The Execution Spectacle and State Legitimacy: The Changing Nature of the American Execution Audience, 1833–1937

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This paper examines the role of the audience in the process that transformed executions from public spectacles to hidden rituals, and makes visible the ambiguities and uncertainties that accompanied the transportation of capital punishment from its monarchical origins to a modern democratic setting. From this vantage point, the evolving responses to concerns associated with the execution audience share many characteristics with efforts to control other problematic audiences. And yet, the particular forms that audience manipulation in the context of executions took cannot be fully understood without considering the occasion that brought the audience into being. Viewed as a mirror held up to the execution, the audience, whether conceptualized as a rowdy crowd or a solemn group of witnesses, emerges as a constitutive element of the execution and, in this sense, carries the potential to grant, or deny, legitimacy to the event and, by extension, capital punishment itself.

Introduction

During the nineteenth century, the execution in America underwent a major transformation from a large and rowdy public spectacle to a hidden and tightly controlled ritual (Fearnow 1996; Lofland 1976; Madow 1995; Masur 1989). Typically described as uncivilized, irrational, and ignorant, the public execution crowd triggered at least three intertwining concerns for nineteenth-century reformers. First, the rowdiness of the crowd made it increasingly difficult to maintain a clear distinction between a solemn execution and a festive holiday celebration. Sec-

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ond, the lowly members of the crowd were seen as especially vulnerable to the violence displayed, thus leading to fears that the public execution might have a brutalizing impact on those watching rather than serving as a source of moral (re)invigoration. Finally, the crowd itself, by its size and social composition, came to be viewed as a political challenge of sorts, most directly in relation to the pending execution, but also in the more general sense of carrying within itself the power to challenge the authority staging the event (ranging from disrespect and mockery to threats and riotous disruptions).

Initially conceived of as a simple adjustment to the execution event—remove the execution from the troublesome crowd by bringing it inside the jail yard—the transformation came to involve a series of organizational modifications that turned the execution into an event that was qualitatively different from the public execution; these modifications included the site of execution (from public to private), the size of the audience (from large to small), the gender composition of the spectators (from mixed crowds to male witnesses), the class character of the event (from popular/mixed to middle-class/professional), the method of execution (from hanging to more "scientific" methods), and the jurisdiction of the execution (from local to state). How can we account for this transformation?

Scholars have identified a range of historical developments that contributed to the demise of the public spectacle, such as the rationalization of authority, democratization, cultural changes, and technological/medical advances, but these insights do not immediately translate into an explanation for what the execution event was changing into. That is, the transformation of the execution, I argue here, is best viewed *not* as a passive and unidirectional response to inexorable external pressures, but instead as a series of evolving and open-ended responses to the problems associated with an actively criticized institution situated in the midst of the social and political upheavals of the nineteenth century. While the role of the crowd in making the nineteenth-century execution spectacle problematic is fairly well documented, much less attention has been paid to the continued role played by subsequent audiences in the various organizational responses aimed at rescuing capital punishment from the rubble of public executions. In this paper I demonstrate that, just as the public execution audience had carried the power to discredit and challenge the execution event, subsequent witnesses, in turn, carried the power to confer respectability and legitimacy on the event. In this sense the execution audience has always played a complex role of both observer and observed in the execution drama and, whether conceived of as a rowdy crowd or a select group of solemn witnesses, emerges as the key figure in the transformation of the execution and also, consequently, as a ma-

jor contributor to the tenuous position of capital punishment more generally. That is, the two-century-long conflict over capital punishment has in large part been waged with and sustained through claims about the audience, thus making the audience a key element in the perception, organization, and delivery of the death penalty.[1] Seen in this light, the audience is an integral part of the execution drama, itself performing a part that attracts attention and commentary (whether the execution is performed in public or in private), thus raising unavoidable questions around "whom exactly is the performance for" (Blau 1990).

Understanding the Execution Audience

Prior to the revisionist challenge of the vision of western penal history as a steady progression of civilization, the abolition of public executions was typically seen as one aspect of the move toward more humane penal practices.[2] Several contemporary analysts have raised serious questions about the developmental assumptions inherent in this historical interpretation, particularly with regard to the humanitarian components, arguing that the presence of humanitarian sentiments in no way suggests a relaxation of power and social control, on the contrary (Foucault 1979; Ignatieff 1983; Philips 1983). While there can be no doubt that the expressions of humanitarian sentiments multiplied during the nineteenth century (Haskell 1985), it is clear that the application of these sentiments was not constrained by any generally agreed-upon criterion whereby humanitarian questions and disputes could be settled. That is, because it was quite possible to argue that, for example, *both* private and public executions served humanitarian ends and *both* hanging and electrocution satisfied humanitarian demands, it is difficult to sustain an argument where the direction and content of political decisions are understood primarily in humanitarian terms (Spierenburg 1984). Nevertheless, the entry of humanitarian concerns into the realm of capital punishment has left enduring marks on subsequent debates and conflicts, and in this sense the revisionist skep-

[1] See Gatrell (1994) for a general discussion of resistance and consent in the context of public executions. More specific inquiries into the effects of the execution on various modern audiences include those on journalists (Freinkel et al. 1994), prison staff (Johnson 1990), and family members (Smykla 1987; Radelet et al. 1983). Additional insights into the audience experience can be gained from first-person accounts by various participants in the execution process including governors (Brown 1989; DiSalle 1965), prison wardens (Cabana 1996; Lawes 1932), doctors (Squire 1937), lawyers (Mello 1989), prison chaplains (Eshelman 1962), spiritual advisers (Prejean 1983), and executioners (Elliot 1940).

[2] Other aspects include the abolition of torture, the abandonment of more brutal execution methods, the curtailment of the death penalty, the abolition of public punishments more generally, the emergence of the penitentiary as the dominant alternate penal measure, and, in some cases, the abolition of capital punishment altogether (Bye 1919; Cooper 1974; Davis 1958; Hartung 1952; Radzinowicz & Hood 1990; Sellin 1967).

tics might have underestimated the extent to which humanitarian arguments can be wielded as political weapons in states ostensibly (whether sincerely or insincerely) committed to humanitarian ideals.

As an overt critic of the humanitarian thesis, Foucault's groundbreaking analysis of the rationalization of authority (1979) points to an inexorable move away from a spectacular display of power (epitomized in the public execution) toward a more insidious penetration of authority (captured by the rise of the penitentiary). Playing an ambiguous yet critical role, the crowd was the "main character" in the public execution drama; it was the target of the terrifying display of might but also a necessary witness to it. As such, the public execution audience held the momentary power not only to confer legitimacy on the executing authority but also to challenge that authority; thus, monarchical authority was always precarious and, at least in the abstract, beholden to the whims of the crowd. From this vantage point, the public execution was abandoned not only because it was no longer necessary—the state had more efficient tools of authority at its disposal—but also because it was counterproductive to the new forms of social control. To accommodate the transformation of authority, two of the most fundamental elements of the public execution, the spectacle and the attack on the body (in the form of visible pain), were replaced by their logical opposites, secrecy and the absence of pain. Although Foucault himself devoted little attention to the modern execution, we might still conclude from his insights that traces of the spectacle, as well as visible signs of "unnecessary" pain, remained of concern to the authorities once the execution was privatized.

Other critics of the "humanitarian" thesis have analyzed the privatization of executions as a process largely distinct from a more general history of the death penalty. Above all, these critics emphasize, the public execution was a crowd occasion, and as such shared significant characteristics with other types of crowds. Viewed from this vantage point, the problem with the public spectacle was the crowd *itself*, making the occasion that brought the crowd together largely incidental (Gilje 1987; Weinbaum 1979). Pointing to the politically volatile role played by the crowd (Laqueur 1989; Jasper 1990; Faulk 1990), this approach, accordingly, links the abolition of public executions with political unrest and pressure for democratic expansion in the nineteenth century—England in the 1860s and the United States in the 1830s are cases in point. By shutting out the spectators from the execution site the state thus sought to remove not only a visible thorn in the eyes of democracy but also a direct challenge to the promise of democracy as a new source of social order. In this sense, the replacement of the "gibbet" with the "ballot box" can be seen as an effort to diffuse and render harmless the potential

power of the crowd (Faulk 1990:87). While these observations provide astute insights into both the demise of the public execution and continuing concerns around crowds converging on execution sites (epitomized in the frequent presence of armed guards and soldiers), they obviously shed less light on the concealed execution arrangements that came to replace the spectacle. In other words, although the execution audience shared many elements with other problematic crowds and audiences at the time (Brophy 1997; Snyder 1994; Levine 1988; Denning 1987; Rader 1983; Barrows 1981), and prompted similar efforts at controlling, curtailing, and civilizing public behavior, the problem with the execution audience cannot be divorced entirely from the problem with capital punishment itself.

Yet others have aligned the changes in execution practices with the larger cultural transformation captured by writers like Elias (1939) and Sennett (1977). Approached from this vantage point, the abolition of public executions signaled a dramatic shift in public expression, making the public display of suffering and death incompatible with the new set of sentiments that slowly came to dominate modern life (Spierenburg 1984). Transferred to the political arena, such emotional experiences exerted a different kind of pressure on the execution than those captured by, say, security concerns. The new sensibilities were not evenly distributed among execution spectators but instead concentrated in the elite segments of the community and only slowly (if at all) penetrated the masses. In this sense, the shifting perceptions of executions capture a well-documented process of the divergence and class segmentation of cultural ideas and practices (Levine 1988; Denning 1987). Thus, the new sentiments were directed not only at the unpleasantness of the execution itself but also at the uncivilized manner in which the lower-class crowd conducted itself during the public spectacle (Evans 1996; Masur 1989). If other lower class pleasures could be relegated to the lower echelons of public entertainment, the execution, as government business at its gravest, could not endure such a status slide. That is, while other forms of lowly public pleasures could be contained and controlled by managing the boundary between the "normal" and the "deviant" (cf. Gamson 1998), the execution had to be removed from the category of public pleasure altogether. The analysis of the role of sentiments in the transformation of executions has served to release "culture" from its previous association with humanitarian expansion, but the cultural components of the privatization process remain underexplored. For the purposes of this paper, the emphasis on new sensibilities provides an entry point, not a conclusion, to the analytical task of accounting for the evolving interpretation of what constituted a respectable audience and an acceptable execution arrangement.

The pressures that I have identified all point to the tenuous and precarious position of capital punishment in the democratizing and modernizing world. Why, then, did the state not simply abandon the death penalty altogether, rather than risking the moral, judicial, and political minefields that had come to surround and define the institution of capital punishment? Part of the answer is that some states did, at somewhat different times, ranging in duration from a few years to permanent abolition.[3] Thus, the problems associated with the institution of capital punishment were thorny enough to make total abolition not only a viable solution, but also the one preferred by many lawmakers and other observers throughout the period. Generally, however, and of considerable significance for the argument pursued in this paper, abolition sentiments were often unstable and volatile (as were sentiments associated with retention and restoration), linked as they were to the *practice* of capital punishment. That is, throughout the nineteenth and early twentieth centuries, the efforts to abolish capital punishment were often, if not typically, associated with particularly controversial or scandalous executions (Cropley 1952; Koeninger 1969; Mackey 1969, 1974; Post 1944; Quaife 1926). Thus, the recurrent outbursts of abolition sentiments indicate that there was enough opposition to provide a constant source of scrutiny and criticism of the institution of capital punishment, including the handling and behavior of the various audiences. It would be a mistake, however, to conclude that antigallows sentiments coincided perfectly with audience-related concerns. On the contrary, one of the most visible oppositions to the privatization of executions came from the antigallows reformers who were motivated by the assumption that the public execution, with all its troubles and embarrassing features, was the most persuasive argument against the retention of the death penalty (Masur 1989). In this sense, the transformation of executions can be viewed as a series of compromise solutions to a number of potentially embarrassing and discreditable features of the practice of capital punishment. Building on these insights, I argue in this paper that the concerns derived from the crowd as a simultaneous observer, reflector, and guarantor (to use Foucault's phrase) of capital punishment, were transferred, albeit in modified form, to the new execution audience, now segmented into witnesses, professionals, prison staff, crowds outside the prison gates, and dispersed newspaper readers.

[3] In the United States, the first modern states to abolish capital punishment—Michigan in 1847, Rhode Island in 1852, and Wisconsin in 1853—have remained abolitionist. Several other states experimented with abolition during the period under consideration here, including about ten states during the Progressive era (Galliher et al. 1992). In Western Europe, similarly, the debate over public executions and capital punishment more generally were intertwined during the nineteenth century (Evans 1996; Cooper 1974; Spierenburg 1984).

The Audience: Gazing at the Execution

Drawing on the field of audience studies, tenuously held together by the "audience" concept (Porter 1992; Holton 1978), I will show how the problems associated with the execution audience did not cease with the privatization effort; rather, attempts to manage the audience continued and have remained intertwined with efforts to control the legitimacy of the execution event itself. With tentative roots in nineteenth-century crowd psychology (Le Bon 1896; McPhail 1991; King 1990; Nye 1975) and its concerns with "irrational," contagious, and dangerous crowds, contemporary debates about audiences have largely come to coalesce around audience reception (McQuail 1997), especially with regard to mass media (Webster & Phalen 1997; Cohen 1994; Cobley 1994; Moores 1993; Seaman 1992), but also in the context of other cultural products, such as theater (Butsch 2000; Blau 1990) and literature (Hayward 1997; Denning 1987; Radway 1984). One of the dominant concerns linking this loose intellectual field refers to the impact of various cultural messages on various audiences—is the audience a passive recipient of mass-produced ideology? Does it use available cultural messages as a "tool kit" (Swidler 1986)? Or, does it actively resist and transform cultural hegemony? That is, the focus of much audience research is the audience (e.g., reader, viewer), and not that which brings the audience into being (e.g., the text, the display).

In order to understand how different conceptions of audiences, as well as the social forms they participate in, arise, are maintained, and are transformed, however, we need to incorporate the object of the audience's gaze, alongside the audience itself, into the analysis (Harrison 1988). More specifically, the "stickiness" of the reflection thrown by the audience (Levine 1988; DiMaggio 1987) provides an opportunity to examine how institutions thus implicated respond to the reflection (Gans 1993). This reasoning follows the recommendation of Webster and Phelan to reverse the sight lines of the Panopticon and place authorities and institutions at center stage; thus situated, institutions are surrounded by layers of real, diffused, and presumed audiences who more or less inadvertently come to "exert a coercive force on those being observed" (1997:119).

Exactly how authorities will respond to the "coercive" gaze of audiences, however, is an empirical question. In the case at hand, the institutional response to the growing "trouble" with execution crowds was what Ettema and Whitney call audience (re)making (1994). That is, the pressures that the public execution crowd exerted on the execution led to various efforts at manipulating the audience—physically, behaviorally, and emotionally. These efforts had, by the end of the period, produced an execution event that only marginally resembled the original

vision guiding the first generation of execution reformers. Moreover, efforts to manipulate the *actual* audience were accompanied by attempts to define, control, and render harmless various other potential, imagined, removed, or hypothesized audiences, such as crowds gathered outside the prison walls and, increasingly throughout the period, the newspaper consumer. From this perspective, the struggle to control the execution audience is simultaneously an effort to control the perception and legitimacy of state-authorized killings and, by extension, the legitimacy of the entire criminal justice system (Evans 1996).

Who Feels the Gaze of the Execution Audience?

Complicating the picture of the audience-(re)making process I have painted is the slippery and changing nature of the various social constellations (authorities, witnesses, observers, observed, etc.) that are implicated by the execution process. That is, while the execution audience was clearly subject to considerable concern and criticism during the entire period examined here (Madow 1995; Masur 1989), it is far less clear how the distribution of such concerns evolved, shifted, and changed. Consequently, the distinctions between those who expressed audience concerns, those who gave rise to them, and those who received them are not nearly as neat as the uniform denouncement and curtailment of the "rowdy crowd" suggests. From an analytical standpoint, therefore, the boundaries between different execution actors get increasingly blurry as the efforts to manipulate the execution audience proceed. As a result, an unambiguous designation of particular actors as *either* audience *or* observer *or* authority is no longer possible (if it ever were). Thus, questions around who exactly comprise the audience (e.g., crowds, witnesses, executioners, newspaper readers), the authorities (e.g., sheriffs, prison wardens, legislators, governors, scientists), and the observers (e.g., journalists, newspaper readers, reformers, scientists) complicate the sight lines between observer and observed, but, I argue, do not ultimately undermine the significance of exploring the tension between the two for understanding the transformation of the execution. That is, the observation that particular social groups and/or particular institutional actors may play different roles across different execution dramas, while opening up interesting areas of inquiry, does not constitute a challenge to the claim that execution occasions always involve both a subject and an object of gaze.

It does suggest, however, that the notion of "authority" is not a stable entity in the context of executions but instead a multitude of actors involved in capital punishment at various institutional levels, to varying degrees. Accordingly, the history of capital punishment is filled with incidents pointing to pervasive

authority conflicts, some involving general policy decisions and others individual execution cases (cf. Culver 1999; Lifton & Mitchell 2000; Zimring & Hawkins 1986). During the period considered here, such conflicts include the issuing of the execution warrant, the pardoning power, sentencing authority, and execution jurisdiction, all involving tensions between the branches and levels of government, and all contributing to the shifting constellations of critics and subjects of criticism in the context of executions.[4] Other authority tensions are revealed in questions referring to execution arrangements, killing methods, the criteria to be used for evaluating the execution, and—of course—the audience of executions.

The struggles over authority in the context of capital punishment have at times been predictable expressions of more general political conflicts—the centralization of state authority is a case in point—but at other times the authority struggles have been unique to capital punishment and, at least occasionally, have involved efforts to *avoid* rather than embrace the power to execute.[5] Instead of treating the ambiguity around who has author-

[4] Of particular significance here is the state centralization of executions—that is, the transportation of executions from the local community to a central state location, typically the state penitentiary. Vermont began this movement in 1864, followed by Maine in 1864, New Hampshire in 1869, and Ohio in 1885. Before the end of the period all but a few of the retentionist states had brought executions under state authority (Bowers et al. 1974, 1984). The transition was aided by the adoption of the electric chair in that the technical requirements of the chair were somewhat more demanding than the traditional gallows; state centralization and the substitution of electricity for the gallows coincided in at least seventeen states (Bowers et al. 1984). In Connecticut state centralization coincided with the adoption of a new "automatic gallows" in 1894, and in Missouri the change was brought about by the adoption of lethal gas in 1938. The centralization of executions, like the centralization of other state functions, was typically subject to some conflict (Skowronek 1982). As an example, two Texas senators introduced a resolution shortly after the centralization of executions had been approved in 1923, denouncing the change as a "controvention [*sic*] of all rules of civilized treatment of prisoners by hauling them hundreds of miles over the State subject to the gaze of the public" (State of Texas 1923:221–22). To supporters of the move, however, the "hanging of a man in the community where he is tried produces a sensation, a nervousness and excitement upon the part of the people, and it has a brutalizing effect upon the large numbers, in spite of the law, who witness it" (Governor Beckham of Kentucky, 1906, quoted in Bessler 1997:179). As another example, Governor Geo Chamberlain of Oregon, in recommending that all executions be conducted "within the walls of the penitentiary, out of hearing and out of sight of all except officials," expressed deep concern over the "more or less public" arrangements that up until that point had characterized so-called private executions at the county level; not only were "crowds of men, women, and children" standing "in the adjacent streets to see and hear," but "boys and men actually climbed telephone poles to look over the same." "Such scenes are demoralizing," he concluded, "and ought not be tolerated in any civilized community" (State of Oregon 1903:23). A decade later, Delegate John Phillips, of Wicomico county, Maryland, argued that "the requirements of the law for a certain degree of privacy when convicts are hanged in the counties are ineffectual and that the public spectacle that is made of such affairs is demoralizing" (*Baltimore Sun*, February 10, 1912).

[5] To give just one example, several nineteenth-century legislatures adopted laws that required a waiting period (often a year) between sentencing and execution and/or an additional provision that required a warrant initiated by the governor before the execution could take place. Not surprisingly, governors felt unduly pressured by this arrangement, as the following examples from Kansas demonstrate. "The law is a subterfuge, for

ity over executions—that is, whose legitimacy is at stake here—as an unfortunate but unavoidable consequence of a complicated state institution that involves all branches and many levels of government, I welcome it as a further indication of the precarious cultural and political role played by capital punishment during the period considered here—a precariousness exacerbated by a recurrent reluctance among various individual state actors to claim the ultimate responsibility for the killing act.[6]

The Transformation from Public to Private Executions

The United States is a particularly fruitful case for analyzing the changing nature of the execution audience, since it was in the United States that the process started, thereby setting the stage for subsequent privatization efforts throughout the Western world. Moreover, the process in the United States was more gradual and varied than in most Western European nations—from Rhode Island in 1833 to Missouri in 1937[7]—thus leaving room for extensive variation in the interpretation of "private" ex-

while it pretends to maintain capital punishment, it, in effect, abolishes it," complained Governor Thomas Osborne in 1876 (State of Kansas 1876:42). "The existing law is too apparent as one of evasion," agreed Governor Geo Anthony the following year (State of Kansas 1877:61), and a few years later Governor G. W. Glick stated quite bluntly that no one "is willing to exercise discretionary power in the case of life and death" (State of Kansas 1883:54).

[6] Governor Fred W. Green, Michigan, expressed the authority dilemma of capital punishment as follows (vetoing a bill to reintroduce the death penalty): "While many are found to favor capital punishment there are few people, when brought face to face with the power to send a man or woman to his or her death, who will do it" (State of Michigan, Journal of the Senate, 1929:1143). Lewis Lawes, warden of Sing Sing and a committed abolitionist, observed that while the courts determine the week of punishment, the "actual day and the hour within the week is my responsibility to fix. I alone determine the exact moment when that life shall be extinguished" (Lawes [1924] 1969:60). A few years later Warden Lawes elaborated further on his anti–capital punishment stance which, in his mind, was directly linked to his position: "If you, the reader, were directed by name and official title to kill a designated human being, even though the man was a convicted murderer, it would make you pause—and think" (Lawes 1929). Robert E. Elliot, former executioner at Sing Sing and elsewhere, while acknowledging his own role in the 387 killings he facilitated during his career, observed that his "responsibility is no greater than that of any member of the society that demanded this person's life." For this reason, Elliot advocated making "witnessing an execution . . . a civic duty" (Elliot 1940:298–99). A similar sentiment was expressed by a witness from the Prisoners' Relief Society during a hearing on capital punishment for the District of Columbia in 1926: "judges and legislators should be compelled to witness executions" (United States 1926:27).

[7] Rhode Island, 1833 (Mackey 1974) is the conventional starting point of the privatization process in the capital punishment literature. Already in 1828, however, New York adopted a law giving the county sheriff the discretion to arrange executions away from the public's gaze, and Connecticut adopted a privatization law in 1830 (Bessler 1997). By 1850, at least nine additional states had made executions private: Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, and Vermont (Bowers et al. 1974; National Police Gazette, January 3, 1846; Teeters & Hedblom 1967). The last official public executions in the United States took place in Kentucky, 1936, and Missouri, 1937 (Bedau 1982). However, there are some reports of semipublic executions held in Mississippi in the early 1940s (Goins 1942).

ecutions.[8] Throughout the nineteenth century, public, semipublic, and more or less private executions, each characterized by their own audience, coexisted side by side. Viewed as different audience solutions, these different arrangements illustrate the many problems associated with the execution and its audience, and thus provide an opportunity to identify the ways in which audience concerns interacted with other social processes to produce an increasingly private, masculine, technical, and professional execution event.

To illuminate the links between audience concerns and the organization of executions, I am using accounts, descriptions, depictions, and assertions of the reputed behavior and imputed motives and emotions of the various audiences, ranging from the crowd to the newspaper reader (see appendix for details on sources). For analytical purposes, I am less concerned with the accuracy of these audience descriptions than with the suggestions made by them of the legitimacy of the execution itself; that is, although some audiences may bear their own messages, many others "have messages thrust upon them" (Harrison 1988:318). The text is organized around a few dominant, if interrelated, problem areas, each capturing part of the tension surrounding various audience solutions. The first section, the *rowdy crowd*, is a largely familiar account of the pressures toward privatization and a much-curtailed crowd, and provides the backdrop to the remaining analysis. This is the story of large and excited execution crowds, of drinking, merriment, and impropriety; in short, of an execution event looking more like a public festival than a solemn ritual. In the second section, *respectable women*, I analyze the increasingly precarious role of women at the execution site, which resulted in a masculinization of the execution ritual that dovetailed with the gendering of public life more generally. Third, the section on *propriety and proper witnesses* provides an analysis of the processes that produced a class-segmented and increasingly professionalized audience. While the public execution was designed to provide a major emotional experience for the masses, the private execution, in contrast, became increasingly marked by emotional detachment and disinterestedness, first in the form of "reputable" community representatives and subsequently in the form of professional witnesses (doctors, lawyers, journalists). Finally, the analysis of *horror stories and scientific humanity* captures the general incorporation of novel scientific and medical ideas into the execution arrangement, as well as the more particular negotiations around how such ideas found expression in new execution methods (especially electricity and le-

[8] The process that transformed executions in the United States was not uniquely American, of course, but in most Western European nations the privatization of executions generally came later, and once begun was completed relatively quickly, such as in Germany (Evans 1996), England (Cooper 1974), and Sweden (Seth 1984).

thal gas). The analysis will conclude with a discussion of the ambiguous role occupied by the rapidly growing popular *newspaper press*. In many ways the press made possible the privatization of executions (the community no longer had to be present to know that an execution had taken place), but it also held up a magnifying looking glass to a precarious ritual that the authorities were taking pains to conceal from the general public.

The Rowdy Crowd

During the 1820s and 1830s the execution crowd, like many other crowds, increasingly came to be seen as a threat to the social and moral order (Gilje 1987, 1996; Grimsted 1998; Rader 1983; Weinbaum 1979). Not only did crowd estimates grow larger at this time, occasionally telling of 30,000–50,000 spectators, but accounts of what the crowd did and how it responded to the execution also started to change. Instead of reporting how "tears bedewed the cheeks and glistened in the eyes of thousands who witnessed the solemn spectacle" (*Commercial Advertiser*, October 24, 1817), execution stories began to emphasize disorder, social chaos, drunkenness, and criminality, thus quite rapidly shattering the view of the public execution as a great moral object lesson (Masur 1989). The new interpretation of the execution crowd that these depictions provided cast the public execution itself in a different and much less favorable light and hence prompted a new set of concerns associated with capital punishment. In the words of Michael Madow, the execution event began to look like "a spectacle *in flight from its audience*" (Madow 1995:500, emphasis in original).[9]

One of the most frequently cited examples during the first privatization wave was the execution in Lancaster, Pennsylvania, in 1822, of John Lechler. Prior to the execution the mayor had issued a proclamation aimed at ensuring that the execution was "conducted among civilized, moral and religious people with utmost solemnity"; to that end he appealed to tavern keepers "to prevent gambling, drunkenness, dancing, and other immoral transactions" (Teeters 1963). Despite this effort, observers reported, at least fifteen people (of about 20,000 spectators) were arrested—one for murder, one for larceny, and the rest for vari-

[9] At issue here is not the extent to which the execution crowd did in fact undergo a significant transformation in the first few decades of the nineteenth century, but it is reasonable to conclude that the size of the crowd increased—or at least could have increased—with factors such as larger urban communities and/or more efficient means of transportation. Variations across different executions in different locales remained large throughout the period, however, suggesting that there was not a population-wide surge in execution interests. Claims of a morally downward change in the behavior of the crowd must be viewed with considerable caution, however; in the words of one student of crowd behavior: "concerned social commentators who feel compelled to make pronouncements about crowd behavior sometimes tell us more about themselves than the events" (Berk 1972:114).

ous other offenses, such as assault, battery, and vagrancy—"besides many gentlemen lost their pocket-books, though the pickpockets escaped, or the jail would have overflowed" (Spear 1845:61; also Quinby 1856; Bovee 1869; Teeters 1963). Moreover, according to some reports, a murder was committed later in the evening by a man who, "it appeared, on inquiry . . . was one of the crowd" (Bovee 1869:164).

Another frequently cited story, especially in the legislature of New York, referred to a Levi Kelly, "a man of respectable connections [who] had never been distinguished for immorality of any kind." Less than two weeks after having witnessed an execution, however, he killed an acquaintance, and was promptly condemned to death. On the evening of Kelly's execution a man who had watched the execution committed suicide by hanging. Hence the conclusion that the "public execution [of the first man], instead of tending to preserve life, led to the destruction of three other lives." The select committee that arrived at this conclusion was convinced that "hanging has not the restraining power supposed, it is a work of violence which stirs the blood of the heart and which makes men reckless of right" (New York Assembly Doc. No. 170, 1857, at 6–7).

Based on the observation that "scarcely an account of an execution has reached us from any portion of our country, for the last ten years, but has contained a description of attendant rowdyism and crime, as the legitimate fruits of the occasion" (Quinby 1856:191–92), various reformers and political leaders concluded that the occasion of a public execution "is generally made one of great riot, noise, confusion, drunkenness, and every species of crime" (Upham 1836). Moreover, added a legislative committee in Massachusetts, it is especially those whom "it would be desirable to affect solemnly, and from whom we have the most reason to fear crime, [that] make the day of public execution a day of drunkenness and profanity" (Massachusetts [1836] 1974:71). It was stories like these, then, that made the prospect of concealed executions an attractive alternative. If access was granted by invitation only or by paying an admission fee the "promiscuous assemblage of men women and children" (*National Police Gazette*, November 22, 1845) who formed the typical execution crowd in circulated accounts could be effectively excluded—that is, the poor, the rowdy, the drunkards, the roughs, the prostitutes, the weak and ignorant, and others deemed unsavory enough to cast a questionable shadow on the execution. By removing the execution event from those who tainted the execution by depravity and disorderliness, in other words, the state sought to sever the link between the execution and other forms of lowly public entertainment.

As the actual audience became increasingly orderly, the portion of the public that was excluded from the execution site took

on some of problematic characteristics previously reserved for the execution crowd (thus in a sense confirming the propriety of keeping them out). When John Haggerty was executed, "much excitement prevailed throughout the city" and a number of unsuccessful attempts were made by the assemblage to effect an entrance [to the jail yard]" (*National Police Gazette*, July 31, 1847). The crowd that had gathered in Cincinnati for the execution of Henry Lecount in 1852, the first privately held execution in that city, was "a ragged, drunken, profane, cut-throat appearing crew, of all nations and colors—men, women and children peering through the crevices in the wall—smoking, chewing, drinking and cracking jokes" (Quinby 1856:173; also *Cincinnati Daily Enquirer*, November 27, 1852). During an execution in Pennsylvania in 1867, "every available point from which a view of the jail yard could be had, whether tree or house top, was occupied by a mass of human beings" (*National Police Gazette*, March 30, 1867). Outside the Tombs in New York, where three men were to be executed in 1875, "the scene was one of confusion and considerable uproar," and although a large police force was present "they seemed wholly unable to . . . keep back several hundred rowdy politicians and saloon-keepers who were eager for admission" (*New York Times*, December 18, 1875). As a final example, when Louisiana staged a triple execution in 1885, "there was a rush for elevated places overlooking the jail yard" (*Times Democrat*, August 1, 1885), and "the courthouse yard was a perfect jam" (*Times Picayune*, August 1, 1885).

As these examples show, execution stories frequently emphasized the undercurrent of danger associated with displeased crowds, and the pervasive presence of armed forces at nineteenth-century executions suggests a matching fear by the authorities that the spectators might disrupt the event or, worse, take matters into their own hands. When Georgia prepared to execute Susan Eberhardt in 1873, a judge ordered "a strong guard to be put around the jail. This was in consequence of rumors that an attempt would be made to rescue [her]" (*Atlanta Constitution*, May 3, 1873). The presence of armed guards did not guarantee order, however. At a New York execution, for example, "although a large force of Police, numbering 250 men . . . were present [at a triple execution in the Tombs], they seemed wholly unable to preserve any order" (*New York Times*, December 18, 1875). Elaborating on the same story, a tabloid announced that "the cries of the police and the buffeted people suggested a prize-fight, and showed great want of arrangement on the part of somebody" (*Days' Doings*, December 25, 1875).[10] Reports

[10] To give an example of a more overtly "political" execution, this one taken from an account in *New York Times*: "There were all sorts of rumors of impending disaster flying about," when Pennsylvania prepared to execute six Irishmen at Pottsville, causing the authorities to take extra precautions in arranging the event; "detectives shadowed all sus-

throughout the nineteenth century thus confirmed both the public's seemingly undaunted fascination with executions, and the continued wariness—both moral and political—by which the various executing authorities viewed the public. Whether in fact executions were as popular as the numerous press accounts indicate is a question that goes beyond the scope of this paper, but the point to emphasize here is that the sensationalistic accounts of disorderly and embarrassing execution audiences were abundant enough to help explain the growing political anxiety around them.

But why not simply abandon the audience altogether, one might ask, and thus remove for good the precarious coming together of witness and executioner? The idea of entirely secret executions—with no witnesses at all—was almost unthinkable to the generation of reformers who initiated the privatization process in the 1820s and 1830s: first, the commitment to the notion of the execution as an object lesson remained strong and pervasive among capital punishment defenders throughout the nineteenth century; second, there was a clear assumption among legislatures that the public would never accept killings conducted in secret. As the century progressed, however, the no-audience-at-all alternative did gain a few adherents, especially in the medical-scientific community. Suggestions discussed in medical journals included various contraptions involving poison or poisonous gas, but these were typically dismissed before they reached a larger audience as too cumbersome or technically untenable. While clearly a solution of sorts to the problems associated with audiences, few legislatures seriously considered a no-audience-at-all alternative (Nevada, Utah, and Maryland being a few exceptions), and no state ever adopted one. A Code Commission in Nevada in 1911, to much praise, did propose a solution to the problem of how to arrange an execution with no witnesses at all, not even an executioner: execution by suicide (using self-administered deadly poison). Not only was this an innovation that "is startling and will excite comment all over the world" (*Nevada State Journal*, February 24, 1911), but, in the words of one of the members of the commission, "there will be no morbid crowd in waiting to watch the death agonies of the prisoner, nor will anyone be directly charged with having aided in ending a person's existence" (*Nevada State Journal*, February 23, 1911). In the end,

picious persons . . . . Mounted Police were sent out to assist the foot detail in patrolling the outskirts of the town, . . . sentinels were posted on the parapet of the jail . . . [and] the jail door was guarded by a strong detachment of borough police." Moreover, the "utmost care was taken in scrutinizing the [tickets of admission], and those offering them, . . . [and] all the reporters were required to repeat a thrice-made promise not to mention the names of those officiating at the execution." This promise was extracted because the "authorities stand in great fear of reprisal at the hands of the yet powerful 'Molly Maguire' organization " (a supposedly violent confederacy of Irish-American mine workers) (*New York Times*, June 22, 1877).

however, the legislature abandoned the suicide alternative and settled on a law offering a choice of method to the convicts: hanging or shooting. No doubt inspired by the debate in Nevada, a similar proposal was presented to the Utah legislature two years later, and the response to that proposal gives a clearer indication of the problems involved in a no-audience-at-all solution. As one commentator observed: "However much men may differ on the matter of capital punishment it can be inflicted with decency and propriety only when the properly appointed officers of the law perform the execution" (*Salt Lake Tribune*, January 13, 1913).

Thus, with the no-audience-at-all option turning into a political dead end, the states instead, in increments and with varying degrees of success, resorted to manipulating the composition of the actual execution audience. The result of these various arrangements became an execution audience significantly reduced in size and increasingly homogeneous in social composition. This observation, however, does not mean that the first generations of private execution audiences were nearly as curtailed as they subsequently became. On the contrary, during the first several decades of private executions the audience often numbered in the hundreds. Although stipulated by law to take place in "private," the execution authorities (typically the sheriff) initially retained considerable discretion in deciding both how many community representatives to admit and who those representatives should be; the early privatization laws typically stipulated a *minimum* number of witnesses, whereas end-of-the-century modifications, in contrast, often specified a *maximum* number of witnesses, thus indicating that the private execution audience was an evolving social and legal category.

Respectable Women

The problem with the crowd was not confined to the lower classes, but also involved the presence of women and children. Women and children, just like the lower classes, were generally viewed as less reasonable, less capable of self-control, more emotional, and more volatile (Evans 1996; Masur 1989; Russett 1989). As such they brought an unpredictable element to all public gatherings, including the execution, and might, according to some observers of crowd behavior, more easily erupt into violence (cf. Modleski 1986; Barrows 1981). In American execution accounts, however, the problem of women spectators was more typically framed around the notion of respectability. With the separation of spheres, middle-class women's participation in public life was circumvented by the norms and assumptions that governed proper gender behavior, thus not only turning their presence at the increasingly suspect execution site into a gender breach of sorts, but also almost inevitably associating them with

prostitutes and other "public" women (Matthews 1992; Smith-Rosenberg 1985). For the tabloids, the focus on women spectators offered an opportunity to exploit the taint of sexual impropriety that public women were exposed to.

The tension around women spectators was further confounded by the sanctification of motherhood and new understandings of childhood (Beisel 1997; Zelizer 1985; Ariès 1962). With children increasingly viewed as separate and innocent beings, the stern warning of the gallows, having previously provided the justification for parading school children in front of it, could no longer be defended.[11] Seen as vulnerable and in need of protection, children were to be spared the horrors of the gallows rather than being intentionally frightened by it. A mother who brought her child to the execution site, therefore, was endangering not only her own respectability but also the moral well-being of her child.

Early nineteenth-century execution accounts, while typically reporting on the size of the crowd, seldom remarked on the gender distribution of spectators. As the century progressed, however, women figured with increasing prominence in accounts of the executions that were still held in public. One early-century newspaper remarked with some astonishment that "two . . . women, and three children!" were among the passengers on a boat struggling to get a glimpse of the execution of George Brown that was conducted on a vessel on the east river of Manhattan in 1819 (*Commercial Advertiser*, October 23, 1819). Included among the numerous spectators of Detroit's last public execution in 1831, "were many women, some of them with babes in their arms" (Quaife 1926:47), and, according to newspaper reports, the execution of David McKisson at Ravenna, Ohio, in 1838, attracted a crowd of several thousand, "one third of them women and children" (Post 1945:112). An observer of an execution in 1846 noted the presence of a "large proportion of well dressed females," many of whom "might have looked better at home." While this writer was reluctant to take their presence as definite proof that they, "by yielding to the occasion . . . were, therefore, cruel and unfeeling" (*National Police Gazette*, July 25, 1846), many others left that interpretation open. Of the nearly five thousand people who gathered to witness an execution in Kentucky "full one half of them were ladies—ladies, too, apparently of respectability" (*National Police Gazette*, June 19, 1847), and at another execution, "even *ladies—Christian ladies*," took part in the general excitement that surrounded the execution (Quinby 1856:53; emphasis in original). Observing that there were a "great many women among the crowd" waiting to see Margaret Harris

[11] As an example, before Israel Wilkins was executed by New Hampshire in 1820, "youngsters were called in from the playing field to prepare to go to the hanging" (quoted in Bessler 1997:24).

hanged, a newspaper complained that these women "evinced as much curiosity to see the revolting sight as the men, many of them sitting near the gallows for two and three hours as to get an unobstructed view (*Atlanta Constitution*, October 20, 1883).

As with other troublesome elements of the crowd, the problem with women spectators did not cease with privatization. The "most disgusting feature" of the execution of Anne Bilansky by Minnesota in 1860 was "the eagerness and persistence with which females sought to obtain eligible places to view the dying agonies of one of their own sex" (*Daily Pioneer & Democrat*, March 24, 1860, quoted in Bessler 1997:69). Commenting on the few women who had succeeded in gaining access to the execution enclosure proper, the paper simply could not imagine "what could have induced these women to voluntarily witnessing a spectacle so harrowing to the feelings of even the 'sterner sex'" (*Daily Pioneer & Democrat*, March 24, 1860). The "only unseemly portion" of the execution of John Ware by New Jersey, was "the appearance of several women at one of the windows" (*New York Times,* December 16, 1871, quoted in Madow 1995:517). The execution of the "famous bandit" Tiburcio Vasquez was watched by "a number of ladies [who had] secured a room, the windows of which commanded a view of the scaffold" (*Days' Doings*, April 10, 1875). A remarkable instance in connection with the executions of Josiah and Elizabeth Potts, one newspaper observed, "was the fact that quite a number of women had made applications to the Sheriff for permits to witness the execution. Such morbid curiosity is difficult to understand" (*Silver State*, June 20, 1890).

The problem with women spectators was twofold. First, women brought an aura of promiscuity and questionable respectability to the occasion, suggesting that, as long as women were present, the execution would retain its tainted status as popular entertainment. But, and this was the second problem, if the brutality of the execution was incompatible with respectable women's sensibilities, then, in case the women spectators really *were* respectable, the state was in a sense responsible for exposing them to a harmful influence. Seen in this light the execution was a potential source of moral corruption, made infinitely worse by the fact that it was provided by the state. Thinking along these lines, Lewis Lawes, warden of Sing Sing, observed that, although "women may make excellent jurors, even in capital cases, . . . as witnesses to grim tragedy, they have their failings. The merely morbid woman might stand it. Certainly we should not encourage that type of feminism" (Lawes 1932:326).

From this perspective, the only roles women could play that would leave their own as well as the execution's respectability intact were those of grieving family members, as the following examples illustrate. When an "aged aunt" came to bid her farewells to one of three convicts executed in Ohio in 1867, "she had to be

carried from the cell in a fainting fit." The sisters of another of the three "threw themselves upon their brother's neck, weeping bitterly, and they had to be taken from the room by almost main force" (*Cincinnati Daily Gazette*, May 1, 1867). As her two doomed brothers approached the gallows, "Miss Brassell rode up to her brothers, and throwing her arms around Joseph's neck, wept bitterly. He was deeply affected, and requested her not to witness the hanging, a request which she complied with" (*New York Times*, March 29, 1878). At a triple execution by North Carolina in 1879, "the parting scene between [one of the culprits] and his sister on the scaffold was most affecting, and moved the crowd of witnesses to tears" (*New York Times*, May 17, 1879).

By excluding women from the business of death, then, the execution authorities sought not only to rescue the occasion from the association with depravity, irrationality, and questionable respectability, but also to shield women from the brutality of death, thus upholding and reinforcing the bourgeois divergence of gender roles (cf. Kerber 1998). Although few, if any, states barred the presence of women by statute, the discretion given to sheriffs and prison wardens usually resulted in a de facto exclusion of women once executions were held in private (Bessler 1997).[12] The precarious role of women at the execution site, not surprisingly, had ramifications also for perceptions accompanying the execution of women. If women as *spectators* were challenging Victorian sensibilities about "natural" and appropriate gender boundaries, then the *execution* of women placed an almost intolerable strain on such interpretations (although not intolerable enough for the execution of women to cease altogether); as one commentator observed, the "horrors of the . . . execution of a woman are indescribable and will remain everlastingly vivid upon the memories of the witnesses" (*Philadelphia Inquirer*, June 26, 1889). Thus, as the execution audience became increasingly gendered, so did the execution itself—it became a business about men, conducted among men, in front of a male audience.[13]

[12] How unusual it was with the presence of women during private executions can be surmised from not only the numerous reports of who were in fact present (once the numbers were curtailed, the newspapers often listed the witnesses by name and/or position), but also the flurry of comments when women *did* participate, and then almost exclusively as attendants and/or physicians recruited to aid women convicts. When New York executed Martha Place in 1899, as an example, two women physicians "were the first women to see an execution under the present law" (*New York Sun*, March 21, 1899). Nine years into his term as warden of Sing Sing, Lewis Lawes remarked that "we have had but one woman witness in the death chamber. She was Nellie Bly, who represented a New York newspaper at the execution of Hamby. She was so overcome that we literally had to carry her out of the death house" (Lawes 1929:325).

[13] The concerns around the execution of women occasionally prompted legislative attempts to exclude women altogether from capital punishment (e.g., Pennsylvania in 1841; New York in 1886 and 1899; District of Columbia in 1911; Michigan in 1921, 1923, and 1929), save a particular woman from execution (e.g., New York in 1859; Vermont in 1905), or, less conspicuously perhaps, abolish capital punishment altogether in order to

Figure 1. The Final Scene—The Murderer, Nixon, expiates his crime on the gallows—hanged at 9:07 A.M., Friday, May 16, in the yard of the city prison. (*Days' Doings,* May 1873.)

Propriety and Proper Witnesses

While one of the main purposes of the public execution had been to produce emotions in the spectators, whether fear, awe, or solemnity, the depictions of the crowds during the period considered here more often pointed to joy, curiosity, and sometimes horror (typically in response to some mishap). As a response to the growing criticism of scenes thus depicted, the construction of private audiences became a matter of not only reducing the sheer number of spectators, or even controlling the class and gender composition of those invited to watch, but also of producing appropriate emotional responses to the execution. In other words, the organizational dilemma here was not only the "objective" social standing of the spectators but also, and increasingly so, the behavioral and emotional responses they displayed during the execution. Although "propriety" was a distinctly middle-class construct, and its formulation a direct response to the changing landscape of public life (Sennett 1977), it was a concept surrounded by ambiguities and uncertainties. Who had it? How did

prevent a particular woman from being executed (e.g., Minnesota in 1860; New York in 1899, Vermont in 1905). If such attempts generally failed, the problem with women's participation in the institution of capital punishment reverberated through every step of the social process that brought occasional women to the gallows and very few women to the execution chamber as spectators.

it look generally, and how specifically in the context of executions? The increasingly professionalized execution audience that came to supplement, and in many cases supplant, the "reputable citizens" who made up the first generation of witnesses, was in part at least a response to the difficulties in securing a predictable response from the spectators. In this sense, then, the behavioral and emotional responses by the spectators continued to reflect back on the execution event itself; that is, the professional witnesses of modernized executions were as much part of the execution performance as the earlier crowds had been.

With the audience curtailed, it was somewhat easier for those responsible for the execution to organize an event not immediately subject to criticism, sensationalism, or ridicule, even as the crowds outside the prison walls continued to cause trouble. Commenting on a Philadelphia execution in 1867, the *New York Times* remarked that there "was a dignified solemnity about the proceedings that cannot soon be forgotten by the few whom duty compelled to witness it" (August 30, 1867). The execution of six "Mollie Maguires" at Pottsville, as yet another example, was an "exceedingly well-managed" event, where witnesses were engaged in "smoking and conversation" while waiting, and where "officials stood respectfully aside" during prayers, and the sheriff "shook hands with [the men], who cordially returned his greeting" (*New York Times*, June 22, 1877).

But, as the newspapers were quick to point out, invited witnesses, contrary to expectations, were not always above criticism. As soon as the body of Chris Rafferty fell, to give an example, "many of the spectators rushed toward the door, paying no attention to the Sheriff, who requested them to keep their seats. Their demeanor was simply atrocious, the majority appearing to have no more feeling than so many brutes" (*Days' Doings*, March 31, 1874). During the execution of Hiram Coon in 1867, "every particle of space except the spot where the murderer was to stand was at once occupied by an eager and pressing crowd. . . . Coarse laughter and vulgar jokes were heard on every side" (*National Police Gazette*, March 30, 1867). Similarly, when Indianapolis staged an execution in 1879, the first ever in Marion County, "the Legislature was so excited by the execution that both houses adjourned, and several members were within the inclosure [*sic*] and manifested great eagerness to possess themselves of pieces of rope" (*New York Times*, January 30, 1879). Stories like these made it evident that the respectability associated with "gentlemen," that is, white, middle-class men, was not sufficient to give the execution the aura of gravity and solemnity that the authorities aspired to and/or the critics demanded.

Antigallows reformers had long argued that true respectability and gentility were qualities incompatible with participation in an execution crowd, thus suggesting that those who possessed

the very characteristics that would ensure the propriety of an execution were the ones least likely to choose to participate. Already in 1830, the Reverend Abel Thomas announced that he would never witness an execution if he could avoid it, since "such a spectacle cannot be otherwise than appalling," and "must naturally produce an instinctive shuddering in the feelings of every spectator" (Thomas 1830). Agreeing with this assessment, the *New York Tribune* remarked in 1867 that the "unlucky persons who would enjoy the spectacle [of an execution] most are the very ones who are most sedulously kept out" (quoted in Bovee 1869:166–67). "It seems to me," agreed Michigan representative S. W. Fowler, "that it must be a morbid appetite that craves blood or hanging under any circumstances" (State of Michigan 1891:1262). Representative General N. M. Curtis, New York, argued forcefully in 1890 that the criminal law "ought not be framed with such penalties that only men of the coarsest fiber can be relied on to enforce their sanction" (State of New York 1890:10–11). Senator Elkins of Tennessee made a similar point a few years later: "I would not touch the electric button or pull the hangman's rope to send a human being into eternity, and I feel that I should not by my vote require of others that which I would not myself be willing to do" (State of Tennessee 1915:603). A member of the New Hampshire house agreed that "society has no right to make a hangman of any citizen" (*Concord Evening Monitor*, February 23, 1915).

Comments like these raised serious questions regarding the ability of the state to gather appropriate witnesses (or executioners) among those who *wanted* to participate. The solution to this dilemma is captured by the slow process of substituting "witnesses" recruited from professional circles for community representatives seeking admission out of curiosity. In anticipation of the execution of four of the Lincoln assassins, "Gen. Hancock's headquarters were besieged for passes. The rule of limitation, however, was strictly adhered to, and none permitted to attend the execution for the mere gratification of curiosity" (Washington *Evening Star*, July 7, 1865). A New York execution in 1876, to which "no crowd was permitted," prompted the evaluation that "there never has been an execution in New York conducted in a manner so creditable"; this was so, the paper continued, because the small crowd of witnesses was comprised "chiefly by reporters and physicians, whom business and not inclination had impelled to be present" (*New York Times*, April 22, 1876). By the end of the nineteenth century, physicians and journalists dominated spectator accounts, sometimes being the only witnesses; for instance, during the execution of H. Sutherland by New York in 1898, "the witnesses . . . were all doctors, except the newspaper men" (*New York Times*, January 11, 1898). Lewis Lawes, warden of Sing Sing, determined to prevent the execution from turning into "a side-

show for the entertainment of morbid-minded and abnormal people," always tried to "secure as witnesses those who would prefer not to act but do so as a matter of duty" (Lawes 1929:186). Thus, while professional men might flinch and grow pale, they could be trusted not to defile the moment with coarseness, laughter, and eagerness. The professionalization of the execution audience, then, represented an effort to replace those with an inclination to watch with those who were fulfilling a professional obligation by their presence (Haney 1997).

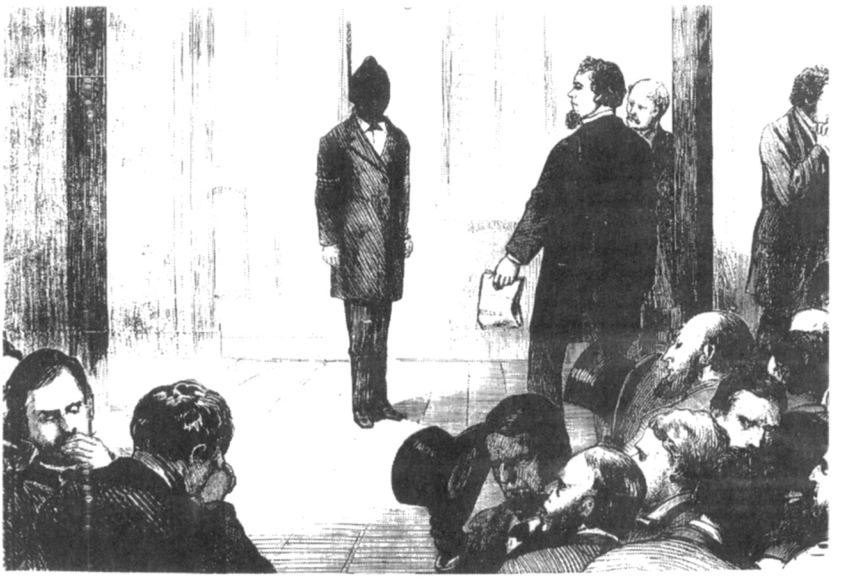

Figure 2. The execution of William Foster for the murder of Avery D. Putnam, March 21, 1872. (*Day's Doings,* April 5, 1873.)

The professionalized audience, through the personal disinterestedness it brought to the occasion, paved the way for an entirely new set of evaluation criteria to be applied to the execution, now derived from science rather than passion. This, as the following sections will illustrate, was to have consequences for spectator responses to "bungled" and otherwise "mismanaged" executions. The professionalized audience might tolerate the ghastliness of death itself, but not incompetence and mismanagement. To give an example, at the execution of the "murderer Runk," the jailer "pulled the noose only partially tight, leaving the knot directly under the chin. There was a movement of horror among the spectators at so palpable a blunder," and, according to the reporting newspaper, "there were men there that had witnessed many hangings, legal and illegal—men of strong nerve, policemen and peace officers, not easily shocked, but from the utterly unnecessary horror of the death to which [Runk was subjected] every one turned with a shudder." After the exe-

cution was over there was "a low savage criticism of what was universally denounced as a most atrocious and inexcusable blunder" (*National Police Gazette*, May 18, 1878).

Horror Stories and Scientific Humanity

Prior to the critique of punishment that emerged in the late-eighteenth century, especially among enlightenment scholars like Cesare Beccaria (1767), the brutality of executions was an asset more than a problem to the executing authorities. As the striking introduction to *Discipline and Punish* illustrates, the imposition of pain on the body of the condemned was often an exquisitely deliberate, not accidental, aspect of pre-nineteenth-century executions (Foucault 1979). By the mid-nineteenth century, however, brutality had become a liability and visible pain a sign of failure. This change captures several large-scale social trends, including medical changes, making the elimination of pain not only possible but also desirable (Pernick 1985); changes in the perception of death, making death itself something to recoil from in horror (Evans 1996; Ariès 1974; Saum 1974); the emergence of a humanitarian ideology (Haskell 1985) and new middle-class sensibilities (Spierenburg 1984; Masur 1989), making blood and agony intolerable elements of the execution; and, finally, the expansion of science, bringing efficiency, proficiency, and rationality to the heart of the execution ritual (Brandon 1999; Madow 1995). Viewed as general pressures, these trends had a profound impact on the understanding of capital punishment as a social institution. Most significantly, the entry of science and scientists into the execution chamber changed (or, according to scientists, ought to change) the basis for evaluating the execution process; according to scientists, no longer were visible clues enough, or relevant even, for determining the extent to which an execution was successful and painless. In practice, however, blood, gore, and burnt flesh remained resilient indicators of pain and suffering. As a result, actual execution arrangements remained under scrutiny as a contested and problematic area of state authority.

Any number of potential "flaws" (Haines 1992) could disrupt the execution ritual, but in this context the risk of "bungling" became particularly and increasingly troublesome. The tabloids reveled in stories about mishaps, typically describing them as "horrible," "shocking," "ghastly," and "terrible," and exploited to the utmost every sensational aspect. To give a few typical examples of how the newspaper press used the witnesses to convey high drama: When Charles Thomas was hanged in 1846, his "chest was convulsively heaving" and his "legs thrown out in spasmodic throes," making the spectacle "a scene of horror that few could look upon with a cheek unblanched" (*National Police Ga-*

zette, November 28, 1846). "A shudder of horror ran through the assembled people" at the execution of Henry Gardiner in 1867; "the rope had partially parted, so that the culprit was suspended by a single strand of the rope, which had so far stretched that his feet had struck the ground" (*National Police Gazette*, March 9, 1867). At the execution of Charles Chase the noose slipped and he fell to the ground; "He was carried up on the scaffold again, and when he was placed on the chair, said, 'Oh, it's hard! I am innocent!' The rope left a bright red mark around his neck from which the blood was seen slowly to ooze" (*National Police Gazette*, September 14, 1867). During an execution in Worcester in 1876, the head of the convict was almost severed, causing "a fearful tear extending over the front of the throat, and the blood gushing out in streams," spurting "fountain-like upward from one to two feet, the stream falling to the floor in a circle round the hanging body" (*New York Times*, May 27, 1876). During Nevada's execution of Josiah and Elizabeth Potts in 1890, the "horror-stricken . . . onlookers, many being ghastly ashen" watched as a ruptured artery caused "a stream of blood [that] burst forth from under the chin of the hanged woman staining her white raiment with . . . blood" (*Central Nevadian*, June 26, 1890; *Daily Nevada State Journal*, June 21, 1890). Summing up this endless parade of "horror," one observer exclaimed, "Never a year passed that does not chronicle several instances where the bungling of inexperienced deputies does not shock the sensibilities, not only of spectators, but of the public at large" (Keating 1888:236).

Thus sensationalized in the press, horror stories came to serve as an indictment of the state's ability to manage the death penalty in a way that consistently stayed above reproach. That is, the unpredictability surrounding "live" execution performances increasingly came under attack as the calls for humanitarianism grew louder, as technological advances promised greater efficiency and less uncertainty, and as the audience became increasingly professionalized. In this context, it was not surprising that, as one critic put it, "some other method of human slaughter is being sought for" (Pentecost 1890:180), and one that is not plagued with "mismanagement, incompetency, and torture" (*New York Times*, February 21, 1896).

The replacement of the "brutal" scaffold with a more efficient and "civilized" method of execution had already been discussed for some time in the medical and scientific communities, with poison or poisonous gas being early favorite alternatives, and several attempts had been made to improve and refine the hanging method. Exactly how to satisfy the requirements of a humane and civilized execution method remained a topic of disagreement, however, and it was not until science provided an irresistible answer to this dilemma—electricity—that the organization of executions in the United States became "private"

Figure 3. WANTED—A HANGMAN—ONE WHO UNDERSTANDS HIS BUSINESS. If we must have hanging, let us have a professional hangman, and no more of these terrible bunglings (*apropos* of a recent execution on Long Island). (*Days' Doings*, January 30, 1875.)

in a more modern sense (Brandon 1999; Metzger 1996; Beichman 1963).

On a patent application in 1882, Dr. Sheridan of New York claimed to have developed "an improved device for executing

criminals condemned to death" that "causes instantaneous death, without pain to the criminal and without disfiguring his body." In comparison, "the hangman's rope is but a clumsy device even in expert hands" (Keating 1888:236). Upon the recommendation of Governor Hill, the New York legislature named a commission in 1886 to examine the possibilities of replacing the gallows with a more palatable execution method. As a change "from the present barbarous and inhumane system of hanging" the commission recommended adopting electricity as "the most rapid and humane" method of execution.[14] In fact, the implication was that "killing by electricity was almost the same as not killing at all. It would remove with dignity and decorum the offender who had forfeited his life, and not be attended by the depraving incidents inseparable from guillotining, garroting, or even hanging, and of course not by the cruel accidents to which the art of the headsman was subject" (Howells 1904:196).

It is difficult to assess the full impact of the "war" between the two electricity giants, Thomas Edison and George Westinghouse, on the development that led some twenty states in rapid succession to adopt electricity as the preferred execution method, but there can be no doubt that powerful interests linked to these two men pushed as hard as they could to persuade New York to either adopt, in the case of Edison's supporters, or reject, in the case of Westinghouse's supporters, the electrical execution method (Brandon 1999).[15] Moreover, it is clear that the state of New York made the legislative decision to replace the gallows with electricity before anyone knew for certain how, why, and even whether the method would work in practice.[16] A few days

[14] The committee's conclusions were summarized by Clark Bell in a paper read before the Chicago Medico-Legal Society, March 2, 1889, and reprinted in the *Journal of the American Medical Association*, 1889, Vol. 12, pp. 325–32.

[15] What was at issue here was a conflict over currents; Edison, who maintained that the alternating current favored by Westinghouse was more dangerous than his own direct current, sought, more or less covertly, to ensure that the state would chose a dynamo with alternating current for its new execution machine, thus boosting his claim that Westinghouse's product was potentially deadly. Westinghouse, in turn, supported various efforts to stop the state's electricity experiment, including attempts to have electricity declared a "cruel and unusual" punishment, and to abolish capital punishment altogether (Brandon 1999).

[16] The scientific foundation on which the electric chair was constructed was built from a series of experiments on various domestic animals (e.g., dogs, horses). These experiments, not surprisingly, were subject to a lively public debate, at times with comical overtones (cf. Metzger 1996). In medical circles, however, the technical difficulties involved in producing not only quick and certain death, but also death that both was and appeared painless were no laughing matter; discussions focused on issues such as proper voltage, the placement of electrodes, and the position of the body. One medical commentary envisioned that "all wires and apparatus excepting the small collar would be out of sight, and the criminal would see nothing but an ordinary chair" (*Boston Medical and Surgical Journal* 1884:508). Another commentary rejected an arrangement where the convict would stand up—in large part because there "are so many histories of unseemly struggles and contortions on the part of the criminals executed by the old methods that the necessity of some bodily restraint is evident"—and concluded after some deliberation that "a chair is preferable to a table" (*Journal of the American Medical Association* 1889:330).

before the first execution by electricity, the *New York Times* observed that here is "a man to be legally killed by electricity, still a new enough force to furnish an almost unplowed field for scientific discovery, Men have been killed by it before . . . but . . . these deaths were accidental" (August 4, 1890). As far as New York was concerned, however, the electrical execution method came to epitomize the state's leading role in the advancement of science and civilization.

The first person killed by electricity was William Kemmler, on August 6, 1890, at Auburn prison in New York. Upon completion, one of the doctors who had witnessed the execution exclaimed that the event was "the culmination of ten years' work and study," and claimed that from this day "we live in higher civilization"; even "a party of ladies could sit in a room where an execution of this kind was going on and not see anything repulsive whatever" (quoted in Beichman 1963:417–18). According to the *Scientific American*, "The most intelligent of the witnesses, disinterested parties . . . declare that as a mode of execution the electrical plan is far preferable to the scaffold" (1890:96). The newspaper headlines following the execution did not, however, correspond with the claim that electrical execution represented a humanitarian victory. "Kemmler's Death by Torture," "Witnesses Faint and Sick," and "Terror Added to the Scene by the Burning of Parts of the Body," announced the *New York Herald* (August 7, 1890). "Far Worse than Hanging" was the assessment of the *New York Times* (August 7, 1890). The *National Police Gazette* concluded, "If hanging is a cruel mode of execution, as it is stated to be, electricity appears to be a still more cruel form" (August 23, 1890). According to the *New York Press* "the age of burning at the stake is past; the age of burning at the wire will pass also." The *New York Sun* agreed, and suggested that "civilization will find other lines on which to manifest progress" (cited in Beichman 1963:417). Observing that Kemmler's execution was widely denounced in the press "as horrible, brutal, atrocious, [and] a disgrace to humanity," one commentator asked in astonishment what "in the name of wonder did they expect. Did they not know that killing a human being is a horrible business, and that all attempts to make it appear refined and civilized must end in failure?" (Palm 1891:100).

Two years after Kemmler's execution, according to the *Journal of the American Medical Association*, "the disagreeable features of this form of judicial death have been reduced to a minimum,"

Other doctors were far less optimistic about the prospect of electrical killings. Dr. Abbott, for example, argued, "Experiments have been made, and it would appear from the results that there are serious hindrances to the adoption of this subtle agent" (*Boston Medical and Surgical Journal* 1889:170). Four years after the first execution by electricity, some doctors still were not quite convinced that electricity did in fact kill; in a letter to New York Governor Flower, Dr. Peter Gibbons made an "application for leave to attempt to resuscitate the life" of the next convict to be executed (reprinted in *New York Times*, November 14, 1894).

and "public clamor against the method may be said to have been effectively stifled, for the present at least" (1892a:236). The *Scientific American* agreed that if "anything connected with the forcible extinguishments [*sic*] of the life of a criminal can be designated as humane, then the electric process may be rightfully so claimed" (1895:28). Witnesses to Ohio's first electrocution in 1897 concurred with this assessment, calling it the "greatest innovation in the criminal history of the state" (*Cincinnati Enquirer*, April 21, 1897). The "marvelous success of the electrical killing" made it clear to some observers that "hanging is now a relic of barbarism in Ohio." The new killing method came "without any mishaps and without any suffering on the part" of the two convicts, and there "was nothing about it that excited the horror of the most susceptible to physical suffering." Moreover, the execution props themselves were far superior to those associated with hanging:

> Instead of the repulsive, dirty-looking iron railing that ran across the middle of the room to keep persons from getting beneath the condemned man when he dropped to his death, there is a handsome wood railing, extending the whole length of a platform about 20 feet long by 10 feet wide. This platform is covered with a handsome Brussels carpet.
>
> In the left-hand corner of the platform is situated the cabinet. This is made of pine, nicely painted and varnished and looks more like an elegant piece of household furniture than the receptacle for the death dealing contrivances that control the current which is shot through the bodies of the men to suffer death in the chair. (*Cincinnati Enquirer*, April 21, 1897)

Not everyone was convinced, however, that electrocution was indeed a superior killing method, at least not all the time. In the case of William Taylor, executed by New York in 1893, "the killing by electricity was not in all respects a success"; after the first application of electricity "it was thought that the victim had died," but "in a moment more a shudder passed over the little gathering. A strange noise was then heard. It was repeated, and it was then recognized as a gasp for breath. The spasmodic gasping continued . . . and some of the more nervous spectators were afraid that the condemned man would soon come to life." After the malfunctioning "apparatus had been rearranged," the prisoner, having been removed after the first failure, "was carried to the death chair by three keepers" and finally put to death (*New York Times*, July 28, 1893). When New York executed Aaron Halle in 1902 it took "three shocks" to kill him, and one of the witnesses "fainted when the third shock was applied" (*New York Times*, August 5, 1902). "It was not imagined that electricity could fail to kill instantly," stated an article in *Harper's Weekly* in 1904, "much less that the criminal, who had become the State's peculiar care, could be so ineffectually tortured as to froth at the

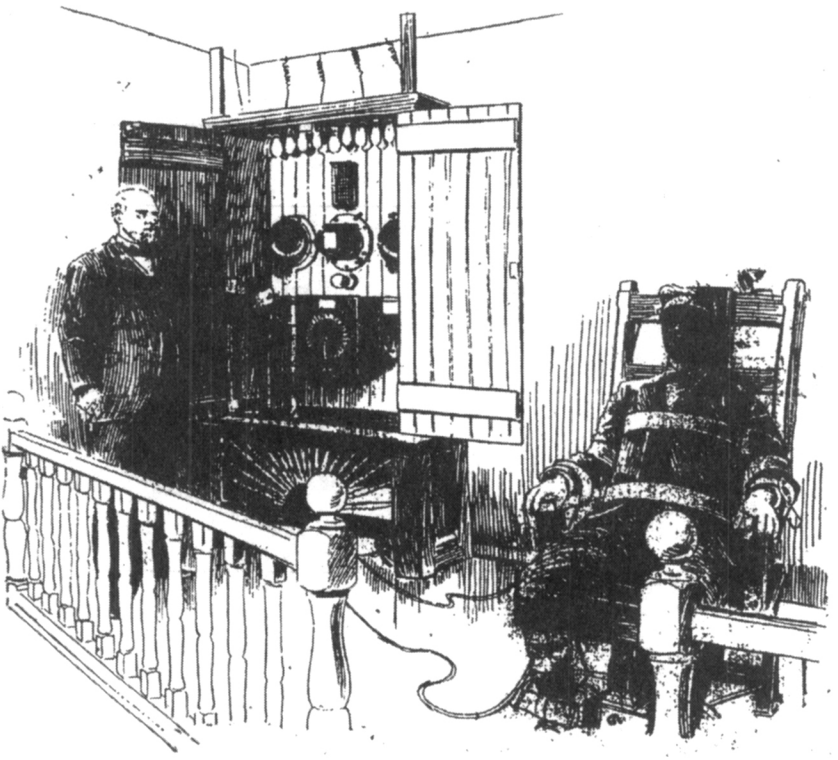

Figure 4. THE DEATH CHAIR. Warden Coffin switching on the death current. The chair is directly beneath the trap of the old scaffold. (*Cincinnati Enquirer,* April 21, 1897.)

mouth, and strain at his bonds with writhings [*sic*] of agony which almost burst them, and give out the smell of his burning flesh so that the invited guest was often made sick at his stomach by the loathsome and atrocious act" (Howells 1904:197). Despite the repeated failures of the electrical killing method, splashed on the front-pages of the popular press, to associate capital punishment with greater certainty, efficiency, and humanity, state after state embraced the new technology (Bowers et al. 1984), and in the process secured a smaller "disinterested" audience, dominated by doctors and scientists.[17]

[17] The efforts to find more "humane" execution methods did not stop with electricity, of course. Already in 1878, Dr. John H. Packard, a Philadelphia physician, advocated "the use of carbonic-oxide gas to deprive of life those condemned to death" (Palm 1891:97). Several earlier attempts had been made to improve upon the gallows (Teeters & Hedblom 1967). Nevada, after extensive debate, settled on lethal gas, which was used for the first time in February 1924, on Gee Jon. The execution was called a success by Nevada officials, and "physicians and scientists who attended the execution were unanimous in pronouncing it a swift and painless method," and the "most merciful form yet devised" (*New York Times,* February 9, 1924). According to *Nevada State Journal,* the execution confirmed that the "novel death law is upheld by the highest court—humanity" and hence "robs capital punishment of much of its horrors. Gee Jon nodded and went to sleep. It was as simple and humane as that. Those who witnessed the execution are agreed that never was man put to death as painlessly" (*Nevada State Journal,* February 9, 1924).

In the preceding accounts of the efforts to "humanize" the execution procedures there is an unmistaken ambiguity around exactly *whose* humanity legislators and commentators had in mind. Most changes in execution practices toward greater "humanity," according to several critics, had been driven not primarily by a concern for the person being executed but instead for the audience witnessing the execution. Claiming that it "was the onlookers . . . whose feelings were considered," one such critic argued that the process of privatizing and humanizing executions was driven by a desire to put a speedy end to a "spectacle that had become too painful for public endurance" (Chillingworth 1911:177–78). What was painful to the public, in other words, was the encounter with the visible pain experienced by the victims of execution. Reducing the appearance of pain, then, was a way to make the death penalty tolerable. And yet, the preoccupation with visible indicators of physical pain at the moment of execution, epitomized by oozing blood, the twitching of a choking body, and the sounds of gasps and gurgles, while providing a continuous justification for rearranging the execution event, also came to serve as a consistent source of criticism, of actual executions as well as the death penalty generally. Driving this process, throughout the period, was the newspaper press.

The Problematic Press

The early movement to privatize executions in the United States coincided with the rise of the penny press in the 1830s. Initially providing a solution to the dilemma of how to satisfy the public's need to know that an execution had taken place, the press quickly became a problem to be reckoned with.[18] The nineteenth-century penny press was distinguished from their predecessors not only by price and readership, but also by political independence and a commitment to the pursuit of "news," which was a novel notion at the time. The focus on "news" was at the heart of the controversy around the penny press and initially the source of the charge of "sensationalism"—that is, what was sensational and objectionable was precisely the accounts of detailed facts about events and incidents in daily life that distinguished "news" from other types of information (Schudson 1978). This is not to suggest that nineteenth-century editors were never informed by political motives—editorials clearly testify that they were—but simply to observe that the twin emphases on "news" and a mass audience constituted a more significant challenge to the elite readership of the commercial advertisers at the time

[18] The 1835 law making executions private in New York stipulated that newspaper be used to inform the public that an execution had taken place. Newspaper accounts, it was assumed, would be published by "respectable citizens who would attend the execution not as private spectators but as public witnesses" (quoted in Bessler 1997:43).

than the political agendas of individual editors, whatever they may have been. That is, the political pressure exerted by newspaper accounts of executions, whether deliberate or not, was not derived from *evaluations* of either individual events or capital punishment more generally, at least not directly, but instead from the minute reporting of every conceivable *fact* of the execution event, including, as I have illustrated, detailed descriptions of the convict, the audience, the setting, and the death struggle, minute by minute, gasp by gasp.[19] Thus, from the point of view of the authorities that were responsible for executions, you might say that, in many cases, the mirror the media held up to executions was not so much distorted as not distorted enough (Barrows 1981).

Torn between the (undemocratic) desire to close off the public entirely and the need to ensure that the public was properly informed about executions, some states were moved to curtail press activities, thinking perhaps, like one commentator, that if the "unnecessary and injurious notoriety given to executions by the press" was not allowed, then "a serious but unnecessary objection to the death penalty" could be avoided (MacDonald 1910:116). Although only a few states adopted such "gag" laws (among them New York, Minnesota, Illinois, Arkansas, Colorado, Utah, Virginia, and Washington), and as a solution they were either short-lived or ineffectual, the attempt to exclude the press and by extension the larger public nevertheless brought to the forefront the tenuous balancing act that the execution event had become (cf. McCafferty 1954). Through the gag laws the state sought to ensure that the notification that an execution had taken place was devoid of the kind of sensational detail that dominated the execution story genre.[20] Accompanying the gag laws were efforts to secure vows of silence among witnesses and other participants.

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[19] This is not to suggest that every detail thus reported was always absolutely accurate. The author of an 1894 handbook in journalism, Edwin L. Shuman, clarified the obligation of the professional journalist: "Truth in essentials, imagination in non-essentials, is considered a legitimate rule of action in every office. The paramount objective is to make an interesting story" (quoted in Schudson 1978:79). Nevertheless, most of the significant conflicts around newspaper accounts of executions are linked to the reporting of "truth," not the use of imaginative nonessentials. A particularly striking example is the controversy over a photograph taken by one of the reporters at the execution of Ruth Snyder in 1928, and published on the front page of the *New York Daily News*. The commissioner of correction immediately announced, "Photographing such an occurrence is directly contrary to the intention of the law" (even as he tried to discredit the photograph as a "fake"), and the warden of Sing Sing fumed, "In the future . . . there will be only one man from the press in the death chamber during electrocutions and he'll be a man I know" (*New York Times*, January 14, 1928).

[20] Less drastic responses to the problematic press, and also more common, were efforts to limit both the number of journalists and the range of newspapers or news organizations (like the Associated Press) to be invited to send representatives. In either case, the motivational force came from the ambition to control newspaper accounts of executions.

In New York, the 1886–88 commission that recommended electricity as the preferred execution method also made the then noteworthy recommendation that the details of executions not be made available to the press, and hence not to the public.[21] Although it passed both houses by wide margins, the law was surrounded by controversy from the outset. In direct violation of the new law the governor himself authorized the presence of two correspondents during Kemmler's execution, and with this official encouragement the other journalists who crowded the hotels in Auburn had no qualms about violating the law (Brandon 1999; Beichman 1963). The result, as I have shown previously, was that the newspapers demonstrated little restraint in commenting on the execution. It was not until after the next New York execution—four convicts killed at Sing Sing on July 8, 1891—that the state made a serious attempt at keeping the newspapers out of the execution chamber. That time, in response to the papers' continued blatant disregard for the law, at least nine newspapermen were arrested for having disclosed unlawful details about the execution (Beichman 1963; Madow 1995; *New York Times*, July 24, 28, 30, 31, August 5, 1891). Already at the next legislature, however, the law barring journalists was repealed, in part at least as a result of the counteroffensive launched by the press itself (Madow 1995).[22] The *New York Herald,* for example, which thrived in its persecuted role, exclaimed that it had

> always been the foremost exponent of the doctrine that the people should have the news, and nothing but the news. . . . The taking of human life is the highest judicial act of the State. . . . The people have a right to know whether the ministers of law put murderers to death in a humane and scientific manner, or whether they are horribly burned and tortured as Kemmler was. (July 30, 1891, quoted in Madow 1995:548)

In the state of Minnesota, similarly, three newspapers, in the words of the *Daily Pioneer Press*, were "indicted for giving news" (March 3, 1906). According to the law, which had never been used before, "though the newspapers of the state have printed detailed accounts of every hanging that has taken place in the

[21] The state of Minnesota argued before the U.S. Supreme Court in 1890, in defense of its decision to exclude representatives of the press, that the law "strives to minimize the evils of too much publicity of such awful scenes" (quoted in Bessler 1997:58). In Colorado, the law was "directed against the too common practice news-mongers have of parading sickening details under the disguise of enterprise," while the state of Washington likened the publication of execution details with "obscenity." The Colorado law also stipulated that the limited number of spectators permitted to watch were required to "keep whatever may transpire thereat secret and inviolate" (quoted in Bessler 1997:52, 55, 60).

[22] The most aggressive move was made by the *New York Sun*, which announced that it would make the issue a litmus test in the upcoming election; for "any office from Governor down, THE SUN is prepared to support the man who comes out squarely for free speech and unshackled newspaper press, as against the man who believes in the gag law" (August 3, 1891, quoted in Madow 1995:552).

state since the law was passed" seventeen years earlier, newspapers were prohibited from printing any details of an execution "beyond the statement of the fact that such convict was on the day in question executed according to the law" (*Daily Pioneer Press* March 3, 1906). What prompted the state to act this time was the cumulative effect of a controversy over a previously scheduled execution (the *Pioneer Press* had "shocked" the governor by printing a facsimile of the sheriff's invitation to that event), the cancellation of that execution after the convict had killed himself (the convict had "apparently preferred a less spectacular finish" than the one planned by the sheriff), and the governor's dissatisfaction with the sheriff's arrangements during this failed execution (*Pioneer Press*, March 3, 4, 1906). The court, siding with the state, upheld the "evident purpose" of the law, which was to "surround the execution of criminals with as much secrecy as possible, in order to avoid exciting an unwholesome effect on the public mind" (quoted in Bessler 1997:60). As it turned out, the law would never again be enforced; the execution that prompted so much controversy in 1906 was the last before Minnesota abolished the death penalty for good five years later.

Except for the few states that had statutory provisions for the presence of newspaper reporters, the decision to invite reporters to executions generally rested with the sheriff or warden. As a result, representatives of the press could be included or excluded on a case-by-case basis. Responding to the intense public interest in the case of Mary Rogers, for example, the sheriff initially decided to exclude all newspaper reporters from the execution, and to limit the number of witnesses to the twelve required by statute (*Bennington Evening Banner*, November 25, 1905). Just before the execution, however, he changed his mind and decided to admit two newspaper representatives who "will prepare an account for the other papers" (*Bennington Evening Banner*, December 7, 1905). According to that account, "The execution passed off without a mishap of any kind. There were no harrowing features or sensational incidents of any kind" (*Bennington Evening Banner*, December 8, 1905). Despite this official version of the execution, several other newspapers pointed out that there was a problem with the rope. According to one account the "rope was a trifle too long," with the consequence that "the woman's toes barely touched the floor for an instant. She was beyond suffering, however, her neck broken at the second vertebra" (*New York Times*, December 9, 1905). Another report, somewhat more sensational, claimed that

> an imperfect strand of rope was used, which, when subjected to the full weight of the woman's body, stretched and sagged. Her feet scraped the floor, her form doubled up spasmodically, and to put an end quickly to the sickening spectacle three deputies seized the rope and, dragging the body from the ground, held

> it suspended until life was extinct. . . . For 14½ minutes it lasted, while the condemned woman slowly strangled to death. (*Cincinnati Enquirer*, December 9, 1905)

Rebutting this more scandalous description of the execution, yet another paper called the so-called mishap a "rumor, which gradually waxed fat as it flew," when all it was was "an incident so slight as to slip the notice of many who were there" (*Boston Globe*, December 9, 1905).[23] The problem with the more sensational account, in other words, was not so much the factual basis as the decision to place the spotlight on what some viewed an insignificant detail.[24]

Why did the efforts to exclude the press generally fail? The most readily available answer refers to the resistance and counteroffensive coming from the press itself (Madow 1995). While the more respectable newspapers frequently complained about the reporting decisions of their more sensationalistic counterparts, the gag laws were generally met with uniform protest from the press. The *New York Times*, for example, concluded in the context of the Illinois gag law that "to try to draw a fixed line . . . between the adequate and excessive presentation of criminal news would be to undertake a hopeless task, and certainly the Illinois Legislature will have no more success in performing it than did our own when it made a like attempt some years ago" (*New York Times*, May 22, 1911).[25] More importantly, however, the gag laws were deeply contradictory, simultaneously relying on and seeking to violate the ideal of objective news that by the end of the nineteenth century had fully permeated both media institutions and public expectations. This contradiction, I suggest, contributed not only to uneven enforcement of the laws, but also to disagreements and conflicts among the execution authorities themselves. Thus, legislators, governors, wardens, and scientists could, and sometimes did, arrive at different conclusions regard-

[23] The same issue of the *Boston Globe* also reports on a statement made by Mary Rogers' attorney, Charles McCarthy; according to him, "This piece of work this afternoon was the most revolting job imaginable. The woman struck flatly upon her feet, and her arms and legs were drawn up and down in her struggles" (*Boston Globe*, December 9, 1905).

[24] A similar criticism over details in execution stories was frequently voiced in the medical community, especially after the adoption of electricity, which came to implicate doctors more directly in the execution process than previous methods. In an article published in the *Journal of the American Medical Association*, Dr. A. D. Rockwell addressed the "great outcry against the use of electricity" raised by the press. Rejecting the accuracy of what the press "described as repulsive mutilation by burns and scalds" as a result of electrocution, Rockwell observed, "While the degree of heat generated, and the influence exerted upon the *superficial tissues*, varied in the different cases . . . and in no instance was there any such repulsive disfigurement as has been intimated, and in all but one or two the effects produced were so *superficial and slight* as to be *unworthy of comment*" (*Journal of the American Medical Association* 1892b:364, emphases added).

[25] The *Illinois State Journal* reports that the bill, which had already passed the house, "succeeded in passing the senate without being notified. . . . Without waiting for an explanation of the bill, the presiding officer ordered the roll called, and the bill went through by a vote of 29 to 0" (May 20, 1911).

ing the (dis)advantages of press representation at executions. While most state representatives shrank from the prospect of seeing bungled executions on the front pages, the desire to showcase a perfectly flawless execution was a constant temptation to the defenders of capital punishment. Among opponents of the death penalty, in contrast, there was an assumption that exposure to problematic executions would eventually turn the public against the death penalty, but also a fear that perfectly sanitized executions would somehow conceal the inherent horrors of state-authorized killings.

The battle over the press generally, and the gag laws in particular, was increasingly waged on terms similar to those of the initial controversy over public executions some sixty years earlier. If the problem then was the demoralizing impact of actual executions, the subsequent controversy was centered on the demoralizing impact of *accounts* of executions. As long as the press was allowed to print detailed accounts, the execution might as well have been public to "every one who gloats over the sickening story of the dreadful scene," complained Governor Andrew of Massachusetts already in 1855 (quoted in Spooner 1900:12). Posing the question if private executions, "to which only the privileged few are admitted," were any less demoralizing than the public ones, abolitionist Andrew J. Palm, asked: "Are not the minutest details of every execution spread before the readers of the newspapers in so glowing language that they see the degrading scene in imagination, even more vividly than they could with their own eyes, if they were permitted to be present?" (Palm 1891:98). If one of the key motives behind the privatization of executions was to curtail the often embarrassing publicity around the execution event, "the activity of the Press has nowadays recovered a good deal of the publicity which the suppression of public executions temporarily removed," concluded a letter to the editor of the *Living Age* in 1911 (Benson 1911:107). Representative Henry Rathbone, Illinois, told a congressional hearing on capital punishment that "the effect on young people reading the newspapers of those executions . . . [is] most horrifying" (United States 1926:2). The criticism directed at sensational press accounts, then, held that "the modern news facilities give to private executions all the demoralizing effects of public executions" (Adelman 1917:102).

Abolitionists, not surprisingly, exploited the ambivalence surrounding press accounts of executions, and deliberately tried to blur the lines between actual public executions and publicly described executions in order to discredit capital punishment more generally. To hold secret judicial killings, according to one such commentator, "is a tacit confession that it must be done hereafter in secret or not much longer at all. When the State begins to be ashamed of what it does the practice is doomed, you may be

sure" (Pentecost 1890:181). In a memorial sent to the legislature of Michigan, the First Unitarian Church of Kalamazoo argued that "if the deterrent theory be sound, then we should return to the old-time widely advertised public execution, with all the horrible details open to the eye" (State of Michigan 1893:1254). Governor Dix of New York, 1912, argued against capital punishment by pointing to "the gruesome setting of an execution and the effect on the community at large of this conspicuous and forcible taking of life by the agents of the State" (reported in *New York Times*, January 12, 1912). Addressing the argument that you "have but to make death by law a private act within the walls, barring even the agents of the press, and every evil influence upon beholders is avoided," Charles Kassel argued that the "thoughtful reader . . . must realize that if we keep the knowledge of such scenes from the very classes who are to be benefited by the dreadful example, we make an abject surrender of the age-long argument for the death penalty" (Kassel 1924:308). Thomas Mott Osborne, former warden of Sing Sing, stated flatly that "when public executions were found to be harmful, the wrong remedy was applied"—"they abolished publicity instead of abolishing executions" (Osborne 1925:157).

By the end of the period, when the most immediate problems with the execution crowd had been transferred to more distant audiences, it was evident that the earlier class-specific concerns about "morbid curiosity" had been transferred as well, even if no longer linked so specifically to the actual execution (Kaminer 1995). Critics kept lamenting over "the enormous interest taken in murder trials, the fierce struggle for seats in court, [and] the enormous sale of the papers which have the fullest details of the reigning horrors" all of which indicated "a morbid attitude on the part of the public" (Schuster 1912:736). It is horrible to reflect, many thought, how some capital cases give "thousands of people the keenest excitement, and, I venture to add, enjoyment" (Benson 1911:107). *The Nation,* an avid opponent of the death penalty, argued that capital punishment "rouses the morbid passions of crowds which assemble around the jail whenever there is an execution" (1921:252). "The mob is all-powerful," concluded Clarence Darrow, the well-known lawyer who defended Leopold and Loeb; it "demands blood for blood . . . and enjoys the sensation of having [a convict] put to death by the state" (Darrow 1928:330). The removal of the public from the immediate vicinity of the execution, then, apparently did little to solve the problem with the sensationalism that surrounded nineteenth-century public executions. With the press as both a "witness" to the execution and an observer of other spectators (or, an audience of audiences), whether professionals, family members, or gatherers outside the jail, maintaining the legitimacy of capital punishment remained—and remains today—a

balancing act of the tensions brought forth by different audience solutions.

Conclusion

In this paper I have argued that it is through the eyes of the audience that the execution event, and by extension capital punishment itself, is evaluated and judged. From this perspective, the audience occupies the epicenter of the nineteenth-century transformation of executions—not only was the audience itself a major object of manipulation (size, class, gender), but it was also the driving force for other changes (site, method, procedures). And yet, concerns about execution audiences obviously do not emerge in a social vacuum. The different aspects of the transformation of the execution identified here were linked in various ways to other nineteenth-century developments, including the rationalization of authority, democratization, professionalization, the gendering of social and public space, cultural changes, and scientific/medical advances. Viewed as general influences, these developments exerted different kinds of pressures on the execution, and as such were all contributing to the demise of the public spectacle. Viewed as more specific influences, however, as I have done in this paper, they reveal messier and more open-ended links to the institution of capital punishment, and not all pointing in exactly the same direction. That is, the transformation of executions was neither a passive reaction to a changing world, nor the result of a logical policy response to a uniform set of social pressures. On the contrary, all the changes discussed here were evolving responses to a crossfire of different social and political interests, some overlapping but others conflicting. What I have showed in this paper is how the audience, in all its shapes and forms, was a focal point—sometimes as an object, and sometimes as a subject—of divergent social interests and conflicts throughout the period. As such, the audience serves as both a reflection of and a commentary on capital punishment.

This approach has at least two consequences for a more general understanding of the links between audience concerns and capital punishment. On the one hand, the audience emerges in the shape of a foreign body, or an intruder, that has penetrated the institution of capital punishment with a set of demands that must be satisfied in order for the death penalty to work as it is "supposed to." During a capital punishment debate in Massachusetts, for example, one commentator argued that the death penalty would become less objectionable were it "stripped of [the] defects" associated with bungled and/or poorly administered executions, that is, the incidents most likely to be noted and commented upon by various audiences (*Boston Globe,* February 6, 1899). With this comment in mind, we can understand, along

with an Iowa official in 1925, the sentiment that some executions—those without mishaps of any kind—ought to have "been held open to the public to counteract opposition to capital punishment" (Saathoff 1927). Thus, despite its status as a potentially troublesome intruder in the execution process, the audience cannot be extracted from the event to ease the production of a perfect execution, since it is only with the aid of an audience that the execution can ever rise above criticism. On the other hand, the audience emerges as the main aorta of capital punishment, without which it cannot survive as a public institution. Moving beyond the audience as an external but legitimizing force, in other words, the justification for the death penalty (whether conceptualized primarily in terms of deterrence or retribution) is intimately and inextricably linked to audiences concerns.

What can this analysis tell us about the contemporary institution of capital punishment? Many of the issues identified here have remained at the forefront of the capital punishment debate, pushing and cajoling the execution authorities into new adjustments, elaborations, and transformations of the execution event. The result has become an execution event significantly different, if not always qualitatively so, from the one we left off in the 1930s. The quest for an increasingly "humane" execution method that can withstand criticism has essentially eliminated hanging (Kaufman-Osborn 2000) and produced lethal injection as the dominant execution method in the United States today. "Instead of suffering electric shock and burns and gagging on poison gas, the victim simply drifts off in a trance," observed the *New York Times* after the first case of lethal injection, in Texas in 1982. And yet, the witnesses, "all of whom appeared shaken by the experience," were not of one mind about what had happened; according to one of the reporters who witnessed the execution, the convict simply "turned his head upward and yawned," but another witness said he "gasped and moved his stomach" (*New York Times*, December 8, 1982).

Moreover, the electric chair, hailed as a technological wonder and a humanitarian victory a century ago, is currently on its way to becoming declared unconstitutional. In October 2001, the Georgia supreme court ruled that "its specter of excruciating pain and its certainty of cooked brains," makes it cruel and unusual; that is, death by electrocution "inflicts purposeless physical violence and needless mutilation that makes no measurable contribution to accepted goals of punishment" (cited in *Los Angeles Times*, October 6, 2001). Clarifying the link to audience concerns, one newspaper asked: "Why is the hood placed over the face of a condemned prisoner about to be executed in the electric chair if not to spare witnesses to this procedure the horrifying contortions of his last grimace?" (*Atlanta Constitution*, October 9, 2001). How much more palatable, then, to accomplish the

killing in a way that resembles "watching somebody go to sleep" (*Atlanta Constitution*, October 26, 2001). Repeating the pattern of previous conflicts over other so-called humanitarian improvements, the contemporary opposition to lethal injection is more likely to come from anti–capital punishment circles. Most recently, Nebraska Senator Ernie Chambers of Omaha has been trying to prevent the replacement of electricity with lethal injection in that state, because "he believes lethal injection is an attempt to sanitize the death penalty" (*Omaha World-Herald*, January 7, 2002). As in earlier times, however, audience concerns and attitudes toward capital punishment more generally do not correspond very well (Lesser 1993).

Additional organizational adjustments, some facilitated by the new execution method, have served to sanitize the execution event even further. Glass separates witnesses from the potential noises and smells of the execution chamber, and a drapery ensures that witnesses "are not privy to the preparations of the condemned body" (Lynch 2000:19); at least some prison officials assume that observing the preparations "would needlessly upset the witnesses" (Johnson 1990; also Cabana 1996). Moreover, the curtain can be used to quickly cut off the view should something go wrong with the execution. This happened when Texas executed Raymond Landry in 1988; his arm broke loose, "spewing the fluids around the chamber" (Lifton & Mitchell 2000:181). While concerns associated with the executioners remain (they are typically hidden, and never solely responsible for the killing), a new set of concerns have arisen around the psychological stress potentially experienced by staff members who participate in the execution (Johnson 1990). These concerns have led to exceedingly routinized and bureaucratized killing arrangements, where staff members work in close units with clearly defined tasks (Johnson 1990; Lynch 2000; Sarat 2001). One perhaps unintended consequence of increased consideration for staff, and probably also judges who are sometimes besieged with last-minute requests for intervention, is that executions once more are starting to be scheduled during the (business) day. Since executions resumed in the United States in 1977 after a ten-year hiatus, the overwhelming number of executions (80%) until 1995 occurred during the night—to make the event less accessible to journalists and protesters, perhaps—but the trend is now toward a more convenient hour for those required to take part (cf. Lifton & Mitchell 2000).

The debate over media coverage of executions has been revitalized with the prospect of televised executions (Lesser 1993), most recently in conjunction with the execution of Timothy McVeigh. So far, no actual execution has been broadcast to the public, but several lawsuits have been filed, and some court rulings have been favorable. In 1977 a fifth circuit appeals court

reversed the decision of a federal district court to allow the filming of executions in Texas; while the circuit court agreed "that the death penalty is a matter of wide public interest," it disagreed "that the protections of the first amendment depend on the notoriety of an issue" (Palmer 1998:171). In 1997 a federal judge in California supported the media's claims when he declared that the public must "have sufficient access to the execution . . . so that it can understand and appreciate the nature and quality of the event" (cited in Lifton & Mitchell 2000:181). That ruling was overturned the following year.

Finally, in at least one respect, the execution event today is *qualitatively* different from earlier executions: the entry of the murder victim's family into the witness box. Nineteenth-century execution accounts rarely mentioned the presence of such family members, and according to available sources, no state once executions were no longer public specified that family members of the murder victim could (or should) participate (cf. McCafferty 1954). As late as 1990, Robert Johnson observed that almost never, "with rare exceptions, are the families of the victims involved in any way with the execution process" (Johnson 1990: 21). In many ways, this is a change unanticipated by historical precedents as well as the present analysis. It indicates a (re)personalization of the execution that is a stark departure from the efforts begun with the privatization of executions in the 1830s to depersonalize the execution and to purify it from the polluting influences of individual emotions and desires. How can we make sense of it? Moving into the speculative realm, I think it would be a mistake to view this as simply a reassertion of the spectacle or as a recapture of the "natural genre of execution" from a sanitization process gone too far (Laqueur 1989:355). It is undeniable that the public debate about capital punishment has become increasingly focused on retribution, while deterrence has lost ground (Gaubatz 1995), but in my reading of the contemporary debate, that change is more a result than a cause of the entry of the murder victim's kin in the arena of the death penalty; that is, retributive claims "are often made in the name of families of homicide victims, who are depicted as 'needing' or otherwise benefitting [*sic*] from the retributive satisfaction" that capital punishment generally, and executions specifically, are thought to provide (Radelet & Borg 2000:52). Thus, the change in audience composition, I suspect, is most immediately a result of the so-called victims' rights movement that has swept the entire criminal justice system during the past decades and, more recently, has succeeded in gaining access to the execution chamber for grieving family members seeking "closure" (Kaminer 1995). That observation, however, introduces more questions than it answers. Where does the emphasis on "closure" come from, and how has it come to be linked to viewing an execution? Going out on a

speculative limb, I suggest that the merger of victims' rights concerns and execution practices that has produced a partially novel execution audience is linked to at least two larger cultural processes: first, the further commodification of individual life—death to the perpetrator signals the worth of the victim, and as such becomes a measure of grief and loss—which in turn, and second, is linked to the reconceptualization of risk in modern life, making premature and "unnatural" death, as well as other random disturbances, increasingly intolerable, both materially and psychologically. These issues being the subject of a future analysis, I end the current one with the following observation by Wendy Lesser:

> As a killing carried out in all our names, an act of the state in which we by proxy participate, it is also the only form of murder that directly implicates even the witnesses, the bystanders. (1993:4)

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Appendix

The data for this paper come from multiple sources, both primary and secondary. Primary documents include (1) state-level legislative records of petitions, bills, decisions, and, if available, debates, regarding capital punishment; since few nineteenth-century legislative records include more than the barest amount of information (e.g., bill number, bill author, vote, and decision), I have made an effort to complement legislative records with newspaper coverage; (2) various pamphlets, books, and articles (including editorials) addressing the issue of capital punishment in a public forum; (3) commentaries about capital punishment in various professional journals (especially medical and scientific); and (4) newspaper accounts of executions. Secondary sources include historical, legal, political, and cultural analyses of various aspects of capital punishment in the United States.

Since the bulk of the evidence in this paper is drawn from newspaper accounts of executions, a more detailed description and discussion of those data is warranted, especially since they are also used as sources of information. The selection of accounts is not systematic in the sense that it represents a random drawing from the total pool of execution accounts (or executions). Even if it had been possible to draw such a sample (which it is not, given the gaps in the collections of historical newspapers) it would not necessarily have served the ends of this paper. Rather, an effort has been made to include execution depictions from different geographical regions, different types of newspapers, and different kinds of controversies. Moreover, and more importantly, given the links between execution controversies and the politics of capital punishment, I have targeted executions that represent critical events in the history of capital punishment, either locally or nationally—examples include the first execution in a county, the first execution of a woman, the first electrocution, the first private execution, the first centralized execution, and various other newsworthy aspects involving convicts and/or their crimes. Greatly facilitating the data-selection process has been a data set compiled by Watt Espy and John Smykla that contains information (date, place, gender, method, etc.) on all confirmed executions in the United States since colonial times (Espy & Smykla

1994). The result of this selection process is a data set that is deliberately skewed in the direction of controversy and sensationalism. As descriptions of more or less controversial executions, however, the cases sited are fairly typical in the sense that any one account of a controversial execution generally, if not always, could have been substituted for any other in a similar publication (many accounts were in fact replicated in more than one newspaper, a practice facilitated by the emergence in the nineteenth century of central news organizations such as the Associated Press). Comprehensive execution reports throughout the nineteenth century typically provided detailed descriptions of the crime, the condemned, the execution apparatus, the general arrangement, the procession, the moment of death, the crowd/witnesses, disturbances (if any), and any other details deemed worthy of mentioning. The total pool of accounts I am working with involves some 200 executions (several involving more than one convict) drawn from about 140 different newspapers.

While sharing a general approach to reporting executions, different newspapers nevertheless produced accounts that could differ markedly in ways not only involving details (e.g., dress, appetite, general demeanor of the convict) but also potentially more significant aspects of the execution (e.g., mishaps, visible expressions of pain). Thus, different newspapers occasionally give different accounts of the same execution, some claiming a flawless and orderly arrangement whereas others emphasize mishaps, drama, and confusion. The discrepancies in such cases, which often are more pronounced for evaluations of facts (was the mishap big or small) than the facts themselves, have multiple origins, including different journalistic practices, different editorial stances regarding capital punishment, and, occasionally, different responses to official gag orders. Given that the argument in this paper is built on claims, interpretations, and accusations concerning executions—not objective features—such discrepancies serve to strengthen rather than weaken the conclusions drawn. That is, the conclusion that the execution audience played a central role in the politics of capital punishment during the period considered here requires that the perceptions of audiences and the executions they witnessed were demonstrable areas of contention.