

between the elites and the other social strata produced comparable developments in the field of repression in England as well as in Amsterdam.

This is all, to emphasize it once more, a matter of middle-term trends which refer to the degree of intensity of repression. The longer-term developments encompass the gradual decline of the public character of repression and of the element of deliberate infliction of physical suffering. That is the main subject of the present study. The longer-term development forms part of changes in mentalities and is primarily related to processes of state formation. Fluctuations in the intensity of repression, on the other hand, may rather be related to tensions between social strata (which in their turn are of course related to state formation). Here we have the contours of a model for the middle-term trend: stabilization of control by the ruling elites and increasing social distance bring about a rise in the relative severity of punishment within the framework of the stage reached by the longer-term development. I do not want to argue that a rise in the intensity of repression can only be produced by the factors mentioned. I merely present a model of a relationship which, I think, occurs more frequently. Empirical evidence from other areas can test the value of the model.

THE DISAPPEARANCE OF PUBLIC EXECUTIONS

After the mid-eighteenth century confidence in public punishment began to crumble. In the Netherlands the earliest signs of a fundamental change of attitudes can be traced back to at least the 1770s, although the completion of the transformation of repression was a long way off. The actual abolition of public executions took another hundred years. A similar chronology characterized most European countries. The transformation of repression was a far from sudden transition, which began in the middle of the eighteenth century and ended towards the close of the nineteenth century. It comprised changes which took place both on the ideological and on the institutional level. At least three phases can be distinguished: first, there is the quest for legal and penal reform which began during the Enlightenment. It is relatively well known and has been analyzed in several studies of the period.¹ Second, there is imprisonment: not the 'birth of the prison', as is sometimes stated, but the rise of confinement to a more prominent position within the penal system and the emergence of the penitentiary. Several recent works document this phase.² Finally, and only after the rise of the penitentiary, there is the abolition of public punishment. This phase and the political struggle involved have only been made a subject of systematic research in the case of England.³ None of these three phases forms the main subject of this chapter. What is of concern here is the change of mentality implicit in them. The aim is to present the following argument: first, the transformation of repression, before and after 1800, was not a matter of political and legal changes alone, but primarily a consequence of a fundamental change in sensibilities, and, second, this change in sensibilities preceded the actual abolition of public executions. This abolition constituted the 'political conclusion', only drawn at the end. The question of an explanation for the change in sensibilities is reserved for the book's conclusion.

The term 'sensibility' should not be misunderstood. It refers to

verifiable expressions of anxiety or repugnance and the question of whether these reflect a genuine concern for the well-being of delinquents or for that matter of anyone at all is left aside. Traditional historiography attributed the Enlightenment's opposition to *ancien régime* justice or the early nineteenth-century advocacy of imprisonment simply to humanitarianism. This is actually no explanation at all. Words like 'humanitarian' are recurrent in the rhetoric of reformers in several countries, but the historian cannot use humanitarianism as a neutral, descriptive category, as he does 'industrialization' or 'nation-state'. Paradoxically, the criticism of this traditional approach by Foucault and others has confirmed humanitarianism in its status of historical category.⁴ Instead of striving for a more adequate conceptualization of changes in mentality, Foucault essentially argues that the reformers were not humanitarian. He stresses that their motives were basically utilitarian and that their concern was with the prevention of crime. Control was the guiding principle, instead of a respect for the humanity of delinquents. This contrast, however, is a false contrast. An increased sensitivity toward executions is not at all incompatible with the wish to establish more control over law-breakers. In fact, the desire to control was always there; also in the sixteenth century. But the ways sought to achieve this control change and these changes reflect an underlying shift in mentalities. As I will demonstrate in this chapter, the gradual transformation of attitudes leading to the privatization of repression set in earlier and took longer than the penal reforms of the late eighteenth and early nineteenth centuries. Therefore I think that the former was more fundamental.

Without elaborating on it, Foucault himself indicated the real nature of the shift in sensibilities. The suffering, he says, which the mitigation of punishment was supposed to prevent, was primarily that of the judges and the spectators. The convicts might still be seen as traitors or monsters.⁵ Both remarks are crucial. The privatization of repression meant first and foremost the removal from public view of a spectacle that was becoming intolerable. The convict's fate within prison walls was of less concern. Second, the fact that the criminals were still seen as wicked underlines the change in sensibilities which is involved. It means that the spectacle of punishment, even though it was inflicted upon the guilty, was still becoming unbearable. By the end of the eighteenth century some of the audience could feel the pain of delinquents on the scaffold. The implication, paradoxically, is that inter-human identification had increased. The aspect of identification in connection with the execution of rioters was examined. The lower-class audience identified with these

specific convicts and hence could feel their pain. This is a static analysis but it can be transformed into a dynamic one. Increasing inter-human identification is an element of the changes in mentality discussed in this book. The death and suffering of fellow human beings were increasingly experienced as painful, just because other people were increasingly perceived as fellow human beings.

This process of identification proceeds along two lines. More categories of persons are considered as 'just like me' and more ways of making people suffer are viewed as distasteful. The first element was illustrated by several examples already given in the preceding chapters. Even in the Middle Ages spectators sometimes experienced sadness at the sight of an execution. When the audience in Paris wept in the early fifteenth century, it was because the person on the scaffold was a nobleman and an Armagnac leader. Not many other people would have been the object of pity. When an intended execution in Seville around 1600 'provoked the compassion of all'⁶ it was because the condemned was seventeen years old and believed to be innocent. Around the same time a few Amsterdam magistrates stated that the house of correction should serve to spare juvenile delinquents who were not real rogues a scaffold punishment. They identified with them enough to want to avoid a physical punishment. But it was only after the mid-eighteenth century that the pain of delinquents who had committed serious crimes and whose guilt was not in doubt, produced feelings of anxiety in some of the spectators. This implies that a new threshold was reached in the amount of mutual identification human beings were capable of.

The second element has also been noted before. The disappearance of most forms of mutilation in the early seventeenth century has been discussed. Commentators from the later eighteenth century already took their absence for granted and often considered it as a sign of the greater civilization of their own times. Writers who commented on the esoteric, physical punishments still in use on ships felt obliged to excuse themselves for confronting the reader with a tale of 'cruelty and inhumanity'.⁷ Again it is only around 1800 that certain groups among the elites considered all forms of public, physical punishment as 'uncivilized'.

Thus, the process certainly covered many centuries. Around 1800, however, it accelerated. Before that date human identification was only extended to the few or, to put it differently, a large amount of suffering was considered acceptable. Yet another way of putting it is to say that the system of public repression met with no significant opposition. Rejection

increased from the 1770s onwards. If delinquents were made to suffer, it should at least be done privately. Towards 1870 continued opposition indeed resulted in the privatization of repression.

In the Dutch Republic a few 'precocious' spurts towards sensitivity antedated the main transformation of repression: a shift from stone to wooden scaffolds and an early wave of opposition to torture. The first has not yet been clearly verified and can only be reconstructed tentatively. In chapter four it was noted that some members of the elites felt a little uneasiness about public executions in the late seventeenth century. It looks as though this feeling extended to the sight of the scaffold. They agreed that public punishment was necessary, but they disliked to be reminded of it every day. Hence the outward signs at the place of execution should not be there permanently. In the sixteenth century most Dutch towns had a permanent scaffold with a gallows on it. It was often made of stone. A characteristic shape of the execution place was that of a so-called *groen zoodje*: a square surrounded by a low fence and grass verges. In the middle the floor was elevated or a small scaffold built. These execution places seem to have disappeared in the course of the seventeenth century.

We saw that Amsterdam had a removable scaffold. According to Wagenaar, the wooden poles and planks were ready-made, so that the scaffold could be erected and dismantled 'in a very short time'.⁸ The city had permanent places of execution in the sixteenth century. The shift must have occurred in the early seventeenth century. It occurred in other towns as well. The city of Leiden had been executing its delinquents on a *groen zoodje* for centuries. This was pulled down in 1671-2 and from then on a wooden scaffold was erected in front of the Papestraat before each execution.⁹ In Maastricht the stone scaffold on the Vrijthof, which had stood there from about 1300, was removed in the middle of the seventeenth century.¹⁰ In Haarlem, however, the reverse happened. As part of a project to rebuild the town hall in the 1630s the old wooden – but permanent – scaffold was replaced by one made of stone. This stone scaffold on the east wall remained there until 1855. Although this is clearly a counter-example, it should be noted that the new scaffold had the appearance of a classical balcony and that the equipment of justice was normally kept inside the building.¹¹

The case of Haarlem calls for caution. Nevertheless, the shift from permanent to removable scaffolds must have been common in the seventeenth century. The Court of Holland made such a decision rather late, but in this case it can be clearly observed that the shift was an expression of changing sensibilities. Constantin Huygens had already

lobbied for the destruction of the stone scaffold in the 1670s. It stood along the Vijverberg close to the meeting place of the Estates and in that part of The Hague where most patricians and foreign ambassadors lived. It was precisely in that area which fell under the immediate jurisdiction of the Court of Holland; the rest of the agglomeration was judged by the court of The Hague which had recently replaced its stone scaffold with one of painted wood. Huygens wished that the Court of Holland would follow this example. Incidentally, since 1672 the scaffold conjured up the memory of the grand pensionary John de Witt and his brother who had fallen victim to popular justice on that very spot. There is no indication, however, that Huygens was motivated by a desire to eradicate the memory of the event.

In 1674 he wrote to William III about the matter: his pleas to several magistrates had been to no avail, although they had at least decided not to do repairs. Huygens considered the Vijverberg as the most beautiful place in the world; the scaffold, on the other hand, was 'the most villainous of all possible constructions'.¹² The Vijverberg was 'a too noble and glorious place to be perpetually embarrassed by the sight of wheels and gibbets, to the great chagrin of so many residents of quality'. Huygens proposed to replace the stone scaffold by a statue of *Justitia* with sword and balance. Beneath it a fountain should be constructed, against which a wooden scaffold could be erected when necessary.¹³ Apparently the *stadholder* could not help him either. Seven years later he wrote a poem in which he regretted the failure of his efforts: 'A foreign gentleman saw this stinking thing in The Hague' . . . 'and wondered why Holland's rulers were so gross as to let it stand there'.¹⁴ Huygens did not live to see its demolition. A wooden scaffold was finally introduced in 1720.¹⁵

Huygens' poem suggests that revulsion against the sight of the scaffold – which in any case is clearly different from the popular fear of touching it – was international. This would be in line with the remark about the unpleasantness of executions by the English gentleman visiting Holland in 1695 (see chapter four). An event in Danzig in 1708 also tunes in to it. Because the Queen of Poland was in the city and lived right opposite the regular place of execution, a decapitation was performed elsewhere.¹⁶ In this case the reason might simply be that the queen did not wish to see a multitude of people gathered in front of her door. But on the whole the conclusion seems warranted that a slight increase in sensitivity toward executions was already visible among the elites in the later seventeenth century. They felt some uneasiness about public justice and did not want to be confronted with its physical apparatus all the time. But they did not oppose the prevailing system of repression. It was a mere prefiguration of

the transformation which set in after the middle of the eighteenth century.

The second 'precocious' spurt was a prefiguration as well, but probably confined to the Netherlands. A few seventeenth-century writers pleaded for the abolition of torture. The movement became widespread and international in the second half of the eighteenth century. The actual abolition of torture was the first visible expression of the transformation of repression. Although we are not dealing with a public feature, torture is still typical of *ancien régime* repression because infliction of pain is the essence of it. Its abolition in some states was the only reform of criminal law which was carried through under the *ancien régime*.

Torture was practiced privately because secrecy during the trial itself was a guiding principle of criminal procedure. But the authorities were quite open about its existence as such. The sentences recited during an execution often began with the standard formula that the prisoner had confessed 'outside of pain and chains'.¹⁷ Apart from this, they occasionally contained references to concrete acts of torture. Thus the sentence of a burglar in 1661 adds to the account of his crime: 'and the court did not take the other accusations into consideration, which he, prisoner, impertinently denied even during torture at the post'.¹⁸ Similar passages, with only one erasure, slipped into other sentences, also in the early eighteenth century.¹⁹

Historians often assumed that the abolition of torture during the Enlightenment was a logical consequence of the rationalism of the age. This is simply not true. Throughout history authorities have been aware of the uncertainties inherent to the procedure and of the possibility of convicting an innocent person. The fabric of rules which had been woven around the practice of torture, was meant precisely to combat uncertainties. Still, various prominent persons, including Augustine, Pope Nicholas I and several humanists, condemned torture.²⁰ But, despite the uncertainties, the authorities thought it a necessary custom. In a recent study Langbein rejected the 'rationalist explanation': 'The eighteenth-century abolitionist literature is the produce of its age in tone, but not in substance. The works of Thomasius, Beccaria, Voltaire, and the others do little more than restate the arguments that have been advanced against torture for centuries.'²¹ According to Langbein, abolition was an overdue reaction to the fact that the old law of proof lost its force from the seventeenth century onwards. I find his argument unconvincing, but it would be beyond the scope of this book to go into it. I think that the first of the two quoted sentences is more important than Langbein himself

seems to realize. The rationalist critique, which had never been successful before, could acquire a new effectiveness because of a change in sensibilities.

This argument forms the reason why I called the opinion of a minority in the Dutch Republic in the first half of the seventeenth century a prefiguration of the abolition movement. Its representatives, besides repeating the rationalist critique, also put forward emotional arguments. Johannes Grevius, an exiled Remonstrant preacher, wrote the first book devoted entirely to the abolition of torture.²² It was written in Latin and published in Hamburg in 1624. Hence its influence was restricted. A less-radical view was espoused by Johan van Heemskerck, a member of the High Council. He advocated a moderate use of the rack and expressed his compassion for the delinquents subjected to it.²³ The most influential work was published by Daniel Jonctijs in 1650. He was *schepen* in Rotterdam. His is actually a Dutch adaptation of Grevius' book. Jonctijs condemns the 'fieriness' of the judges who find torture necessary. They have become immune to the 'sighs and moanings of the miserable'.²⁴

This emotional appeal was not successful at the time, because the majority of the elites did not harbor such feelings of repugnance toward the physical treatment of suspected delinquents. In the seventeenth century the common feeling was probably only a little uneasiness with regard to torture, just as in the case of executions. This was also expressed in France. During the preparation of the criminal ordinance of 1670 two counselors, Lamoignon and Pussort, discussed the articles on torture. The first proposed to prescribe a uniform method, because the practice was 'too rude' in certain places. The other, however, argued that this was simply impossible: it would necessitate a description of torture, 'which would be indecent in an Ordonnance'.²⁵ This opinion prevailed. The solemnity of an official legal document could not stand the blunt description of physical suffering.

A major change in sensibilities occurred in the second half of the eighteenth century. It is most clearly expressed in the fact that the defenders of torture felt obliged to display feelings of repugnance as well. Characteristically a writer would open with the announcement that he too found it an unpleasant method. Thus the Amsterdam lawyer Calkoen acknowledged a 'humanitarianism' towards delinquents but wished to bestow his compassion in the first place on 'the body of respectable citizens'. He advocated 'humanitarianism without cowardice and severity without cruelty'.²⁶ The opening remarks of the Viennese professor Josef von Sonnenfels 'On the abolition of torture' are the exact

opposite of Calkoen's argument and therefore reflect the general sensitivity of the age just as well. 'Many people', he said, 'reproach the opponents of torture because they only appeal to their readers' feelings, while they fall short of convincing them rationally. Therefore I renounce all the advantages which such an appeal to emotion and pity for the suffering could provide me with. I am treating the topic with the cool indifference of the lawyer, who turns his face away from the twitchings of the tortured; who closes his ears to their cries and sees nothing but a scholarly debate before him.'²⁷ Thus Sonnenfels took feelings of repugnance for granted. He wished to attain a new detachment from these feelings, if not his opening represents a covert emotional appeal after all.

Torture was abolished in Prussia in 1754; in Saxony in 1770; in Austria and Bohemia in 1776; in France in 1780-8, in the Southern Netherlands in 1787-94; in the Dutch Republic in 1795-8.²⁸ The rise of sensitivity with regard to torture had prepared the way for other elements of the transformation of repression. The next step was the abolition of exposure of corpses.

The display of the dead bodies of capitally punished delinquents was discontinued in Western Europe around 1800. It antedated the abolition of public executions by at least half a century. There can be no doubt that increased sensitivity moved the authorities to act. Abandonment of the custom was usually motivated by calling it a relic of the 'barbarity of former times'.²⁹

Before the second half of the eighteenth century people were occasionally bothered by the exposure of corpses. The reason was usually that the standing gallows was situated too close to inhabited areas. The growth of a city meant that the site of exposure, originally well outside the walls, came to be nearer and nearer the outskirts. When a storm had blown down Utrecht's standing gallows in 1674, the owners of the nearby saw-mill and brick-fields took the opportunity to petition for a change of location. They noted that gallows fields were normally situated 'outside the common frequency of people'. Their arguments are a little ambiguous. The request calls the smell of the dead horrible, but also the sight. Another consideration may have been more important: the value of buildings and premises was lower when situated close to the gallows. Thus, to live and work permanently in the proximity of corpses was considered objectionable in the seventeenth century. Nevertheless, the magistrates in Utrecht turned down the request.³⁰

In the second half of the eighteenth century exposure of corpses became objectionable *tout court*. For example, when the bodies of

condemned mutineers were to be exposed in 1764, a protest was leveled. A court martial had sentenced, among others, ten persons to hanging and three to breaking on the wheel. They had led a mutiny the year before on a ship owned by the East India Company. Their bodies were to be exposed on a gallows erected on the first row of dunes along the sea close to the village of Huisduinen. The scene was to be a warning to all sailors on the company's ships, which left the coast of Holland from that very spot. The gallows could be observed from a distance of three hours at sea.³¹ The court martial wished to secure permanence for the gallows for at least fifty years. The regional administrative council protested against this, though in vain. They argued, among other things, that the villagers and fishermen of Huisduinen disliked the idea. The council referred to the gallows as an 'offensive and horrible spectacle'; the more so since it was not meant for the inhabitants at all.³²

Another indication comes from events in the town of Amersfoort in 1770. There the council decided indeed to move the standing gallows, which the magistrates of Utrecht had refused to do a century earlier. The old gallows was pulled down because of its bad state of repair and a provisional wooden one was erected some twenty meters to the north. The original site was situated quite close to the Utrecht road. The magistrates stated that the sight of the corpses 'cannot be but horrible for traveling persons'.³³ In this case there is no talk of people living close by. Traveling persons were precisely the ones for whom exposure of corpses had been instituted in an earlier age.

In many countries the abolition of exposure of delinquents' bodies coincided with the end of the *ancien régime*. In the Netherlands it was the only major alteration in the system of public punishment brought about by the Batavian Revolution. In Bavaria it took place at the beginning of the nineteenth century. The structures on the gallows mountains there were often made of excellent oak. Following an order by the royal administration, all gallows and *Rabensteine* were sold between 1805 and 1814 to the highest bidders.³⁴

Why should exposure of capitally punished delinquents have disappeared earlier than public executions? There are two reasons for it. The first is that the change was not primarily related to a shift in attitudes towards the infliction of pain and suffering. It was rather related to changing attitudes toward death. Obviously, developments in both realms are interconnected in their turn. In the long run familiarity with death and with the infliction of pain decreased. In both cases actions directly related to the human body were hidden behind the scenes of

social life; in both cases the encompassing process of privatization is the force behind it. But the realm of attitudes toward death is the one to which exposure of corpses is most directly related.

The historiography of death shows that a major transformation took place in the second half of the eighteenth century. Philippe Ariès speaks of a 'promiscuity between the living and the dead' in Western Europe from the end of the fifth century until about 1750.³⁵ It was especially visible in the cemeteries. Shops and market-stalls stood in or beside churchyards. Musicians and actors played during burials. Graves were opened and cadavers removed, some of which were not yet entirely decomposed. A remarkable feature of many cemeteries was the ossuary: a gallery in which skulls and limbs of the poor among the interred were displayed for ornamental purposes.³⁶

This feature of death disappeared after 1750. More and more people wished to be buried in the new cemeteries outside the walls. Enlightened authors attacked the situation prevailing in the old churchyards: the overcrowding with bodies and the display of bones.³⁷ Finally, the authorities prohibited burials in churches, although this met with popular resistance. Hygienic arguments were important, but they were not at the top of the list in the Enlightened writers' attack. Luther had already posited the hygienic argument against burials in churches.³⁸ In the second half of the eighteenth century a new sensitivity towards death had arisen. The parallel between the disappearance of the artistic use of (parts of) dead bodies after 1750 and the discontinuation of the judicial use around 1800 is evident. It was only the – relatively recent – medical use that remained. But in that case too the transformation is evident. Public anatomical lessons became a thing of the past. The process of privatization is discernible just as much in this area.

A discussion of the second reason why exposure of corpses disappeared first, anticipates a theoretical explanation for the transformation of repression. Following the general thesis of the book, this will be attempted in terms of state formation processes. A change in the latter field was directly related to the end of exposure. I noted the existence of a dual system of exemplarity. Public executions were meant to impress the residents of a town or district, while the display of bodies was to discourage newcomers from undesirable acts. Especially the latter feature had a symbolic value: it signified that the place was a city of law. During the early modern period further pacification was reached around these cities. This did not make much difference for executions as such, which continued to express the personalistic rule of dynastic states and patrician republics. But it gradually eroded the primary function of exposure.

Cities and principalities long retained an emotional value for their inhabitants, as the main focus of the latter's allegiance. This changed in the course of the eighteenth century and the definitive breakthrough came in the Revolutionary period. With the early beginnings of the nation-state the image of a *city* of law had definitely lost its meaning, so it was easier to abolish the display of dead bodies. No political counter-argument opposed the demands of increased sensitivity. This situation did not yet prevail in the case of executions.

Although the abolition of exposure of corpses can be explained in its own terms, it is evident that another major step had been taken on the road towards the privatization of repression. Expressions of repugnance against the sight of executions date back to a period before the disappearance of exposure. The oldest in Amsterdam is an anonymous pamphlet printed in 1773.³⁹ That year 6 November was a justice day on which, among others, no less than six delinquents were hanged and one broken on the wheel. The pamphlet proves that increased sensitivity implies stronger inter-human identification. The author had no particular relationship with the condemned, whom he knew to be guilty and to whom he refers as malefactors. But he still wonders if they deserve such a heavy penalty and if they had not come to their crimes because of a bad education or from poverty. He experiences an inner struggle between his sensibilities and the demands of public security. If such punishments, he says, really prevent crime, everybody should rejoice in justice. The author ends with a word of praise for the Amsterdam magistrates for punishing disturbers of the peace, so he does not oppose the penal system. Nevertheless, his sensitivity is clear:

Be quiet, I see the multitude pressing; they all fix their eyes simultaneously on the spot where the sufferers have to enter the scaffold. No wonder, one of the guilty is already presented there. But good heavens, what a frightening spectacle! Miserable man, I am indeed overwhelmed by pity for the state you are in. What a face, what a deadly complexion (. . .) This one having finished his breath, is followed by others numbering six, who have all been condemned to the rope because of their wicked acts. How full of fright was my soul! How affected was I inside, when I saw them climb the ladder one after the other! I was cold, I trembled at every step they took. I often turned away my face and distracted my eyes from the mortal spectacle to the endless number of spectators. I thought that I noticed in some of them the same horror at such a terrible spectacle, the same repugnance which I felt. This raised an inner joy in me: it gave me a positive view of my fellow-creatures again.⁴⁰

This pamphlet sets the tone for later ones. The spectator, belonging to the middle class or higher, is shivering inside. He notices with satisfaction that some of those around him felt the same; but he denounces the lower-

class multitude who still watched for the sensation. The authorities, who arrange for all this, are not yet denounced.

A comparable attitude was expressed shortly after the Batavian Revolution. A preacher described the last days of a condemned entrusted to his care and hanged on 26 November 1796.⁴¹ He hardly pays attention to the execution itself but focuses on an inner struggle in the minds of the judges. They have to impose public, physical punishment once in a while, but they do not really want to. They are torn between 'human compassion' and their 'legal duty springing from the interests of society'.⁴² Van Hall, the attorney, has a 'sense of his obligations' as well as 'the highest degree of love of humanity and compassion'.⁴³ Because these magistrates impose scaffold punishments against their will as it were, they are worthy of praise again: 'People of Amsterdam! What a delightful acclamation to you that you handed over the sword of justice into such hands.'⁴⁴

Expressions of repugnance against scaffold punishments at the end of the eighteenth century are not confined to the Dutch Republic. In the Southern Netherlands, for instance, sensitivity had increased too. When, at a beheading in Brussels in 1774, the executioner missed a couple of times, there is no talk of the traditional popular hostility, but magistrates who were present referred to it as a 'horrible spectacle' from which all spectators turned their eyes. The court should ensure that it never happened again, 'because it is in the interest of humanity to prevent such cruelty'.⁴⁵ In Germany Goethe expressed his aversion to the appeal of executions. A passage in *Wilhelm Meisters Lehrjahre*, written around 1780, describes it as an irresistible fascination. The spectators 'abhor' the execution, but yet are inevitably drawn to the 'terrible spectacle'.⁴⁶ Even the Prussian authorities adopted a similar terminology. They referred to a breaking on the wheel in 1798 as a 'sad spectacle'.⁴⁷

In France during that period a number of voices were raised against what many persons had come to perceive as the 'cruelty of justice'. A piece of literary criticism is to be found in Restif-de-la-Bretonne's *Les Nuits de Paris* (1788). His account is dramatized, as always, but expresses his sensibilities all the more clearly:

We were proceeding toward the Place de Grève. It was late and we thought the execution over. But the gaping mob proclaimed the contrary (. . .)

The man was broken on the wheel, as were his two companions. I could not endure the sight of that execution; I moved away; but Du Hameauneuf watched it all stoically. I turned to look at something else. While the victims suffered, I studied the spectators. They chattered and laughed as if they were watching a farce. But what revolted me most was a very pretty young girl I saw with what

appeared to be her lover. She uttered peals of laughter, she jested about the miserable men's expressions and screams. I could not believe it! I looked at her five or six times. Finally, without thinking of the consequences, I said to her 'Mademoiselle, you must have the heart of a monster, and to judge by what I see of you today, I believe you capable of any crime. If I had the misfortune to be your lover, I would shun you forever.'

As she was no fishwife, she stood mute! I expected some unpleasant retort from her lover – he said not a word . . . Then, a few steps away, I saw another young girl, drenched in tears. She came to me, leaned upon my arm, hiding her face, and she said, 'This is an *honnête homme*, who feels pity for those in anguish!'

Who was that compassionate girl? . . . A poor woman who had abandoned herself to the procurers on the Quai de la Ferraille! I looked at her; she was tall and attractive. I led her to the Marquise's refuge without waiting for Du Hameauneuf.⁴⁸

Despite the abolition of penalties such as breaking on the wheel, sensitivity toward public executions became more outspoken and widespread in the first half of the nineteenth century. Although examples are restricted to a few expressions from the Netherlands, no doubt comparable fragments can be found in writings from all over Western Europe.⁴⁹ Characteristic of the Dutch writings is that a number of authors mix their sentiments with pride. They express their gladness at the disappearance of the more agonizing forms of punishment and of torture and incidentally launch the opinion that the practice of these penalties was less frequent in their own country. Thus, J. van Leeuwen, in a speech in 1827, says that the old forms of punishment were not due to persons then living but to 'the lower standard of civilization and enlightenment of that age'.⁵⁰ Being a judge himself, he apparently agrees with the scaffold punishments which were still executed. Nevertheless, he assumes that his listeners harbor feelings of repugnance: 'While I excuse myself for the unpretty accounts which cannot be but painful for the heart of the sensitive reader, I beg you to pay attention only to the importance of the matter.'⁵¹

Van Leeuwen published his speech in *Love and Hope*, the journal of the Society for the Moral Improvement of Prisoners. Other members of this philanthropic society were more radical and in favor of the abolition of scaffold punishments. In a petition to the king (1827) they state that the 'most civilized and enlightened part of the nation' feels 'a certain shrinking' from and a 'repugnance' of all corporal penalties. Executions were only attended by the 'lower, less civilized and less enlightened popular classes'.⁵² Yet even the broadsheets, written primarily for these very popular classes, change in tone. A pamphlet announcing an Amsterdam execution in 1838, begins in this way:

Alas what a sad alteration is exhibited before our eyes. A few days ago this place was a place of joy, where people played and danced at the fair and pretty stalls winked at them. But alas! this has been changed into sadness. There the *stage of sorrow* stands again. O God! how many shall mount it this time, to carry their shame and repentance with them. Spectators, see there exposed before your eyes a few criminals who deserve your contempt; but aye, look at them also with eyes full of compassion: once they were as innocent as you are.⁵³

This tone of sorrow and the exhortation to feel pity are absent from eighteenth-century execution broadsheets. They illustrate the author's inner struggle between his sensibilities and the wish, retained from an earlier age, to moralize the lower-class audience. At the execution in question a few delinquents were branded, some more whipped, one exposed with the rope around his neck and one had the sword waved over his head.

In the middle of the nineteenth century sensitivity towards executions is taken so much for granted that, just as with torture three generations earlier, the defenders feel obliged to show their revulsion too. Thus, in 1847 a Utrecht physician takes care to explain that he also dislikes them. Nevertheless, he argues, whipping cannot be abolished yet because of the low standard of civilization and moral development of the lower classes. A year earlier a lawyer from the same town had pleaded for the abolition of physical punishment. According to him, the appearance of recidivists on the scaffold proved that public executions only made people more obdurate in their ways. He found the spectacle a 'barbaric' one and wished to see it disappear in the name of 'civilization' and 'enlightenment'.⁵⁴

This sensitivity was largely confined to the upper and middle classes. They comprised polite society of the time, who formed public opinion and whose members expressed themselves in writing. The lower classes continued to be attracted to the event until the end. The elites had frowned upon their fascination from the middle of the seventeenth century onwards. Two hundred years later some people still thought that control depended on a display of toughness. Many others, whose forefathers had fully approved of the spectacle, now considered the eagerness of the lower classes to watch it as a sign that they were not yet as civilized as themselves.

To conclude, the actual abolition is examined briefly. It has been documented most fully in England. In that country the privatization of repression set in relatively early and originally for reasons of public order. It was noted earlier that executions in eighteenth-century London were more problematic from the public order point of view than in any other

preindustrial city. The procession from Newgate to Tyburn in particular was often seen by the authorities as a march of undue triumph for the convict. He was acclaimed by the public rather than regarded as a warning. As this occurred frequently, it is understandable that the authorities concluded that the spectacle of punishment no longer served the purpose which, to their minds, it had always done in the past. This conclusion was drawn by Henry Fielding, police magistrate for Westminster. He wished executions to be performed a little off-stage as it were. Being private to a certain degree, they would appear 'more shocking and terrible to that crowd'.⁵⁵ In 1755, together with his brother John, he proposed to move them to Newgate.⁵⁶

At that time the opposition was still too strong. The idea received a new impulse around 1780. In 1779 branding was abolished,⁵⁷ which left whipping and hanging as the major tools of public justice. Two years later the Corporation of London wrote to the Secretary of State about the ineffectiveness of high numbers of capital executions. These would rather 'encourage crime by accustoming the populace to acts of brutality and by cheapening the value placed on human life'.⁵⁸ In 1783 Fielding's proposal was realized, with the arguments already put forward by him. Capital executions were removed to a place just outside the walls of Newgate. Linebaugh concludes: 'Hangings were still public, but in the abolition of the procession to the gallows, a step had been taken towards privately inflicted punishment and a major source of disorder at hangings had been removed.'⁵⁹

The second part of Linebaugh's statement refers to the immediate context of the decision. Late eighteenth-century London was the biggest metropolis that preindustrial Europe had ever seen. At executions it faced problems of a magnitude that did not occur elsewhere. No other European city, except Paris, grew that big before public justice was abolished. Hence the events of 1783 were peculiar to London. The Corporation's request does exhibit the first signs of a sensitivity with regard to physical punishment. Just as in other countries, however, it was still a long way from private executions.

This road has been ably charted by David D. Cooper and it is unnecessary to repeat his analysis here. Besides hanging, whipping came to be executed in private too. Flogging continued to be practiced well into the twentieth century and its use was even extended in 1863.⁶⁰ But it was no longer public. A description around 1870 says: 'Few or none are present except the officials of the gaol or visiting justices; spectators are not admitted within the prison walls to see a fellow human being beaten when they have no better motive than mere curiosity.'⁶¹ In the

meantime hanging had also ceased to be public. The last public capital execution in Britain took place at Newgate on 26 May 1868. Three days later the Capital Punishment within Prisons Bill received royal approval. On 13 August the first private hanging followed in Maidstone.⁶²

The other Western European countries witnessed a similar development. The last public execution in Vienna also took place in 1868. From the early 1850s onwards most German states transferred capital punishment to within prison walls. In one case we hear that the new privateness was circumvented. An execution in Darmstadt in 1853 was to be performed in the prison's courtyard. An enterprising citizen had a stand built outside the wall and charged a fee to mount it.⁶³ In a few other countries, such as Spain, the abolition of public executions occurred somewhat later than 1870, but it is only in France that the transformation of repression extends far beyond the chronology 1770-1870. It began around the same time as elsewhere in Western Europe but was completed much later.

A major step was taken in the early years of the July Monarchy. Just as in London a half century earlier, capital executions were moved from the center of Paris. In 1830 the name of the Place de Grève had been changed into Place de l'Hôtel-de-Ville. Two years later a square on the outskirts of the *faubourg* St Jacques was chosen as the location and henceforth the execution was scheduled at 8.0 a.m. instead of 4.0 p.m. According to Victor Hugo, fear of the multitude in the center of the city had induced the transfer. Reasons of traffic control were also given.⁶⁴ In the same year branding and exposure were abolished.⁶⁵ Corporal punishment came to be executed exclusively within prisons.

In the middle of the century the location of capital executions was again changed. They were now done next to the prison walls on the Place de la Roquette. This meant that the condemned did not have to be transported through the streets. Still the crowds kept on assembling. In January 1870 the notorious murderer Troppmann was guillotined. Although the event had been brought forward to 7.0 a.m., numerous spectators watched it, among them Turgenev. In June of that year the deputy Crémieux proposed a law that would transfer capital executions to within prison walls. It never came to a vote because of the approaching war.⁶⁶ The Third Republic apparently did not wish to change the situation. We hear of large crowds assembling at the decapitation of murderers in Béthune and Carpentras in 1909.⁶⁷ The last public execution in France took place in 1939.⁶⁸

In the Netherlands a conscious transfer of punishment to indoors never took place. Public executions simply ceased to exist because all public

penalties were abolished. Amsterdam witnessed a partial parallel to the geographic marginalization of executions which occurred in London and Paris. The last justice day on Dam Square was 12 December 1807. Louis Napoleon wished to use Amsterdam's town hall as a royal palace. The court evacuated the building in February 1808 and on 21 May the scaffold was erected in front of the St Anthony weigh-house at the Nieuwmarkt.⁶⁹ The Nieuwmarkt was still very much within the city, but not as central as Dam Square. In 1812 the spectators were able to admire the guillotine there.⁷⁰ The new Dutch regime did not adopt this instrument, but the location of executions in the city remained the same.

In 1839 the Second Chamber sanctioned the removal of branding from the penal code, but the First Chamber voted against it the next year. The disappearance of public, corporal punishment took another fourteen years. Exposure, whipping and branding were abolished by a law of 1854.⁷¹ Only the spectacle of death remained. The hanging which took place in Maastricht on 31 October 1860 was the last public execution in the Netherlands. No death sentences were executed from then until the abolition of capital punishment ten years later. In 1870 it was discovered that due to an 'oversight' a few forms of public, corporal punishment had been officially valid since 1854. These were simultaneously abolished.⁷²

At the time most countries did not follow the Netherlands in the total abolition of the death penalty. In England only the Radicals favored this. They opposed the Capital Punishment within Prisons Bill for that very reason, arguing that it would consolidate the position of the death penalty. Other opponents were, according to Cooper, reactionaries who wished to show a tough face and denounced 'philanthropic weakness'.⁷³ An analysis of the political affiliations of those arguing for and against the privatization of repression in various countries is still lacking. I do not think it would be very important. The argument of public security gradually lost ground before the rising tide of sensitivity toward the open infliction of physical suffering and death. It may be correct to designate those who tenaciously held on to the public security view as conservatives or reactionaries, but this is largely tautological. At one time the spectacle of punishment had been self-evident for all. We have to explain the emergence of 'philanthropic weakness' and to inquire into the pre-conditions for its ultimate victory. What was the changed social context in which this was in fact no weakness at all?