with feeling and fellow feeling announced the increased orientation of criminal justice towards the interior – of the magistrate, the juror and the defendant.

In the course of their wars with the other European powers, the French Revolutionaries came to occupy the Southern Netherlands, first for a few months from the end of 1792 to the beginning of 1793 and then definitively in 1794. For most of this period, the old legal order kept functioning. Not without opposition, the regular French legal organisation was first introduced in the Southern Netherlands at the end of 1795. Despite its revolutionary aims and French origins, the new criminal justice system was not entirely alien to the Southern Netherlands. Even while the introduction of defence lawyers, a centralised (rather than urban) criminal justice system and a partially public procedure were indeed novel, some practical arrangements remained similar. Many of the people charged with keeping order and providing justice remained the same while their titles changed. The course of preliminary investigations, conducted by police officers or justices of the peace, in practice differed little from the investigations formerly conducted...
by the officers of justice. In some cases, when the laws were unclear, judges could even resort to ancien régime laws. The local embeddedness of criminal prosecution – most criminals were only prosecuted when their environment complained – also remained. And even while the ‘law of proof’ was abolished, juries and judges kept favouring confessions as evidence.

While the French introduced their new institutions in the former territory of Belgium (and in many other newly conquered territories), they continued to reform them. As first consul Napoleon gradually expanded his power and became emperor in 1804, some of the most revolutionary aspects of the criminal justice system were undone. The Napoleonic reforms focused on guaranteeing security, rather than defendants’ rights. Thus, in reforms between 1795 and 1810, the criminal investigation again became secret, written and inquisitorial up to the court session, which remained public, oral and accusatory. New laws replaced the director of the jury with the examining judge (juge d’instruction), who carried out most of the investigations and interrogations. They stipulated that judges were once again appointed instead of elected, replaced the jury of accusation with an indictments chamber – consisting of magistrates attached to the court of appeals – and entrusted the power to prosecute to an official public prosecutor and his substitutes. For some crimes, the new laws stipulated minimal and maximal sentences. Choosing between them was left for the judge to decide.

The reforms culminated with the Code d’instruction criminelle of 1808 and the Code pénal of 1810 – both came in vigour in 1811. These two codes would regulate criminal justice in the Belgian region for a long period, even after Napoleon’s defeat. Despite frequent criticisms, the codes remained in use with only slight modifications when the Belgian and Dutch territories were integrated in the United Kingdom of the Netherlands in 1815, and even after the Belgian independence in 1830, up to the Belgian criminal code of 1867.

Bad conscience

Let us now look in more detail at the impact of all these procedural reforms. The French Revolutionary legal system put an end to the reigning system of proofs. The value of a confession – or of any other type of evidence – was no longer made explicit. However, this did not mean that judges and juries put less value on confessions: on the contrary, as they deliberated on their ‘inner conviction’, a confession became one of the most sought-after pieces of evidence.

Although eighteenth-century legal scholars frequently heralded a confession as the ‘queen of proofs’, many magistrates were not all that industrious
in obtaining such proof. Apart from relatively rare torture sessions, the interrogation of the suspect was the main procedure for obtaining confessions. The law required at least one interrogation. But in most cases, magistrates simply allowed suspects to tell their side of the story, which often entailed a denial of all allegations. In his legal manual, alderman J. G. Thielen provided some advice on how to conduct interrogations: he suggested that interrogators try to confuse suspects about what they were accused of, so that they could accidentally confess or contradict themselves. Moreover, he advised that magistrates did not ask questions in a logical order, again, to increase the chance that suspects would contradict themselves. Finally, he proposed to hear suspects as soon as possible, so that they did not have the time to concoct lies. Experience shows, he wrote, that the first interrogation was usually the most useful one, with the least prepared answers. Implicitly, Thielen made clear that allowing suspects to overthink their case would not be beneficial to discovering the truth. From this view, it is unsurprising that Thielen also defended judicial torture, which started from the same principle.

The records of interrogations may not reveal the exact nature of interrogations – not all questions were reported, questions were perhaps formulated differently, answers may have been summarised – but they do show that there were rarely any attempts to pressure suspects into confessing, even in serious cases. The magistrates puzzled together the story of events as they had learned them from victims and witnesses and rephrased this story as questions. Most commonly, these took the form of ‘Asked if he did not...’ or ‘Is it not true that...’. Regardless of the suspect’s denials, they generally continued their interrogations along the line of the events as they had supposedly unfolded. Magistrates rarely used the attempts at confusion Thielen proposed. As in many other regions, the recorded questions early modern interrogators asked often seem scripted and monological – clerks just had to fill in the answers of the defendants.

A typical example is the case of Antoine Deleporte in Kortrijk in 1762. Deleporte was a sergeant in a minor village near Kortrijk and stood accused of battery resulting in the death of a forty-year-old woman. The woman had suffered from poor mental and physical health, but was from a relatively well-to-do family. The magistrates considered the case as serious; they heard many witnesses. But Deleporte’s interrogation was very straightforward: after verifying his identity, magistrates first established whether he was near the woman at the time of the incident (he acknowledged this) and then asked him in chronological order about the passing of events. Deleporte confessed that he had hit the woman, but only very lightly and only after she had gravely insulted him. When the judges continued with more serious accusations – that he had hit her again afterwards, that it
had resulted in serious wounds, that she had died from these wounds – Deleporte simply claimed that these were false allegations. The only ‘trick’ question came at the end, when they asked him whether he had fled from his house after the woman had died. Deleporte acknowledged that he had done this on the advice of two notable inhabitants of his village. There was no other pressure to confess to the more serious allegations.57

This is not to say that magistrates were not interested in confessions, indeed, in some cases magistrates went to great lengths to elicit confessions – in cases with torture, for instance, or as in the case of Joanna Catherine Janssens, with threats and promises, as I discussed at the beginning of this chapter. However, in comparison with later interrogation strategies, magistrates’ techniques were rarely sophisticated and rarely played to suspects’ feelings. An exception was the case of Peter Stocker, suspected of sodomy in 1781. After a long and detailed interrogation, in which Stocker denied having even thought about sodomy, judges asked him ‘whether he knows that he has a soul that he must try to save’. Stocker confirmed that he knew this. ‘How does he dare, then’, judges continued, ‘to keep denying the truthful truth, does he not fear to be abandoned by God, and that his soul will be torn out of his disastrous body to be thrown into the abysses of hell?’ Stocker did not break immediately, but eventually ‘voluntarily’ confessed a month later. Judges played to Stocker’s religious fears in a more sophisticated way than in the case of Janssens to get him to tell the account that they wanted to hear. This approach was, however, rare.58

With the new criminal procedures of the French Revolutionary criminal justice system, the practices of interrogators necessarily changed. Torture was abolished and suspects gained better protection: magistrates had to inform them immediately of the charges against them, for instance, rendering some of Thielen’s techniques obsolete. But criminal investigators still valued confessions, as they convinced juries and judges more than any other proof. As a result, magistrates started to seek out new techniques of interrogation, techniques that did not so much involve physical violence or direct confrontation, but that often played to people’s feelings and sought to portray the interrogator as an ally of the suspect.

The change is most striking if we compare Thielen’s treatise on criminal justice with an extensive commentary on criminal procedure published in France in 1845 by Faustin Hélie and edited for Belgian purposes between 1863 and 1869 by J. S. G. Nypels and Léopold Hanssens. In the more recent work, the authors argued that confession had been quintessential in the old regime, but was now just one piece of evidence among others, though still a very usable one. ‘Our modern legislation attaches all the proper weight to confessions, but has left its moral appreciation to the judge’.59 The prime means to obtain a confession was an interrogation. Focusing on the mind
by asking questions was the preferred method to get suspects to give an account of themselves.

Faustin Hélie made explicit the psychology underlying the value of confession: ‘When a man confesses to having committed an immoral action, this declaration carries the presumption of truth, for it is not in human nature to undergo voluntarily the imputation of a shameful fact, when this imputation is false’. To confess, trust between confessant and confessor was required. The confessant ‘had to overcome an instinctive repugnance to talking’. He could find the power to do so in ‘the secret inspiration of conscience and in the innate love of truth, that double ray which still resides in his mind, despite his attempt to obscure them’. Confessing allegedly also gave suspects their inner peace back: ‘truth has such power to alleviate and relieve suffering’.60

Clearly, much had changed since the days of Thielen. For Thielen, judges were to confuse and delude suspects and, if this did not suffice, they were guaranteed to find the truth through regulated violence. The truth could be extracted by the interrogator from the body of the suspect. In the vision of Faustin Hélie and his contemporaries, suspects were still reluctant to confess to their horrible crimes. But the interrogator could extract the truth by gaining the trust of the defendants, by stimulating their conscience and allowing them to regain inner peace by confessing. In part, the truth moved from body to mind (though the body could still be important in accessing the mind), and from the result of an open opposition to a seeming collaboration (though open opposition was never far away).61 In this process, the self, inner depth, feelings and conscience became central concerns of criminal justice.

This was not only a change in legal manuals. After the installation of the new legal system, the criminal interrogation techniques recorded in interrogation transcripts became more sophisticated. While many interrogations were still rather straightforward, it became increasingly common to try to convince suspects to confess. Moreover, interrogators not only played to suspects’ fears, but also to their hopes: they promised that confessing would bring relief. They played to suspects’ consciences and likened confession in criminal court with confession in penance. In 1810, after magistrates confronted him with the wealth of evidence against him, agricultural worker Jean Ronse said that he would confess in a next session. The interrogator pressed him to ‘tell the confessions that weigh on his heart now’, but he refused.62 When farmer Laurent Spinoy professed his innocence of a murder in 1824, the judge told him that ‘he will have to answer on several points, and one hopes that he will then speak more frankly, and will in the meantime search his conscience, and unburden his soul’. The magistrate did not tell Spinoy, like Stocker, to think about

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saving his soul for eternity, but to consider the advantages in this life of ‘unburdening’ his soul by confessing. Judges increasingly presented confessions as something advantageous for the inner life of the defendant, thus confirming the importance of such an inner life. A guilty conscience could be alleviated through confessing.

Interrogators went further: they not only promised relief of conscience, but they actively sought to provoke feelings of shock, shame, guilt and remorse – they sought to create or at least reveal guilty consciences. By provoking these feelings and analysing suspects’ bodies, they sought new ways to the truth. To this end, interrogators sometimes confronted suspects with witnesses, victims or objects connected to the crime. In these instances, clerks almost always wrote down the reactions of the suspects, or the lack thereof. In 1816, for instance, a magistrate showed field servant Henriette Meurisse a series of objects: a child’s cap, a small shirt and some linen and asked her ‘to contemplate and handle these things’. He then asked whether ‘when seeing them, she doesn’t feel interior movements [elle ne se sentait point emouvoir les entrailles]?’ For four minutes, Meurisse kept a ‘profound silence’ and then started ‘sighing and bitterly weeping’ for several more minutes. In tears, she confessed that the objects had belonged to her infant. She had been abandoned by everyone and had ‘on no-one’s advice except the demon’s’ thrown her baby in a river.

In a rather macabre performance, some interrogators even confronted suspects with the corpses of their supposed victims. They confronted several suspected infanticides with the corpse of their baby, who often immediately confessed that it was theirs, sometimes while ‘crying and moaning’. Domestic worker Pascal Bastiaens received the same treatment in 1821. Before the post-mortem was allowed to take place, the justice of the peace took him to look at the corpse of a murder victim, and asked him then and there to ‘tell how this event has come to pass’. The magistrates expected that seeing the victim would move him in such a way that he could no longer hide the truth.

This new focus on conscience and remorse was not only a clever means to extract confessions. The criminal justice system in the early nineteenth century was increasingly bent on reforming criminals, especially with the use of prison sentences. If a suspect showed remorse, this was a first step in their trajectory towards a better life. It showed that they accepted the moral values that they had broken and decreased the ‘moral culpability’ of the criminal. From this perspective, it made sense to reduce the sentence of those who repented. Initially, however, sentences in the new regime were fixed and did not allow for much clemency. Juries found some defendants who confessed infanticide innocent. Although they did not motivate these verdicts, it seems that the jury found the possible punishments too harsh. After the Napoleonic reforms, judges could arbitrate between minimum
and maximum sentences to consider the remorse of the suspect. In some cases, they also recommended convicts for grace. In 1829, domestic servant Katharina Lignel had killed her infant but was struck by remorse. A neighbour saw her ‘wholly dismayed and half insane, saying that she was damned and could not hope for salvation and knew that she would be arrested by the gendarmerie within few days’. And indeed, she was, and she immediately confessed to the local mayor that she had murdered her child. The court condemned her to death, but several magistrates felt compassion for Lignel and recommended her for grace. The trial contains two reports sent to the king, asking to pardon her crime. ‘Notwithstanding the cruelty of the crime’, they noted, Lignel has ‘from the beginning confessed her crime with an open heart’ and she has shown ‘sincere remorse’ to the court. They recommended her for His Majesty’s compassion. Her sentence was commuted to ten years of imprisonment.70

In other cases, however, there was no hope for a diminished sentence. And yet some suspects responded to the incitements to confess. They felt guilt. They acknowledged that they had committed a particular action and that this action was morally wrong. As such, the feeling of guilt was the outcome of a long historical process of ‘culpabilisation’. It can be seen as the result of an attempt of religious and legal institutions to not just have people obey the law, but to have norms inscribed onto the body and into the mind. The Catholic ritual of penance played a pivotal role in this process.71 If people broke certain norms, they had a ‘bad conscience’ – they felt guilty and uneasy. Feeling remorse was a way of recovering from these feelings of unease: its effect was to disconnect the disapproved action from the true self. If you practised remorse, you showed that your actions were a deviation from values that you actually held deeply and dearly. This whole process worked to promote the feeling of inner depth.72

This background helps to explain why and how suspects confessed crimes: relief was the central theme, relief of conscience and relief of the actual sentence. As we have seen above, some interrogators made this explicit. Even without these specific admonitions, some suspects referred to these images when they made a confession. In 1816, an interrogator confronted maidservant Isabelle Desmet with contradictions in the story she had told. She broke and declared that ‘her conscience told her to tell the truth’, before making a confession.73 In 1814, day labourer Pierre Calland said that he ‘wanted to tell the truth to relieve his conscience for God and for Justice’. 74 In 1820, weaver Cecile Louise Broucke asked for a new interrogation after she had denied all allegations, claiming she had ‘sincere repentance of her mistakes and that she felt pursued by remorse which torments her day and night […], and therefore had resolved to confess and say everything’.75 Interrogators not only promised the relief of confession, but suspects also longed for it.
Interrogators in the old regime often just asked suspects to tell their side of the events relating to a crime. If they did attempt to pressure a suspect into confessing, they were often blunt, simply confronting suspects with evidence against their claims, trying to trick them and using religious imagery to impress them. If that did not work, torture was a possibility. Lacking the latter solution, in the new regime, interrogators used more sophisticated techniques and paid more attention to feelings and to the relief of conscience that confessing could bring.

The interest in conscience was not entirely new in nineteenth-century trial records: Laura Kounine has found some references to conscience and interiority in sixteenth- and seventeenth-century German witchcraft trials. Such discussions seem to have been much rarer in French witchcraft trials of the same period, where, as Virginia Krause has argued, individual subjectivity was mostly absent. However, limited research on the period around 1800 shows that in Germany and France, too, psychological interrogation techniques and attention for the inner side of the suspect were on the rise in the early nineteenth century.

The proliferation of ‘psychological’ interrogation techniques and the increasing references to conscience (and its relief) among both interrogators and defendants in the early nineteenth century can be seen as evidence of the continuing movement towards a ‘culture of confession’. Like the Catholic Church, institutions of criminal justice promoted self-verbalisation. They not only stimulated confession, but also promoted the idea that confession would not come spontaneously, that labour was necessary to overcome the suspect’s reluctance to confess. Eventually, it would bring them relief. By demanding and writing down confessions, they made them more real. The techniques they used to obtain confessions in the early nineteenth century created a sense of depth and promoted the idea of an inner conscience and feelings of guilt as important aspects of the self.

The new discourses of guilt and interiority were visible across genders and classes. I have encountered them among impoverished aristocrats, merchants, artisans and farmers, as well as day labourers and male and female servants. But, as the examples discussed above illustrate, the changes were most outspoken in the case of more modest people – servants and day labourers – and especially in the case of women accused of infanticide. In these cases, interrogators asked their most interior-oriented questions: they frequently confronted women with clothes or even with the corpses of their infants and explicitly asked how they felt when seeing them. Men of the middling sorts were more often, but certainly not always, spared from these explicit techniques aimed at eliciting interiority. As I will discuss in more detail in the next chapter, they were more commonly treated as rational beings.
It could be objected that the evolutions I have sketched are merely the result of changing prescriptions and practices of transcription. Indeed, with the installation of the French Revolutionary criminal justice system, administration expanded and bureaucracy became more precise. Interrogation transcripts were, in some cases, more detailed than before. So perhaps magistrates were already using the same techniques in the old regime, but clerks simply did not write them down. This would seem to limit the significance of the evolutions that I have described, but it does not. It points to the increased attention for the relevance of conscience, guilt and relief. Because of the powerful place of the criminal justice system in society, writing down references to these aspects of the self was never merely writing them down, but acknowledging and reinforcing their privileged position.

Resisting confession

In the face of overwhelming evidence, warnings of eternal damnation, and threats and promises, some defendants continued to deny the allegations. Most were rather straightforward, simply denying the imputed crimes. But defendants too had particular techniques to make their case stronger. Much like Bailliu under torture, suspects, while clearly in a subordinate position, could appeal to God, assert their moral superiority or play to the interrogators’ sense of justice to convince them of their innocence.

The case of Gerard Deboysere in 1802 is unique for the perseverance of both the interrogator and the suspect. I will relate this case in some detail, as it illustrates many of the interrogation techniques discussed in the previous section, as well as how suspects could resist them. Deboysere, a fifty-one-year-old former police sergeant from Bruges, was suspected of murder and theft. His first interrogation was rather straightforward: the director of the jury asked Deboysere about his whereabouts and actions on the day of the crime, Deboysere answered. During the second interrogation a month later, the director of the jury pointed out numerous contradictions in his story and made many ‘observations’ of a more likely course of events. He became none the wiser and the interview was suspended as the suspect seemed indisposed.80

For his third interrogation, again a month later, Deboysere was taken to the crime scene, to the house where the murder had taken place. His guilt was clear, the director of the jury said. ‘We have only taken him here to ask for a pardon of God and Justice on the scene of the crime’, he said. ‘And in consequence, we ask him to tell us whether he has committed the crime singlehandedly, or whether he has had other accomplices’. The magistrate performed a whole range of interrogation techniques: confrontation with
the crime scene to elicit a reaction; invoking the respect required to God and Justice; not asking whether he committed the crime but asking who helped him. Deboysere was not easily cornered, however. ‘If he has committed a crime, he is punishable’, he said, ‘but he has not’. He resisted confession by expressing his agreement with justice and his innocence at the same time.

The director of the jury pointed out the blood on the wall. Deboysere asked him what he wanted to obtain by doing so. Again, many questions followed about Deboysere’s ‘when and where’. Finally, the director ‘observed that he has not been called here to confess, for his culpability is proven, but to unburden his conscience by declaring his accomplices, if any’. Deboysere repeated that ‘his conscience [was] not burdened’. Any witnesses against him were lying. Conscience was given an important role in the interrogation.

Two months later there was another interrogation, back in the court of justice. This time, the declarations of witnesses against him were read to Deboysere. After a few statements, he lost his patience and ceased to answer the questions, denying the legitimacy of his interrogators. Upon every question, for dozens of questions, he only said ‘I don’t say yes, I don’t say no’, ‘I don’t hear anything, I don’t say anything, I’m mute’, or ‘I say nothing, nothing can be proven’. Neither the interrogators nor Deboysere seemed to want to bend. At one point, Deboysere accused the interrogators of ‘impertinence’, and asked what the allegations against him were. He said that all were ‘tell-tales and shit’. And then he continued in his refusal to answer questions: ‘Why do you continuously want to reason with me? I say that I hear nothing’.

After some two hundred questions, the interrogators once again tried a new technique. ‘A truly innocent man’, the interrogator said,

has no better defence than the truth. […] He who speaks truth, always says it in the same way, without variation, because the truth is one and invariable. The suspect, conversely, has changed his answers all the time […] and often denies things that are irrevocably proven. It results that the suspect has not used the truth to defend himself, which evidently proves that he feels that the truth can only show that he is guilty.

After a moment of silence (the transcription noted) Deboysere said ‘madmen are in the madhouse’ – another defensive technique, claiming insanity. And then he started to assert his innocence again. ‘All what they have said is lies’, or ‘gossip’, and ‘all what he has said himself is the truth’. But the interrogators again continued and observed that his behaviour showed his guilt: ‘this is not the behaviour of an innocent, but the behaviour that we have seen among the truly guilty, when they do not want to confess their crimes’. And then, they summed up his most important techniques:

1. Denying things that have been proven beyond revocation or doubt
2. Never saying the same thing twice
3. Treating witnesses like drunkards, liars and forgers
4. Claiming that the accusers had instructed witnesses on how to answer questions
5. Repeating often that witnesses who are his old friends will eventually testify in his favour
6. Saying that witnesses would speak differently in his presence
7. Talking nonsense and being extravagant each time he feels so cornered that he has no good replies to make.

Deboysere did not reply to this exposition. The interrogators therefore continued to hold out the evidence against him; Deboysere persisted in his denials. Once again, the director of the jury then decided to resort to another technique and confront Deboysere with his unusual behaviour in prison. He interpreted his body to draw conclusions about the mind; again, conscience and feelings occupied a central role; he explicitly used metaphors of interiority. Deboysere had woken up in the middle of the night and shouted that soldiers were coming to take him to the guillotine. He had told others that he had seen the bailiff reading aloud his death sentence. Surely ‘the idea of the crime tormented his conscience’. Practising his best rhetorical talents, the interrogator continued: ‘Imagining hearing his death sentence, was that not the effect of an inner conviction of the crime? The tambour he was hearing, was that not remorse rising in his mind, which, reproaching his crime, didn’t leave him quiet during day nor night?’

No, Deboysere replied, they were wrong to imprison him, for this only showed his insanity. Again, however, the interrogators refused to accept this. The extravagances he had committed were, according to experts who had examined him, the effect of anxiety and agitation since the crime: ‘This agitation will continue as long as he doesn’t make a complete confession of the crime with which he is soiled’. Only confession would bring relief. In response, Deboysere said that he doubted that the experts claimed this, and questioned their authority, saying that they were only ‘pulse takers’.

The final stage of the interrogation, which must have taken many hours, was approaching. One last time, the interrogators pointed out that his behaviour clearly showed that he had plotted to deny everything and use all the worst means of defence, but that this was a proof against him. Deboysere once again claimed that these were only bagatelles, ‘and that he would take care not to confess a crime he hasn’t committed. And if he has committed it, he wants to be punished’. One final time, the interrogators repeated that his was not the behaviour of an innocent man, ‘who would conduct himself with respect towards his judges and justify himself cold-bloodedly and peaceably’. Deboysere did not reply and the interrogation was closed.
The evidence against Deboysere was rather thin. It consisted of many small clues, especially that of Deboysere’s own suspicious behaviour. As a result, the rest of the procedure also took more time than was usual. His interrogation before the president of the criminal tribunal, generally only a formality, was longer than usual and was conducted twice, although it was never as extensive as his earlier hearings. Almost a year after the murder, the jury came to a conclusion: Deboysere was guilty of murder and theft and was convicted to death. Almost all possible techniques of interrogation and of resistance had been used in the case. It serves as testimony of the increasing resort of interrogators to the mind of the suspect, to his feelings and his conscience; but also to the importance they attached to obtaining a confession. Conversely, the case also shows the range of techniques suspects possessed to oppose their interrogators: claiming innocence, false witnesses, insanity, refusing to answer questions, exposing plots against him and confusing the magistrates – even if Deboysere was, in the end, less than successful.

The exchange between suspects and interrogators had important repercussions for self and identity. Suspects who resisted their interrogators defied the identity of a criminal. They self-verbalised, but not in a way acceptable to the magistrates. The latter tried to destabilise their stories and to get them to confess. As in the Deboysere case, they played to suspects’ inner side, their ‘conscience’ and their ‘inner conviction’ to get them to confess. Suspects had to relate to this sense of interiority and generally went along, practising an inner orientation but not accepting the interpretation of the magistrates. But the attempts of interrogators to destabilise suspects’ stories of denial could backfire. Indeed, in his continuous denials, Deboysere practised a strong sense of identity. It led him to exclaim at one point: ‘I am innocent and I know who I am’.

Giving an account of oneself

So far in this chapter, I have discussed the varieties in the demands of the court for people to give an account of oneself. These were generally specific demands: magistrates were aiming to obtain a confession of a particular crime. Magistrates stimulated people to confess, to a lesser extent in the eighteenth century, with the use of torture, and especially in the early nineteenth century, with psychological techniques, by promoting guilt and remorse, which could be relieved by self-verbalising.

We arrive at the next stage of the criminal trial: the confession itself and its effects. In the chapters that follow, I will discuss the excuses and interpretations people gave in their confessions. For now, I stick to the form of their confessions, and the effects of this form. The criminal court demanded
an account of the self, but also dictated to a large extent what form this account should take. Between 1750 and 1830, the form of confession became more individual and more focused on the confessant’s interior feelings and motivations; but an assumption of responsibility remained crucial throughout the period.

Eighteenth-century legal commentaries contained some formal guidelines on the confession: once suspects started to confess, Fierlant noted among others, they should not be interrupted. Only when they finished their story should the interrogator ask additional questions. It was particularly important, he noted, to ask for the circumstances of the crime: where it had taken place, which weapons had been used, whether there were any accomplices or witnesses. Moreover, interrogators should insist that suspects reveal their motivations for committing the crime. If these were unclear, they should ask whether anyone had incited them to the crime.81 In practice, eighteenth-century interrogators were rarely as thorough as Fierlant recommended. They were usually quite content if a suspect confessed to the crime. Only in a minority of cases did they explicitly ask suspects about their motivations. In many trials, however, suspects volunteered an explanation for their behaviour, describing it as the consequence of particular circumstances or conditions.

The formal requirements of a confession changed little in the new regime. Like Fierlant, French criminalist François Duverger noted that the judge should not be content with vague and general confessions and that he should ask for the reasons for and circumstances of the crime.82 As interrogations became more thorough, it became more common to ask for detailed circumstances. Especially when crimes were deemed atrocious – such as infanticide – it was more usual to explicitly ask for motivations. For instance, after Maximilienne De Cerf had confessed to infanticide in 1819 and described the circumstances of her crime, magistrates asked her ‘what may have been the motive that has engaged her to commit this crime?’83 The need for confessions not only became greater in the new regime, the confessions also required more details and explanations – I will expand on this point in chapter 5.

An important change in the form of confessions, at least in the way they were written down, was the gradual switch from the third person to the first person. In the old regime, clerks usually wrote down interrogations, like witness statements, in the third person, in the Southern Netherlands as in France and Germany.84 In the case of Peter Stocker in 1781, interrogators asked – as was standard practice – ‘what his name was’ and some questions later ‘with whom he associated’. Clerks wrote down that he answered that ‘he was called Petrus Gommarus Stockart’ and that ‘he associated with no-one in particular’. When Stocker confessed, he said that ‘he was prepared to make a true confession’. He related his many acts of sodomy and said that
he had only done it out of urge’. Clerks thus even wrote very personal confessions down in the third person. This was the habit in all courts, even though there do not seem to have been any regulations demanding this form of transcription.

The installation of the new legal system did not change these practices. Interrogation transcripts continued to transcribe questions and answers in the third person. After the turn of the century, however, some courts started to occasionally record answers in the first person. In the case of Gerard Deboysere, for instance, questions were reported in the third person and answers switched regularly between the first and the third (‘he hears or sees nothing’, followed a few questions later by ‘I hear nor see anything’). A similar thing happened in 1809, when an officer of the judicial police in Kortrijk interrogated Barbe Vandenhende, suspected of infanticide. The clerk wrote most of the interrogation down in the third person, including Vandenhende’s lamentation that ‘she suffered much [during the crime], but that she wanted to suffer a thousand times more and leave this world’. The officer ‘asked her the reason why she wanted to suffer and die’, and Vandenhende replied ‘for the crime that I have committed’. All further questions, and all further interrogations, were again written in the third person.

Police officers indeed seem to have been among the first to have started writing interrogations in the second and first person. In Ghent in 1806, an entire interrogation by a judicial police officer was written down as such: ‘Where were you [vous] on 16 September in the evening?’ ‘I was in the Grand Theatre’. When the suspect was then brought before the director of the jury, the interrogation was again written down in the third person. Gradually, however, clerks also started to write down interrogations before magistrates in the first person. The Antwerp courts were earlier than those in Brabant and West-Flanders to commit to this practice. The first of these transcriptions can be found in 1813, and the practice was standard by around 1820. In Brabant, first-person interrogation transcripts became common around 1828. In West-Flanders, it remained common to write interrogations down in the third person at least up to 1830. Only occasionally, interrogations before the court were written down in the first person. In this period of transition, it was not uncommon for interrogations to switch between different pronouns. While the precise timing of these changes is still unclear, by the early-to-mid nineteenth century, most French and German courts also adopted the practice of recording interrogations in the first person.

There does not appear to have been any directive to advise this shift. None of the legal manuals note anything about the use of third or first/second person when writing down interrogations. They simply stipulated that the transcription should be ‘clear, precise, legible and without corrections’
and that ‘answers should be written down literally’, which was the same advice that had been given to ancien régime magistrates – ‘literally’ was not generally taken literally. In a manual for justices of the peace from 1852, a model for recording interrogations still displayed questions in the third person. The evolution therefore seems to have developed from below. Together with the increasing length of interrogations, this connected to an increased concern for representing suspects’ words more precisely. As such, it was also a form of ‘subjectivation’: as suspects’ answers were written down in the first person, they became more personal and more individual. It reinforced the individualising effects of confessing. Suspects not only confessed in the first person, but now they also had to confirm a direct, first-person transcription of this confession.

Within these constraints, confessants were relatively free to mould their stories in the form they wanted. Relatively free, of course: they had to confess to the crime at hand and in a way that made it understandable to the judges. As Virginia Krause has shown for witchcraft confessions in the sixteenth century, this often led to confessions that were rather uniform. While there is greater diversity in the confessions of the murderers, sodomites and prostitutes I have studied than among Krause’s witchcraft confessions, the central theme is also that people take on a particular identity. In interrogations, people were called to reflect on themselves: were they murderers, were they sodomites? Suspects were summoned to self-identify with the accusation, to express it in the first person. Through this act of confessing (or of denying), they became someone different; they assumed a transformed self.

Judiciary institutions did not simply summon people to self-reflect and assume an identity, they also steered them towards particular sorts of selves – as we have seen, selves with depth (inner guilt and remorse) and, as we will see in the next chapters, stable selves in control of themselves. Most confessions were more or less extensive stories, detailing what suspects were doing before the crime and how circumstances brought them to the crime. They gave an account of themselves, taking on or rejecting particular identities; bringing along excuses and mitigations (or not); contrasting their crime with their previous behaviour or suggesting stabilities. Most suspects did not go much further than what magistrates wanted – they confessed to their crimes and made them understandable. Some went to great lengths to explain their crime much more extensively. Famously, for instance, in France in 1835 the young farmer Pierre Rivière wrote a fifty-page memoir detailing what brought him to murder his mother, his sister and his brother. The only one to come close to this form of confession – but on a much smaller scale – among the suspects I studied was Pierre De Mahieu in 1803. The case illustrates how a criminal action led to a proliferation of practices of the self.
Unlike Rivière, the De Mahieu family was part of the country’s (impoverished) elite. The family had been ennobled in 1715, but had fallen on hard times a while before the revolution. Pierre Antoine Joseph was born in 1764. He joined the army and while stationed in Antwerp in the 1780s, he met Josine Doloit. She knew French, which was refreshing for De Mahieu, who did not speak Dutch. They married and after Doloit’s father died in 1801, they moved in with Doloit’s mother and sister.

On 19 September 1803, an officer of the gendarmerie heard shouting while on patrol in Antwerp. People informed him that De Mahieu had slaughtered his mother- and sister-in-law. He went to their house and found De Mahieu hiding in the attic, his hands covered in blood. He was arrested and taken away. On their way to prison, De Mahieu and his guards encountered Doloit, who shouted at them: ‘De Mahieu, De Mahieu, what have you done!’ ‘I come from killing your mother and your sister’, De Mahieu allegedly replied, ‘and if you had been home, I would have killed you too!’ Doloit fainted.

The substitute government commissioner interrogated De Mahieu the same day. His answers were recorded in the third person. Asked why he was arrested, De Mahieu immediately confessed that it was ‘for having punished his mother-in-law and sister-in-law’. The interrogator then asked ‘if it was the effect of the vivacity of the moment, or whether he had premeditated punishing them like that’. De Mahieu said that ‘it was because of a vivacity in that moment, but that he had nevertheless for some time thought about punishing them exemplarily for the irregular conduct of his wife that his mother-in-law provoked’. De Mahieu took responsibility for his crime. He went on explaining that he had tried to lead his in-laws to virtue, to have them abandon their scandalous life but without success. The day of the murder, he had asked his sister-in-law not to demand his wife to prostitute herself for the benefit of the family. His sister-in-law hit him and then he hit her with a hammer. His mother-in-law came to help her; he took his knife and stabbed her. De Mahieu claimed that he had not intended to kill, only to punish.

Witnesses were heard. They stressed the virtuous behaviour of the Doloit family and suggested that De Mahieu’s jealousy came forth from his frequent drunkenness. Another witness had heard that De Mahieu was often restless at night, getting up to check the house for intruders. De Mahieu’s brother-in-law (his sister’s husband) testified that De Mahieu had visited him in Brussels about six weeks before. He looked sad and could hardly eat; he seemed ‘occupied by sinister plans and dark projects’. The brother-in-law ‘pushed him to open his heart and tell him the cause of his chagrin’, but he would not say anything, except that ‘he would be talked about’.

Two weeks after his arrest, De Mahieu was interrogated anew, now more extensively and by the director of the jury. He was asked about his entire
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life course: how he met his wife, how they lived, where he worked, etc. – I have relied on his answers to introduce De Mahieu earlier. He freely disclosed his many disputes with his wife and her family, which centred on their perceived lack of virtue. He said that before his violent act, someone in the street had shouted ‘she has danced despite you’, which he took to mean that his wife led an unruly life. As De Mahieu ‘loved virtue and loved an irreproachable life’, he felt that he had to act.

After the interrogation, De Mahieu was given insight into the declarations against him. While he did not dispute the general accusations, he found that the statements did not detail his actions precisely enough and started writing a ‘Reply to several declarations against me’, addressed to the director of the jury. This memoir is written in clear handwriting, but contains many spelling errors and is sometimes difficult to make sense of. De Mahieu related what happened after the crime, now in the first person. He described in dramatic detail how terrible he felt:

The movement of my mind and my body, my pen cannot describe. One must be in such an unfortunate event to feel its effects, and he who is not accustomed to crime feels it still more intensely, for the suffering he feels for his crime and the desperation of having committed it, and the rage in his heart against those who he believes being its author, this together brings the strongest man to delirium in spirit and body, so that he does not know what he is doing or saying, and such a man is so attacked in all parts of his body that all these parts are in movement. I am sure that if I had been bled three days afterwards, there would not have been any blood, for all my blood was frozen from the horror of my crime and I have kept a tremble that will never disappear.

De Mahieu practised feelings of suffering, desperation, rage and horror, placing these feelings explicitly both in the mind and in the body. He continued his memoir with correcting some specific witness declarations and ended by stipulating that: ‘It is not myself that I seek to defend, but the duties I have to my family, but it is my character to be without detours and to say things like they are’. Two months later, De Mahieu’s case came before the jury. They unanimously convicted him for premeditated murder. He was guillotined on 18 January 1804, dressed in a red shirt, on the central square in Antwerp.96

Comparisons with the case of Pierre Rivière are interesting. Both killed close family members, both wrote a memoir on their murder, both readily confessed their crime and both shared a sense of righteousness, believing their victims had provoked their treatment, and importance – people would talk about them. Both vividly testified of the horror they felt when they realised what they had done, while both also lacked the submission associated with remorse. But there are of course notable differences as well. Rivière’s text was much more extensive, spanning about fifty pages, compared to De
Mahieu’s three pages. Rivière was truly writing a history and had always intended to do so – it was part of his criminal plan. For De Mahieu, writing came more as an afterthought, to set the record straight.

The most obvious difference is, of course, that while the Rivière case attracted national attention in France, and the most renowned doctors investigated Rivière’s sanity, De Mahieu’s case was mostly a local affair and his sanity was never in the picture. There were elements that could have served such a course of investigation: his ‘paranoia’ about virtue, about possible intruders at night and his restlessness. However, they only served as indications of his premeditation, not of his insanity. It is testimony to the increased status and elaboration of psychiatric thought that Rivière’s mind in 1835 attracted so much more attention than De Mahieu’s in 1803. Although the court eventually declared that Rivière was not insane, he received grace for the death sentence (but later committed suicide).97 The Antwerp trial promoted a conception of De Mahieu’s self that was more in control of itself and more socially oriented. While witnesses and De Mahieu himself addressed his states of mind at some length, his interiority was, in 1803, not yet as central as it would later become.

De Mahieu’s confessions and his memoir show the successes and the failures of the norms and feelings institutions of religion and law tried to enforce. De Mahieu was obsessed with virtue, his own virtue and his family’s virtue. After he killed his in-laws, he confessed his crime and confessed his horror of what he had done, but he did not display remorse. He felt that he had to tell the truth, but was adamant that his version of the truth was the only one. There was no submission to the law. As such, his confessions and his memoir were not just the result of regulating practices of the court, the law or religion. De Mahieu actively strove to have his own version of the story accepted. He wanted to determine the true story about himself and his actions. He wanted to confess, he wanted to be tried, for it was the right thing to do. He used the criminal trial as a technology of the self, to become a better person again. He assumed control and actively accepted the identity of a murderer. Because his sanity was not investigated, he was able to remain in control in a way that Pierre Rivière could not.

### The turn inwards

The ideas about and practices of criminal justice went through great changes between the mid-eighteenth century and the 1830s. While this is well-known, historians of criminal justice have had little attention for how closely intertwined legal procedures were with evolving conceptions of self. Conversely, scholars of the self have rarely addressed how deeply
conceptions of self were implicated in the political project of criminal justice. My goal in this chapter has been to both introduce the general principles of criminal procedure in late eighteenth-century and early nineteenth-century Belgium, and to show how these principles implicated discourses and practices of the self.

The eighteenth-century criminal justice system was, admittedly, not very concerned with the self. Except in the most serious cases, the criminal courts mainly judged crimes, not criminal selves. They had some interest in their circumstances and the social status of the suspect – vagrants did not receive the same treatment as noblemen – but had only a marginal interest in the more individual background of a criminal. While a confession was a highly valued piece of evidence in the system of proofs, most interrogations were rather straightforward and did not try to penetrate to the suspect’s inner self. The most incisive but rarely used method to obtain confessions was judicial torture. The ideology of judicial torture was based on the idea that truth resided in the body. It was a truth that was accessible through the destruction of the will, through the destruction of the self by the application of pain. The self was, for eighteenth-century criminal justice, often more a hindrance than an asset. Certainly, there were exceptions, but compared with the early-nineteenth-century trial records, concerns about interiority, feelings and motivations were remarkably absent.

The reformers of criminal justice in the late eighteenth century put the self in a more positive light. They decried torture and inhumane punishments and stressed that criminal justice should seek to change people, to change selves, rather than destroy them. From the late eighteenth century, therefore, criminal justice more and more started to take not crime but the criminal self as its object. This view was exemplified by the rise of ‘houses of correction’, discipline and prison sentences. But it also impacted criminal procedures. Magistrates no longer sought truth by inflicting pain on the body of the suspect, but through the feeling and thinking (though still embodied) self. The practices of criminal trials started to stimulate a more inner-oriented self from the late eighteenth century and especially early nineteenth century on. Interrogators started playing on suspects’ feelings and on their consciences; they appealed to remorse. They promised suspects that if they confessed, they would feel better. They used some of the most inner-oriented approaches for defendants of the lowest social status, such as illiterate servants. By focusing so much attention on individual, inner feeling and conscience, the criminal court stimulated interiority, stimulated people so reflect on their inner lives and expand them.

And many suspects went along with this. Indeed, the ‘turn inwards’ of the criminal trial was not only carried by magistrates practising more sophisticated techniques, but also by the suspects themselves. Men and
women of all social statuses showed remorse and hoped to obtain relief. The accounts about themselves that they were required to give had always led to the assumption of an identity. Increasingly, the self they practised in these accounts was individual. It was not only spoken in the first person, but also written down and confirmed in the first person. Moreover, the accounts became more oriented towards feelings and motivations. Through these practices in the criminal trial, people’s inner sides expanded. While the criminal trials only directly affected a small number of people, they institutionalised practices of interiority and individuality. By attending to these practices, courts confirmed their validity and reinforced them. Because of their status as official institutions, they could indirectly influence many more people than just the suspects before them. While discourses of the self remained unstable and, as I will discuss in the next chapters, conflicting discourses arose at the same time, for many people, an inner orientation became a more important discourse in the early nineteenth century.

Notes

1 State Archives, Kortrijk (SAK), Old City Archives (OCAK), 6676. Also for the following paragraphs.
2 This diversity incited complaints: see Poullet, Histoire du droit pénal, pp. 312–13. While Philip II had issued an ordinance on criminal procedure in 1570, this ordinance was limited in scope and not recognised in all courts.
4 Monballyu, Six Centuries, pp. 15–18.
5 Maarten F. Van Dijck, ‘Towards an economic interpretation of justice? Conflict settlement, social control and civil society in urban Brabant and Mechelen during the late middle ages and the early modern period’, in Manon van der Heijden et al. (eds), Serving the Urban Community: The Rise of Public Facilities in the Low Countries (Amsterdam: Aksant, 2009), pp. 62–88. In France, the regional parliaments had more influence. In Germany, practices varied strongly by state.
11 Goswin de Fierlant, ‘Premières idées sur la réformation des loix criminelles’ (ca. 1773–1782), fo. 941r. (NA, Diverse Manuscripts, 2119).
13 Eugène Hubert, *La torture aux Pays-Bas autrichiens pendant le XVIIIe siècle: son application, ses partisans et ses adversaires, son abolition* (Brussels: Hayez, 1896), pp. 27–33.
18 E.g. in the case against Jacquemijns in Brussels, 1791: CAB, HA Trials, 8146.
20 Monballyu, *Six Centuries*, p. 54.
23 The interrogation is transcribed in Hubert, *La torture*, pp. 148–52.
25 CAB, *HA Trials*, 1086. Also for the following paragraphs.
27 *FA*, V, 125. See also Hubert, *La torture*, pp. 125–31.
See the essays on several different regions in Norbert Campagna, Luigi Delia and Benoît Garnot (eds), *La torture, de quels droits? Une pratique de pouvoir, XVIe-XXIe siècle* (Paris: Imago, 2014).

Terribles et désolantes reflexions d’un ex-conseiller en première instance dans le Brabant: sur quelques abus de justice (Imprimerie Patriotique, 1787), p. 6.


48 By then, further reforms had been introduced, but the central principles of revolutionary criminal justice remained: Berger, *La justice pénale*, pp. 37–48, 80–3; Allen, *Les tribunaux criminels*, p. 21.
54 On these modifications, see Berger et al., ‘La justice avant la Belgique’, pp. 43–5; Sjoerd Faber, ‘De verzachting van de Code Pénal in Nederland (1813) en België (1814–1815)’, *Pro Memorie*, 15 (2013), 243–60; Monballyu, *Six Centuries*, p. 28.
57 SAK, OCAK, 8293.
58 FA, *Modern City Archives* (731), 1514/2.
61 The change from opposition to seeming collaboration was also visible in the spaces of interrogation: Elwin Hofman, ‘Spatial interrogations: space and power in French criminal justice, 1750–1850’, *law&history*, 7 (2020), in press.
62 State Archives, Bruges (SABR), *Assize Court of West-Flanders (AC-WEST)*, 228–1081.
63 SABE, *Assize Court of Antwerp (AC-ANT)*, 1378.
The self in court


65 SABR, *AC-WEST*, 286–409. The same technique was also used in SABR, *AC-WEST*, 320–723.


72 Bandes, ‘Remorse and criminal justice’, 17.


75 SABR, *AC-WEST*, 320–723.

76 Kounine, *Imagining the Witch*, chap. 3.


80 SABR, *AC-WEST*, 164–446. Also for the following paragraphs.

81 Fierlant, ‘Premières idées’, fo. 807r.


There are some examples, however, of interrogations partially transcribed in the first person, especially when torture was applied, e.g. Krause, *Witchcraft, Demonology, and Confession*, pp. 118–20; Paul Cohen, ‘Torture and translation in the multilingual courtrooms of early modern France’, *Renaissance Quarterly*, 69 (2016), 903; Kounine, *Imagining the Witch*, p. 114. Of the old regime cases in my sample, only the interrogation of Jan Bailliu under torture was recorded in the first person.

FA, 731, 1514/2. My italics.

SABR, *AC-WEST*, 164–446.


SABR, *AC-WEST*, 196–748. The case in Ghent was annulled by the court of cassation and then transferred to the criminal court in Bruges.


At least not in France or the Southern Netherlands; for Germany, see Becker, “Recht schreiben”, p. 69.


SABE, *AC-ANT*, 329; FA, 731, 1476.