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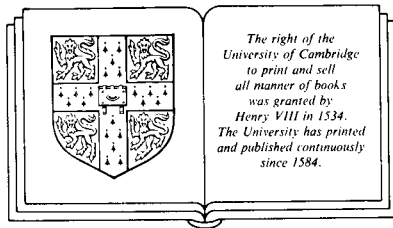
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THE SPECTACLE OF SUFFERING

*Executions and the evolution of
repression: from a preindustrial
metropolis to the European
experience*

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PREFACE

The sight of whippings, thumb-cuttings and hangings is not part of the experience of the average inhabitant of the Western world. Most people have merely a vague sense of public physical punishment as a thing of the past. Elsewhere public executions of delinquents are generally only a feature of countries with a fundamentalist Islamic regime and even there they are not applied consistently. We are told that a provincial town in Iran introduced public flogging but discontinued the practice, because the people apparently did not accept it. Death penalties in Iran are carried out within prison walls, but the distribution of official photographs makes them semi-public.¹ Where it exists today, capital punishment is hardly ever inflicted out in the open. In Europe and America its abolition or re-introduction is a much-debated issue. These discussions reflect an uneasiness about our ways of dealing with delinquents which has deep historical roots.

For a better understanding of the options open today it is necessary to possess a diachronic analysis of the developments in repression that helped shape the present. This book offers a contribution. I see my subject from the angle of the history of mentalities, rather than focusing on repression as a system of control. Throughout the preindustrial period the authorities never achieved the ordered society they were aiming for. Nevertheless, the modes of repression changed. This was an expression of changing mentalities. The 'mental history' of repression refers to notions of what constitutes undesirable behavior and how it should be dealt with.

Public executions were the most conspicuous feature of repression in preindustrial Europe (and in some countries during industrialization as well). In this book I attempt to describe their rise to prominence, continued functioning and ultimate disappearance, and to offer an explanation for this. By public executions I mean all penalties meted out in a public place. Execution originally meant the carrying out of any

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sentence, not only death sentences. The list which was drawn up before each ‘justice day’ in eighteenth-century Amsterdam, for instance, was called the ‘list of names of those who are to be publicly executed’, even though most received a corporal penalty. I will keep to this wider use of the word execution. It has one implicit advantage. A few authors, in discussing capital punishment during the *ancien régime*, place it exclusively in the context of attitudes towards death.² It should, however, also be viewed as an element of a penal system in which physical treatment figured prominently. The wider meaning of the word execution clearly refers to this system.

The word repression, as used in this book, in its turn has a wider meaning. It refers to more than punishment alone: also to matters such as prosecution policy, trial procedure and semi-judicial institutions of control. We may define repression as all means which the ruling groups employ to keep the population in line, whether these are effective or not. As noted above, it is not the effectiveness of repression that constitutes my subject, but its changing modes.

The best-known study of changes in modes of repression is by Michel Foucault.³ He analyzes the rise of the modern prison in the nineteenth century and the era of physical punishment which preceded it. The main difference between these penal systems is twofold. The earlier one had two major characteristics which were to a great extent absent from the later one: publicity and the conscious infliction of physical suffering. This characterization is certainly valid. Foucault’s study, however, remains defective in a few respects. His theoretical frame of reference is essentially that of structuralist philosophy. He conveys the picture of a sudden transition from one penal system to another, without inquiring into that transition. Moreover, the changes in modes of repression are hardly explained at all, which could be done by showing their interdependencies with other societal developments. A third criticism is that his study, especially his analysis of public executions, was not based on archival sources.

Foucault’s picture of one system quickly replacing another is actually far from historical reality. The infliction of pain and the public character of punishment did not disappear overnight. Both elements slowly retreated in a long, drawn-out process over several centuries. For one thing, public executions survived in most European countries into the 1860s, when the penitentiary had already been firmly established. On the other hand, with the disappearance of serious mutilation in the early seventeenth century a major change in the direction of a decline of the physical element in punishment had already taken place. Around the

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same time, imprisonment was introduced. These are only the most prominent examples. There can be no doubt that the history of repression exhibits long-term processes. We need, therefore, a developmental perspective. This book was written from this perspective and attempts to construct a 'counter-paradigm' to Foucault's.⁴

A study by Rusche and Kirchheimer, published more than forty years ago, does attempt to account for changing types of punishment from a developmental point of view. Yet this book is also of limited value. Rusche and Kirchheimer provide a very general and crude overview of the development of penal systems. They roughly distinguish three phases: until the sixteenth century mutilation and death combined with fines prevailed; the seventeenth and eighteenth centuries witnessed compulsory labor in houses of correction; after 1800 this was followed by solitary confinement in penitentiaries. They offer unconvincing economic explanations for this development. Essentially they argue that the nature of a penal system is determined by the demand for labor. In the mercantilist period labor power was valuable and hence people were put to work; but not before and after. This type of theory, however, cannot explain why non-productive punishment sometimes consisted of physical treatment and at other times of solitary confinement. That cannot be done without taking changing sensibilities into account.⁵

In this book, then, I am working out my own theory in order to explain the development of public executions in Western Europe and their ultimate disappearance. I will consider changing modes of repression as a reflection of changing sensibilities. But I will also analyze the functions which executions had for the various social groups involved. That is a necessary step towards establishing the relationship of the evolution of repression with other long-term processes in society. A model of the interrelationship between the development of mentalities and changes in human organization is provided by Norbert Elias.⁶ His theory can serve as a general frame of reference, but I do not follow the model too closely. A few points need to be revised. The model does serve my purpose as far as the development of mentalities is concerned. Elias conceptualized the psychic changes he observed, first in the elites and then in broader sections of society, in terms of processes of *Zivilisation*, which might best be translated as 'conscience formation'. Two elements of this process of conscience formation are particularly relevant for the present study: first, several forms of human behavior, among which was the infliction of physical injury, came to be loaded with restraints and, second, several aspects of life became privatized, disappearing from the public arena. The development of repression, with the retreat of physical punishment

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and the decline of its public character, fits this model very well.

The second part of Elias' model, however, has to be handled more carefully. He accounted for the dynamics of conscience formation by relating them to the development of society in general, but within this development state formation clearly plays the major part. Two objections can be raised to this emphasis: first, state formation, although certainly of vital importance, may not be the only long-term process which explains changes in mentality. Urbanization, for instance, played its role too. The second objection is that Elias' model of state formation relies too heavily on the French development. In this sense he comes close to Foucault, who also sees the early modern state as largely identical with French absolutism. There were, however, other models of state formation in the early modern period, such as Britain and the Dutch Republic. Moreover, I would rather place the emphasis on the development of the entire network of states in Europe, than on the development of each single state. The influence of this network also reached areas which lagged behind in some ways, such as the Netherlands in the seventeenth and eighteenth centuries.⁷ With this shift in emphasis state formation may still be crucial for the explanation of changes in repression. Elias' theory has, in contrast to Foucault's, the advantage of being truly historical. It suggests that the evolution of repression is part of processes involving the changing sensibilities of the upper and middle classes, and is related to the rise of states.

The conclusions of this book will be based on the evidence. Within the general framework of Elias' model, revised as indicated above, I put forward my own theory. The book's thesis is twofold: first, an original positive attitude towards the sufferings of convicts slowly gave way to a rising sensitivity, until a critical threshold of sensibility was reached in the nineteenth century. Consequently, executions played a crucial role as the most conspicuous part of the penal system, but finally disappeared from public life. Second, these developments are closely related to the rise of a network of states and the changes they underwent. Notably, the disappearance of public executions is related to the transition from the early modern state, whether absolutist or patrician, to the nation-state.

The empirical evidence for my thesis comes from Germany, the Netherlands, France and, to a lesser extent, England. The bulk, however, is derived from an investigation of Amsterdam court records and related sources. The choice of Amsterdam was not accidental: for one thing, there is an abundance of source material, which makes it possible to put together a coherent picture of the history of executions. And pre-industrial repression reached its fullest elaboration in the context of large

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cities. The evidence from the Dutch metropolis can be compared with the data compiled for London. There are no indications that the Amsterdam experiences deviated in any significant respect from those in Western Europe generally.

Hence the empirical evidence is composed of four concentric circles, representing a decrease in depth and an increase in scope. The nucleus consists of a comprehensive scrutiny of public sentences pronounced in Amsterdam between 1650 and 1750. The second circle is formed by a survey of other relevant court records and pamphlets pertaining to justice in Amsterdam. An investigation of published sources and literature on executions in the Northern Netherlands constitutes the third circle. The fourth, finally, is made up of cases collected from the literature on various Western European countries. This structure has, I think, a double advantage. It combines a wide geographic range with a firm base in archival material. In this way it is hoped that the construction of a counter-paradigm to Foucault's will indeed be realized. Of course the book still leaves many questions of detail open. The primary task is to elaborate the paradigm and to show its potential.

The bulk of the following chapters consists of a successive treatment of the various parties involved in executions. Of course no absolute division exists between them; it is a way of organizing the material. Although the composition of the book is largely thematic, chronology has influenced it too. Chapter one discusses the emergence of criminal justice as a function of state formation and urbanization in the later Middle Ages. Chapter two deals with the executioner and focuses especially on the rise of the office during the same period. Chapter three and chapters four and five concentrate on the 'classic' age of preindustrial repression during the seventeenth and most of the eighteenth centuries. Chapter six discusses the transformation of repression in the late eighteenth and nineteenth centuries.

This book is the result of a ten-year involvement with problems of preindustrial criminal justice. The bulk of the archival research, however, was performed during 1975 and 1976, when I enjoyed a grant from the Netherlands Organization for the Advancement of Pure Research (ZWO), which also provided funds for the correction of the present text. The original investigation resulted in a dissertation, presented at the University of Amsterdam and supervised by M. C. Brands. In those years I profited from the help of several people, whose advice indirectly benefited the present book. Of these I am especially indebted to Hans Blom, who critically accompanied the research, and Sjoerd Faber, who explained a number of intricacies of the Amsterdam judicial archive to

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me. His book on criminal justice in the city⁸ appeared after I had completed the manuscript for this study. Lia van Wijk and Rob van der Horst assisted with the computer-processing of the data.

The first version of the present book was written during the year 1981, aided by the ample facilities provided by the *Subfaculteit Maatschappijgeschiedenis* of Erasmus University, Rotterdam. My colleagues Rudolf Dekker and Jan van Herwaarden both offered critical comments on a chapter of the manuscript. The completion of this book also owes a great deal to numerous encounters with scholars working in the field of the history of crime and justice. I should mention in particular Herman Bianchi, Nicole Castan, Yves Castan, Herman Diederiks, Gustav Henningsen, Jim Sharpe and Jan Sundin. Two successive versions of the manuscript were typed by Anneke Daniëls-de Leeuw and Tineke Huijssen, whose attentiveness saved me from a number of errors. Anne Lavelle polished my original English text and, consequently, made this into a much better book.