The Cultural Life of Capital Punishment: Responsibility and Representation in Dead Man Walking and Last Dance

Austin Sarat*

For Death must be somewhere in a society; if it is no longer (or less intensely) in religion, it must be elsewhere; perhaps in this image which produces Death while trying to preserve life . . . .

—Roland Barthes

Every death agony expresses a certain truth . . . . Hence the insatiable curiosity that drove spectators to the scaffold to witness the spectacle of sufferings truly endured; there one could decipher

* William Nelson Cromwell Professor of Jurisprudence and Political Science, Amherst College. I am grateful to Amrita Basu, Carol Clover, Marianne Constable, Lawrence Douglas, Tom Dumm, and Joel Handler for helpful comments on a previous draft of this essay. Another version was published in The Killing State: Capital Punishment in Law, Politics, and Culture (Austin Sarat ed., 1999).

crime and innocence, the past and the future, the here below and
the eternal. It was a moment of truth that all the spectators
questioned: each word, each cry, the duration of the agony, the
resisting body, the life that clung desperately to it, all this
constituted a sign.

—Michel Foucault

Even a theater of fictional murder is not an innocent theater. The
point, or one of the points, of the murder story is that there can be
no innocence in circumstances that give rise to murderous
impulses—even if the impulses are aroused in mere bystanders,
witnesses, observers; even if the murder is not real.

—Wendy Lesser

I. INTRODUCTION

Punishment, as Nietzsche reminds us, makes us who we are and
constitutes us as particular kinds of subjects. The subject constituted
by punishment is watchful, on guard, fearful, even if never directly
subject to the particular pains of state-imposed punishment. One of
the primary achievements of punishment, to use Nietzsche’s vivid
phrase, “is to breed an animal with the right to make promises,” that
is, to induce in us a sense of responsibility, a desire and an ability to
properly discharge our responsibilities. Dutiful individuals, guilt-
ridden, morally burdened—these are the creatures that punishment
demands, creatures worthy of being punished.

Punishment constitutes subjectivity through the complex juridical
mechanisms that put it in motion, as well as the moral tenets and
legal doctrines that legitimate it. Here too, we can see the centrality
of responsibility. The state will only punish responsible agents,
persons whose "deviant" acts can be said to be a product of consciousness and will, persons who "could have done otherwise." As Blackstone put it, "to constitute a crime against human laws, there must be, first, a vicious will, and, secondly, an unlawful act consequent upon such vicious will." Thus, the apparatus of punishment depends upon a modernist subject and a conception of the will that represses or forgets its "uncertain, divided, and opaque" character.\footnote{William Blackstone, Commentaries *21. See also Aristotle, Nicomachean Ethics 125-28 (W.D. Ross trans., Oxford Univ. Press 1925) (connecting the wrongfulness of an act to the mental states and dispositions of the actor). In the modern law of criminal responsibility, the language of a vicious will or depraved state of mind has receded. More often, criminal intent is framed as a question of fact, the relevant issue being whether the defendant had knowledge of the likely consequences of the prohibited nature of his act. See George Fletcher, Rethinking the Criminal Law 397 (1978).}

In addition, because most citizens are not, and will not be, directly subjected to the state's penal apparatus, punishment creates a challenge for representation that is deepened to the point of crisis when the punishment is death.\footnote{William Connolly, The Will, Capital Punishment, Cultural War, in The Killing State, supra note 8, at 187, 190.} Punishment is inscribed in both our unconscious and our consciousness. It lives in images conveyed, in lessons taught, in repressed memories, in horrible imaginings. Some of its horror and controlling power is, in fact, a result of its fearful invisibility. "Punishment," Foucault reminds us, "[has] become the most hidden part of the penal process."\footnote{Id.} He argues that:

This has several consequences: [Punishment] leaves the domain of more or less everyday perception and enters that of abstract consciousness; its effectiveness is seen as resulting from its inevitability, not from its visible intensity; it is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage crime . . . . As a result, justice no longer takes public responsibility for the violence that is bound up with its practice.\footnote{For a discussion of the nature of this challenge, see Lesser, supra note 3.}

It may very well be, however, that the more punishment is hidden, the less visible it is, the more power it has to colonize our imaginative life. We watch; we seek to conjure an image of punishment; we become particular kinds of spectators, anticipating a glimpse, at least a partial uncovering of the apparatus of state discipline.

And what is true of all punishment is particularly true when death
is a punishment. That the state takes life and how it takes life insinuates itself into the public imagination, even as the moment of this exercise of power is hidden from view.\textsuperscript{15} This particular exercise of power helps us understand who we are and what we as a society are capable of doing. And as Wendy Lesser so skillfully documents, the hidden moment when the state takes the life of one of its citizens precipitates, in an age of the hypervisual, a crisis of representation.\textsuperscript{16} This crisis occurs as we confront the boundaries of our representational practices,\textsuperscript{17} where we must determine who decides what can and cannot be seen, and whether particular representations of the "reality" of the pain on which the penal apparatus depends are adequate.\textsuperscript{18}

The modern execution is carried out behind prison walls. In these semi-private, sacrificial ceremonies a few selected witnesses are gathered in a carefully controlled situation to see, and by seeing to sanctify, the state's taking of the life of one of its citizens. As Richard Johnson suggests:

In the modern period (from 1800 on), ceremony gradually gave way to bureaucratic procedure played out behind prison walls, in isolation from the community. Feelings are absent, or at least suppressed, in bureaucratically administered executions. With bureaucratic procedure, there is a functional routine dominated by hierarchy and task. Officials perform mechanistically before a small, silent gathering of authorized witnesses.\textsuperscript{19}

Capital punishment becomes, at best, a hidden reality. It is known, if at all, by indirectness.\textsuperscript{20} "The relative privacy of executions nowadays (even photographs of the condemned man dying are almost invariably strictly prohibited)," Hugo Bedau notes, "means that the average American literally does not know what is being done when

\begin{flushleft}
\textsuperscript{16} See Lesser, supra note 3. And, as Dolan and Dumm argue, this crisis of representation is not limited to the domain of punishment. "[T]he struggle over the representation of politics in the public spheres of late twentieth-century America has become the single most important force shaping political life in this country." Frederick Dolan & Thomas Dumm, Introduction to THE RHETORICAL REPUBLIC: GOVERNING REPRESENTATIONS IN AMERICAN POLITICS 1 (Frederick Dolan & Thomas Dumm eds., 1993).
\textsuperscript{17} For a discussion of the legal definition of these boundaries in the context of capital punishment, see Sarat & Schuster, supra note 15, at 417-24.
\textsuperscript{20} See Foucault, supra note 2, at 9. See also Jacques Derrida, Force of Law: The Mystical Foundation of Authority, 11 CARDOZO L. REV. 925 (1990).}
\end{flushleft}
the government, in his name and presumably on his behalf, executes a criminal."\textsuperscript{21}

While executions have been removed from the public eye for more than fifty years, in most states capital punishment still must be witnessed by members of the public in order to be legal. It is this linkage between violence and the visual that Lesser explores when she notes that witnesses are "there not just to ensure that the deed is actually done . . . but to represent and embody the wider public in whose name the execution is being carried out."\textsuperscript{22} Thus the state's power to kill is linked to the imperatives and privileges of spectatorship. Whatever the means chosen, execution is always a visual event.

Historically executions were, in Foucault's words, "more than an act of justice"; they were a "manifestation of force."\textsuperscript{23} They were always fundamentally about display, and in particular the display of the majestic, awesome power of sovereignty as it was manifested on the body of the condemned.\textsuperscript{24} Public executions functioned as public theater, but also as a school for citizenship.\textsuperscript{25} While the act of execution linked violence to spectatorship, it also helped constitute citizens as subjects. On Foucault's account, the drama of execution produced a sadistic relation between the executioner, the victim, and the audience. Yet it also contained a pedagogy of power. "The public execution," Foucault explained,

has a juridico-political function. It is a ceremonial by which a momentarily injured sovereignty is reconstituted. It restores that sovereignty by manifesting it at its most spectacular. The public execution, however hasty and everyday, belongs to a whole series of great rituals in which power is eclipsed and restored (coronation, entry of the king into a conquered city, the submission of rebellious subjects) . . . . [T]here must be an emphatic affirmation of power and of its intrinsic superiority. And this superiority is not simply that of right, but that of the physical strength of the sovereign beating down upon the body.

\textsuperscript{21} HUGO BEDAU, THE DEATH PENALTY IN AMERICA 13 (1982).
\textsuperscript{22} LESSER, supra note 3, at 37.
\textsuperscript{23} FOUGAULT, supra note 2, at 50.
\textsuperscript{24} One thing that typically has not been a subject of public display has been the executioner's identity. The anonymous executioner is, at once, a stand-in for the community in whose name the execution was carried out and a sign of the "shame" attached to those who turn our bloodlust into blood-thirsty deeds. See GEOFFREY ABBOTT, LORDS OF THE SCAFFOLD: A HISTORY OF THE EXECUTION (1991); Roger Callois, The Sociology of the Executioner, in THE COLLEGE OF SOCIOLOGY 233, 247 (Dennis Hollier ed., Betsy Wing trans., Univ. of Minn. Press 1988).
of his adversary and mastering it . . . 26

The pleasure of viewing, as well as the instruction in one’s relation to sovereign power, was to be found in witnessing the pain inflicted, as well as in the hope that seeing the death of another would convey the meaning and character of death itself.

The excesses of execution and the enthusiastic response of the attending crowd created an unembarrassed celebration of violence that knew no law except one person’s will materialized on the body of the condemned. 27 The display of violence was designed to create fearful, if not obedient, subjects. Execution without a public audience was, as a result, meaningless. “Not only must the people know,” Foucault claimed, “they must see with their own eyes. Because they must be made afraid, but also because they must be witnesses, the guarantors of the punishment, and because they must to a certain extent take part in it.” 28 In this understanding of the relationship of punishment and the people, “the role of the people was an ambiguous one.” 29 They were, at once, fearful subjects, authorizing witnesses, and lustful participants.

Yet the public execution was also an occasion for the exercise of popular power, if not popular sovereignty. In Foucault’s words, “[i]n the ceremonies of the public execution, the main character was the people . . .” 30 It was an occasion on which people could, and did, mass themselves against the punishment that was to be carried out before their eyes. Their presence ensured that the act of execution itself, not just the judgment of death, could be contested 31 and that execution could not be reduced to a bland routine. “[I]t was on this point,” Foucault suggests,

that the people, drawn to the spectacle intended to terrorize it, could express its rejection of the punitive power and sometimes revolt. Preventing an execution that was regarded as unjust, snatching a condemned man from the hands of the executioner, obtaining his pardon by force, possibly pursuing and assaulting the executioners, in any case abusing the judges and causing an

26. FOUCAULT, supra note 2, at 48-49.
28. FOUCAULT, supra note 2, at 58.
29. Id.
30. Id. at 57.
31. As Gatrell argues, “These crowds behaved and spoke in terms which polite observers grew less able to understand. Many crowds acquiesced in what was done by the law and affirmed its righteousness. The hanging of murderers was usually approved. But when humbler people hanged for humble crimes, they could act like a Greek chorus, mocking justice’s pretensions.” GATRELL, supra note 27, at 59.
up roar against the sentence—all of this formed part of the popular practices that invested, traversed and often overturned the ritual of public execution . . . . It was evident that the great spectacle of punishment ran the risk of being rejected by the very people to whom it was addressed.32

Today the death penalty has been transformed from a dramatic spectacle to a cool, bureaucratic operation, and the role of the public has become strictly limited and controlled.33 The chance of either disruption or rejection, as a result, has been minimized. The public has been displaced by a small, select, and carefully controlled group of witnesses, who are provided a fleeting glimpse of the rituals of state sponsored death as it is turned into a problem of administration. Thus, the problem of representation, spectatorship, and the public’s role remains.

What we know about the way law administers death comes in the most highly mediated way as rumors, reports, accounts of the voiceless expression of the body of the condemned—or it comes in images and representations made available in popular culture. There it lives in its fictive re-creations.

My interest in this Article is to make a particular intervention in scholarship about the death penalty,34 and to turn away from abstract, philosophical questions about the morality or legality of state killing35 and narrow policy-relevant research36 toward an analysis of the cultural life of capital punishment.37 My work builds on David Garland’s suggestion that we should attend to the “cultural role” of legal practices, to their ability to “create social meaning and thus shape social worlds,” and that among these practices none is more important than how we punish.38 Punishment, Garland tells us,

32. FOUCAULT, supra note 2, at 59-60, 63.
33. See JOHNSON, supra note 19, at 5.
34. Franklin Zimring recently called on scholars to broaden the focus of death penalty research and claimed that the increasing unresponsiveness of policy-makers and courts to social science evidence concerning capital punishment sets researchers “free of the constraints that might apply if such work was relevant to immediate decisions on executions.” Franklin Zimring, On the Liberating Virtues of Irrelevance, 27 L. & SOC’Y REV. 9, 12 (1993).
37. This approach to the study of capital punishment is more fully described in Austin Sarat, Capital Punishment as a Fact of Legal, Political, and Cultural Life, Introduction to The Killing State, supra note 8, at 3. For an important precursor to my approach, see LOUIS MASUR, RITES OF EXECUTION: CAPITAL PUNISHMENT AND THE TRANSFORMATION OF AMERICAN CULTURE, 1776-1865 (1989). See also JOHN SLOOP, THE CULTURAL PRISON (1996).
“helps shape the overarching culture and contribute to the generation and regeneration of its terms.” Punishment is a set of signifying practices that “teaches, clarifies, dramatizes and authoritatively enacts some of the most basic moral-political categories and distinctions which help shape our symbolic universe.” Punishment lives in culture through its pedagogical effects, and it teaches us how to think about such basic social categories as intention, responsibility, and injury. In addition, it models socially appropriate ways of responding to injuries done to us.

The semiotics of punishment is all around us, not just in the architecture of the prison, or the speech made by a judge as she sends someone to the penal colony, but in both “high” and “popular” culture iconography, in novels, television, and film. Punishment has traditionally been one of the great subjects of cultural production, suggesting the powerful allure of humankind’s fall from grace and of our prospects for redemption. But perhaps the word “our” is inaccurate here, since Durkheim and Mead, among others, remind us that it is through practices of punishment that cultural boundaries are drawn. Solidarity is created by marking difference between self and other, though dis-identification as much as imagined connection. “[M]ass-mediated representations of prisoners function as a public display of the transgression of cultural norms; as such, they are a key site at which one may investigate the relationship of the individual to the culture in general, as well as the cultural articulation of ‘proper behavior’.”

This is also true when the punishment is death. Execution is, even now, an occasion for rich symbolization, for the production of public images of evil or of unruly freedom, and for fictive re-creations of the scene of death in popular culture.

I examine the cultural life of capital punishment through a reading of two recent films about capital punishment: Dead Man Walking and Last Dance. I am interested in the cultural politics of these

---

39. Id. at 193.
40. Id. at 195.
41. On the aesthetics of punishment, see Wilf, supra note 25, at 54.
42. See EMILE DURKHEIM, THE DIVISION OF LABOR IN SOCIETY (George Simpson trans., The Free Press 1964) (1933).
44. SLOOP, supra note 37, at 3.
46. DEAD MAN WALKING (Polygram Filmed Entertainment 1996); LAST DANCE (Touchstone Pictures 1996). These films appeared at about the same time and were intended for a mass audience. They came out at a time of deepening public support for capital punishment and an increasing impatience with the frequent delays between death sentences.
films and the way they seek to convey knowledge of capital punishment. How is the death penalty represented in these films and what connections do they forge among death, spectatorship, and the constitution of legal subjectivity? What do they suggest about the legitimacy of state killing?

To answer these questions, I analyze the way these films speak to two basic conceptual categories to which Garland directs our attention. The first of these is individual responsibility and its utility in explaining the causes of, as well as directing our responses to, crime. Dead Man Walking and Last Dance do not explore the social and structural factors that some believe must be addressed in responding to crime; instead, they are preoccupied with the question of personal responsibility. To the extent that they contain an explanation of crime and a justification for punishment, it is to be located in the autonomous choices of particular agents. While building dramatic tension around the question of whether their hero or heroine deserves the death penalty, these films convey a powerful dual message: First, legal subjects can, and will, be held responsible for their acts; second, they can, and should, internalize and accept responsibility.

Last Dance and Dead Man Walking depend upon categories—agency, will, and responsibility—the stability and coherence of which are today increasingly called into question. Yet they evade rather than engage those questions. These films are deeply invested in the constitution of a modernist, responsible subject as the proper object

and executions. As any attentive American who lived through the 1970s, 80s, and 90s knows, the politics of law and order have been at center stage for a long time. From Richard Nixon’s “law and order” rhetoric to Bill Clinton’s pledge to represent people who “work hard and play by the rules,” crime has been such an important issue that some now argue that we are “governing through crime.” See Jonathan Simon, Governing Through Crime, in THE CRIME CONUNDRUM 171, 174 (Lawrence M. Friedman & George Fisher eds., 1997). In the effort to show that one is tough on crime, the symbolism of capital punishment has been crucial. These films are but two examples.

Last Dance and Dead Man Walking are important interventions in the debate about capital punishment, but, as I will argue, their interventions, while significant at the level of some of our most crucial cultural categories, are quite circumscribed in the questions they raise about capital punishment.

I make no claims here about the representativeness of these films. My purpose is to read them as cultural productions. Yet it might be worth noting that both films are examples of one type of death penalty film, which I label the “sentimental tale.” These films focus on a biographical or autobiographical reconstruction of the condemned, raising questions of responsibility and repentance. Other death penalty films, which I label “injustice tales,” take as their central thematic the question of whether the condemned is really guilty, that is, whether an innocent person will be executed. A classic of this genre is I WANT TO LIVE (United Artists 1958).


48. See Connolly, supra note 11, at 158. See also WENDY BROWN, STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY (1995); Homi Bhabha, Minority Manoeuvres and Unsettled Negotiations, 3 CRITICAL INQUIRY 431 (1997).
of punishment, a subject who, as Nietzsche would have it, has the "right to make promises." They suggest that there can be, and is, a tight linkage between crime and punishment, such that those personally responsible for the former can be legitimately subject to the latter.

The second conceptual category to which this paper speaks involves representation, especially how the death penalty is represented to us, and the cultural politics of representational gestures. While *Dead Man Walking* and *Last Dance* initially appear to deploy complex representational practices that call attention to the partiality and limits of all representations, they ultimately depend on a representational realism that allows viewers to think that they can know the reality of the crimes for which death is a punishment and of the death penalty itself. Instead of inviting us to imagine the scene of death and its significance, they seek to inspire confidence that their viewers can "know" the truth about capital punishment through their "you are there" representations of execution.

Yet the death penalty plays an uncanny role in film, pointing to the limits of representation, to the limits of our ability to "know" death and, as a result, to our inability to be sure whether state killing is an appropriate, proportional response to the crimes that appear to justify it. Whenever and however death is present in film, it reminds us that, in this domain, seeing is not, and cannot be, knowing.

Traditionally, the cultural politics of state killing have served to shore up status distinctions and distinguish particular ways of life from others. Thus, it is not surprising that today the death penalty and death penalty films sit at an important fault line in our

---

49. The very title of the film *Dead Man Walking* emblematizes a crisis of representation. The title invites the viewer to imagine the impossible—a dead man walking—and it conveys the indeterminacy of death in the sense that death row inmates are described as dead men before they are actually put to death. I am grateful to Susan Schmeiser for pointing this out to me.

50. Perhaps Edmund Burke had it right when he suggested that in certain domains the imagination is more powerful than the senses. "The imagination," he said, "is the most extensive province of pleasure and pain as it is the region of our fears and hopes and all of our passions." EDMUND BURKE, A PHILOSOPHICAL ENQUIRY INTO THE ORIGIN AND OUR IDEAS OF THE SUBLIME AND THE BEAUTIFUL 31 (James Boulton ed., Routledge 1958) (1759). Envisioning the unknown "creates a terror unequalled by actually seeing the object of fear." See Wilf, supra note 25, at 64.

51. "Our death, which is intended for us alone, is the one experience of our life that we can't directly experience . . . . We can have access to the event only indirectly, by extrapolating from the experience of others." LESSER, supra note 3, at 135.

52. Writing about the end of public executions in the mid-nineteenth century, Masur notes that it "marked the triumph of a certain code of conduct and set of social attitudes among the middle and upper classes; it symbolized a broader trend toward social privatization and class segmentation; it turned the execution of criminals into an elite event centered around class and gender exclusion rather than communal instruction . . . ." MASUR, supra note 37, at 6.
contemporary culture wars. In the way they address questions of responsibility and in the representational practices on which they depend, *Dead Man Walking* and *Last Dance* (whatever the intentions of those who made them) enact and depend upon a conservative cultural politics, in which large political questions about what state killing does to our law, politics, and culture are bracketed and in which viewers are positioned as jurors deliberating solely on the question of whether a particular person merits death. While they raise questions about the calculus of desert that justifies the death penalty in particular cases, they support the conceptual foundations of capital punishment, and they legitimate its place in America's penal apparatus.

II. THE SCENE OF THE CRIME AND THE CONSTRUCTION OF RESPONSIBILITY

Every story about punishment is inevitably a story about crime, about its causes and the process of assigning responsibility for it. How we think about punishment is in part a function of what we know and think about the crimes that give rise to it. The prevailing common sense suggests that the severity of punishment should be proportional to the seriousness of the crime and that punishment should only be deployed against responsible agents, against free and moral agents, persons capable of knowing right from wrong and choosing to do one or the other. As former Supreme Court Justice Robert Jackson once explained:

53. In this context to favor capital punishment is, so it is said, to be a defender of traditional morality against rampant permissivism, of the rights of the innocent against the rights of the guilty, of state power against its anarchic critics. To oppose it is to carry the burden of explaining why the state should not kill the killers, of producing a new theory of responsibility and of responsible punishment, and of humanizing inhuman deeds. Proponents of state killing, Connolly contends, put aside "the instability [of] categories of will and responsibility ...." Connolly, supra note 11, at 200. At the same time, they highlight "the theatricality of the state's power to kill, and the promise to make state punishment 'morally proportional' to the act." Id. at 35.

54. Others have pointed toward such a reading of *Dead Man Walking*. "The movie *Dead Man Walking* . . . fails to deliver the same unequivocal abolitionist punch as the book . . . [V]iewers are torn about whether or not this is even a film with an anti-capital punishment point of view." See Carole Shapiro, *Do or Die: Does Dead Man Walking Run?*, 30 U.S.F. L. REV. 1143, 1144 (1996).

55. As Baudrillard suggests, in regard to capital punishment, "the thought of the right (hysteric reaction) and the thought of the left (rational humanism) are both equally removed from the symbolic configuration where crime, madness and death are modalities of exchange ...." JEAN BAUDRILLARD, SYMBOLIC EXCHANGE AND DEATH 169 (Iain Hamilton Grant transl., Sage 1993) (1976). And all of this is carried on against the background of cultural divides that are becoming ever more intense as they become more complex and unpredictable.

56. Shapiro contends that *Dead Man Walking* "leaves the audience clueless about the systematic inequities and arbitrariness" of the death penalty. Shapiro, supra note 54, at 1145.


58. See Morris, supra note 7, at 127.
The contention that injury can amount to crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil . . . .  

This understanding of crime and punishment depends on what Stephen Carter calls “bilateral individualism.” As Carter explains:

The dominant culture’s understanding of victimhood awards the status of victim to someone who loses something . . . because of the predation of someone else. Victimization, then, is the result of concrete, individual acts by identifiable transgressors . . . . [The dominant understanding] invents a reality in which the only victims are those who have suffered at the hands of transgressors, and in which any sanctions should be directed toward deterring or punishing those transgressors . . . . To one who accepts this vision, a world like ours, one in which so many violent crimes occur and go unpunished by the state, must seem a world in which the forces of order have lost control . . . . People are afraid of crime and are afraid of becoming victims. They want to strike back at someone to liberate themselves from fear . . . . [B]ilateral individualism can rationalize the need to strike back only by insisting that . . . transgressors are real, individual people, and other individuals have the right to turn their assaults aside.

In this vision the legitimacy of punishment depends on a relatively precise moral calculus in which punishment is a measured and proportionate response to crime. Linking crime and punishment is the supposed reality of individual responsibility.

A second explanation for crime, Carter notes, complicates the calculus of punishment by altering the bilateral individualist’s straightforward story of responsibility. It does so by pointing away from individual agency toward the sweep of history and the differential positions of the social groups from which criminals (and often their victims) come. This “enterprise takes the form of a search for explanations rather than a search for villainous agents and attributions of blame; the remedial enterprise is directed to altering

62. See id. at 426.
institutions, systems, and incentives rather than to exacting punishment . . . .”63 A structuralist perspective is less intent on carefully reconstructing the crime and assigning personal responsibility; instead, it uses the fact of crime to highlight the need to alter social structures.

In the cultural life of capital punishment, at least as it is exemplified in *Dead Man Walking* and *Last Dance*, Carter’s bilateral individualism, I will argue, is the prevailing motif. Because stories of the lives and deeds of particular persons have much more dramatic appeal than stories in which causation is impersonal and diffuse and the source of crime is located in social structure,64 it is not surprising that these films provide narratives of crime and punishment that focus on describing what a particular person did and on fixing responsibility on a blameworthy agent.65

In popular culture the linkage between crime and punishment can be, and regularly is, made visual. This is certainly the case in the films under consideration. They focus on people already condemned to death, living on death row, whose legal guilt is not in doubt, and whose crime is graphically and repeatedly presented to us. Both are tales of persons coming to terms with their responsibility for gruesome crimes. In *Dead Man Walking*, Matthew Poncelet (played by Sean Penn) has been sentenced for his part in a double murder, in which a classically clean-cut boy and girl are accosted while parking in the woods. They are then led off into a clearing, where the girl is raped and repeatedly stabbed, and both ultimately are shot execution style. In *Last Dance*, Cindy Liggitt (played by Sharon Stone) is on death row for killing two people with a crowbar during a burglary of their home.

*Last Dance* and *Dead Man Walking* ask us how one human being can take the life of another. What forces propel such “evil” deeds? They inquire about the capacity of spectators to recognize a shared humanity, to empathize, and to care for the condemned. They do so

63. Gordon, supra note 60, at 38.


65. Whether one favors individualist or structuralist explanations, it is important to recognize that there is an asymmetry between the cultural life of crime and of punishment. While we are bombarded with representations of crime, punishment, as I suggested above, is almost invisible. See ALISON YOUNG, *IMAGINING CRIME* 15-16 (1996). The scene of criminality is a familiar one, a common though not unproblematic sight for most citizens; the scene of punishment is neither familiar nor common. The result is that the bridge between crime and punishment works primarily at the rhetorical level, or at the level of imagination. Seeing the scene of crime, confronted with its graphic depiction, we are left to identify a responsible agent and imagine a just punishment.
through pairing the condemned with a cinematic "buddy." Each film shows the relationship of one other person—a lawyer and a nun—to the condemned. This person becomes the stand-in for the film's viewers. Can we have as much understanding and compassion as that person? Should we? Should it matter to us whether Cindy Liggitt or Matthew Poncelet accept responsibility for the crimes for which they already have been found legally responsible?

In Dead Man Walking and Last Dance images of the crime play a large role in suggesting how these questions should be answered. The crime is presented in a variety of ways and reenacted repeatedly throughout both films in a duet with the impending execution. Visual equivalences are created, and the viewer is positioned alternatively as crime-scene investigator, juror, omnipotent truth seeker, and voyeur. Through their preoccupations with the scene of criminality these films establish the background conditions against which responsibility and blameworthiness can be fixed and punishment ultimately assessed. Both bring a "who-did-what-to-whom" logic to bear on criminal and victim, bracketing questions about history and structure that would complicate the assignment of responsibility and the assessment of punishment. Additionally, by presenting repeat, but incomplete, reenactments of the crime, in which the "truth" of what happened only gradually unfolds, these films highlight the partiality and problematics of viewing, seeing, and knowing. Yet this suggestion is undone in climatic scenes that ultimately reassure the viewer that the whole truth has been revealed.

While the use of the repeated reimagining of the crime puts us at the scene as both potential victim and killer, we see the crime most often from the perspective of the killer, first approaching the hapless victim and then acting out a murderous passion. What Young says about Psycho and Silence of the Lambs is also true for Dead Man Walking and Last Dance as well: "While offered temporarily the experience of identifying with the victim, the spectator is incorporated into the film much more significantly as an accomplice of the killer.... [This] identificatory relation is achieved through an association of the spectator's look with the gaze of the cinematic

66. Many death penalty films are structured around a relationship between the condemned and another person who befriends them or takes up their cause. In these films we are invited to see the condemned through that person. Harding contends that "these secondary characters are pivotal" in that they are often able to see the human face behind the monstrous deeds that bring someone to death row. Roberta Harding, Celluloid Death: Cinematic Depictions of Capital Punishment, 30 U.S.F. L. REV. 1167, 1172 (1996). If these characters can see beyond the crime, then perhaps so can the viewers of the films.

67. In each there is also a problem of how we identify with their caring for and about the condemned. In Dead Man Walking it is Sister Helen's deep religious conviction that moves her; in Last Dance it is Rick's growing attraction to Cindy that moves him.
apparatus." We are powerless to stop the violence that unfolds before us, and we are cinematically reminded of that powerlessness since we see crimes already committed, for which the murderer is now in the custody of the state. So we are safe. The deed is done; we cannot rewrite history.

In *Last Dance* the crime is presented in various ways—through photographic stills seen by different characters and in moving images presented in flashback. Each of these techniques has particular significance in focusing the viewer's attention on issues of responsibility and representation. Thus, when we first see the crime in the form of crime scene photographs glimpsed over the shoulder of Rick Hayes—lawyer, ne'er-do-well brother of the governor's chief-of-staff, and new employee of the state clemency board—the camera gives us but a brief view of the bloodied body of a man lying on the floor, a fleeting suggestion of what happened. It pans quickly to Rick's face and pauses as he registers the horror of what he sees. This register marks one dimension of the responsible subject, someone who identifies with the victim and knows, at the deepest level, that he or she is incapable of doing such gruesome deeds.

We see more of the crime scene when Rick's first romantic interest in the film, Jill, knocks over a file in his apartment, spilling its contents onto the floor. Again there is a quick shot of the bloody photos now strewn on the floor as if in a photo array presented to a court. This time the camera cuts to Jill to catch the same distressed and disgusted look that had marked Rick's first sight of the photographs—the same reminder of the way "respectability" depends on just the right combination of responsibility and inhibition.

The looks on the faces of Rick and Jill are "our" looks. They establish a shared understanding of the horror of a sudden, murderous death, and they represent our reaction to the horrible violence that lurks just beyond law's boundary. Responsible people are repelled by the kind of violence depicted in the photographic representation of Cindy Liggitt's crime.

---

70. See Young, *supra* note 68, at 32.
71. For a discussion of the uses of this imagery in capital trials, see Sarat, *supra* note 64, at 30.
72. For an empirical examination of the reactions of jurors in capital cases to photographic evidence, see Austin Sarat, *Violence, Representation, and Responsibility in Capital Trials: The View From the Jury*, 70 IND. L.J. 1103 (1995).
The baseline of responsibility established by Rick and Jill's innocent gaze does two things. First, it provides a standard for viewers to judge Cindy as she later relives the crime in several flashbacks. It also sets up an argument that Rick makes later in the film, namely, that those who use capital punishment to respond to murder—and are not repulsed by the violence it does—are no different from those they condemn. As he puts it talking to the governor about Cindy, "We never gave her a chance to become like us. Now we've become like her."

This is a key moment in Last Dance. It provides a glimpse of what a structuralist response to crime would look like in popular culture. Moreover, it challenges individualism by presenting the subject's position as fluid, contingent, and reversible. In Rick's line, responsibility is temporarily shifted from the criminal to those who occupy respectable positions in society; "we" are responsible for denying Cindy the chance to be respectable. Moreover, those who use capital punishment as their way of responding to murder become murderers themselves.

Yet, as Last Dance proceeds, the structuralist critique fades. Rick becomes preoccupied with his own tragic romantic attraction to Cindy, an attraction signaled by the film's title. More importantly, Cindy herself counters Rick's initial structuralist response by insisting on her own responsibility.

At the level of the film's representational practices, the photographic stills through which we first see the crime in Last Dance represent it as an evidentiary matter. We see the evidence as a jury would see it. The still photographs freeze and partialize the scene of death, allowing us to know the pain of the victim through the most graphic representations of the wounds inflicted. Yet they also serve as a reminder that, when we see motion pictures of the crime, we are being given a privileged view available to us only in our access to the memories of the film's central characters. Motion

73. This moment is a reminder of the stark fact that when law runs out, sitting just beyond is the executive's plenary power to pardon. See Kathleen Dean Moore, Pardons: Justice, Mercy, and the Public Interest (1989). The haunting specter of executive clemency depends on the will of a single person, who sits as an omnipotent force with the power to grant life. To enlist this power, as Natalie Zemon Davis reminds us, requires the fashioning of persuasive narratives, narratives of the kind that Rick tries to provide for the governor. See Natalie Zemon Davis, Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France (1987). Yet as Last Dance so vividly demonstrates, no narrative can guarantee clemency.

74. This is, of course, the classic anti-capital punishment argument made by Albert Camus. See Albert Camus, Reflections on the Guillotine, in Reflections on capital Punishment 125 (Albert Camus & Arthur Koestler eds., 1957).

75. See Sarat, supra note 72, at 1122.

76. Scarry contends that we can only know pain through images of weapons and wounds. See Scarry, supra note 18, at 16.
pictures serve as the revealed truth of the crime; they fix our gaze as coextensive with Cindy's recollection of the crime.

We see the crime through Cindy’s eyes twice: once as she looks through an art book at a dark and evocative painting of a woman being tormented for her sins; the second time in a dream that disturbs and awakens her. It is in these scenes that her insistence on the appropriateness of the logic of free will, agency, and responsibility becomes clear. The first time we get an abbreviated look as she bludgeons one of her victims, Matt McQuire, and sends him hurtling through a glass door. In this moment of murder she appears to be in a trance, until she is finally interrupted by her accomplice’s call to stop. The second time we get a more complete picture, a picture not available to the crime’s victims or to the jury. We see Cindy and her accomplice driving toward the house where the crime will occur, both of them getting high by smoking crack cocaine. We watch the entry into the house and helplessly follow Cindy as she goes into the bedroom where Debbie Hunt, the other victim, awakens, recognizes Cindy, and yells, “It’s you, you fucking whore. Get out of my house.” Cindy silences her with a blow to the skull.

It is in Cindy’s deeply troubled reactions to these graphic recollections that the narrative of responsibility unfolds. They both connect her with Rick and Jill, and, through them, to us. They serve as a point of critical engagement with Rick’s assertion that “we” are somehow to blame. Though she is a murderer, she is disturbed, indeed haunted, by what she has done. While Rick, the lawyer and clemency investigator, is eager to forgive her crime or to attribute responsibility to her troubled childhood and the fact that she was high on crack at the time of the killing, Cindy, who has already been found legally responsible, insists on taking responsibility. As she explains to Rick:

That night [the night of the killing] is inside me like a giant shadow. I hated everything I didn’t have, and Debbie Hunt used to rub my nose in it. All that hate blew everything apart. I killed them. I killed myself. I know what I did. I can’t change that. I can only change myself. I guess there are some things that can’t be forgiven.

In an odd forecast of the drama that would unfold around Karla Faye Tucker, and in a recapitulation of Carter’s bilateral

---

77. A truth is here revealed to the film’s viewers that was not available at her trial, since evidence of her use of crack before the crime was suppressed by an incompetent judge during the penalty phase.

78. On the transformation of Karla Faye Tucker, see Beverly Lowry, The Good Bad Girl,
individualism, Cindy focuses attention on an "I" who acted. She insists that no one is to blame but herself.79 This insistence on taking responsibility marks a change that has already occurred in Cindy, and it reminds us that she, like us, is an agent capable of being held responsible. That she is guilt-ridden and morally burdened makes her an icon of modernist subjectivity, a subjectivity fully embracing the burden of its will put to "evil" purposes.80 Moreover, it establishes the dramatic question that haunts the film: Does she really deserve to die for her crime? In Dead Man Walking the drama of responsibility unfolds in a more conventional way. Instead of the criminal resisting the structuralist analysis of his interlocutor, it is the latter who, in this film, speaks the language of responsibility against the evasions and deflections of the condemned. But in this film, as in Last Dance, the viewer's attention is fixed on a gradual unfolding of the "truth" of the crime against which responsibility can be measured and punishment fixed.

The crime is seen primarily through the imagination of the main character, Sister Helen Prejean. As in Last Dance, the scene of the crime provides a recurring dramatic frame within which the question of whether Matthew Poncelet deserves to die can be posed. The repeated reenactment of the crime in a series of flashbacks spread throughout the film is key to the construction of Poncelet's subjectivity. It delineates the difference between being responsible and taking responsibility.

As to the question of innocence and guilt, law is indifferent to the distinction between being responsible and taking responsibility. The Fifth Amendment protects the accused from being forced to take responsibility, in part because being "forced" to take responsibility eviscerates whatever moral significance such a gesture would have.81 While under current Supreme Court doctrine being an accessory is sufficient to create culpability for first degree murder and eligibility

79. Cindy thus plays out a powerful theme in contemporary legality. The more law is challenged by theories that insist on the contingency and fluidity of identity, or on the effacement of the subject in modern conditions of danger, see, e.g., Thomas Dumm, Democracy and Punishment: Disciplinary Origins of the United States 7-11 (1987), the more it seeks to affirm "that an individual is completely responsible for his actions... [Law] needs an autonomous, rational, self-determining individual to assume the position of the cause of events that disrupt the pattern of everyday life in an ordered society. And, it must affirm this figure without skepticism...." Culbert, supra note 8, at 29.


for the death penalty, the assumption that taking responsibility has enormous significance in constituting the moral quality of the subject is as crucial to the dramatic unfolding of Dead Man Walking as it was in Last Dance.

Will Matthew Poncelet confess? Will he admit his true involvement and genuine culpability for the murders for which he was sentenced? Or will he go to his death still insisting that he was only an accessory swept up in the evil deeds of another? These questions, rather than any broader effort to understand the society of which his crime is a part or the ongoing political and legal problems with the death penalty, provide the dramatic frame of the film. As Shapiro contends, "the confession is, in fact, the pivot on which the movie balances . . . . It might also be said that without the confession, Dead Man Walking would give viewers little reason for opposing the execution since this sympathy is largely dependent upon the defendant's act of contrition."

Dead Man Walking is more concerned with Sister Helen Prejean's ability to tame the savage beast in Matthew Poncelet, a heroic effort in the face of death, than with the question of whether state killing is compatible with our Constitution and our commitments as a political and legal community. Insisting that legal responsibility is not enough to heal the wounds inflicted—or to mark a soul that is saved—is the work of Sister Helen, the spiritual counselor to Poncelet and the person whose story Dead Man Walking tells. Thus, Sister Helen informs the parents of one of Poncelet's victims, "I want him to take responsibility for what he did."

Whereas in Last Dance the lawyer tries to diminish the responsibility of the condemned, in Dead Man Walking Sister Helen works to constitute Matthew Poncelet as a fully responsible agent. She does so, in part, by imaginatively reconstructing the crime and trying to figure out exactly what he did, if not why he did it. A chronology of such imaginative reconstructions provides the site at which responsibility gradually can be assessed. It also continually reminds the viewer of the salience of the "who-did-what-to-whom" problematic.

Dead Man Walking begins the visual reconstruction of the crime after Sister Helen has heard a verbal description of Poncelet's deeds from the jaded prison chaplain who warns her, "There is no romance here sister. This ain't no Jimmy Cagney 'I've been wrongly accused. If only I had someone who believed in me' nonsense. They [the men

82. For an elaboration of the state of the doctrine, see Culbert, supra note 8, at 207.
83. Shapiro, supra note 54, at 1153.
84. See id.; see also Harding, supra note 66, at 1177.
on death row] are all con men and they will take advantage of you every way they can.”85 This is a warning to the viewer as well. Be wary. Do not be taken in. Remember who you are about to meet and why he is on death row. Unlike in Last Dance, where Cindy Liggitt is presented as torturing herself into responsible subjectivity, Poncelet is the unrepentant con man.

As Sister Helen leaves the chaplain and walks into the prison for her first meeting with Poncelet, the film moves back and forth between her observation of the strange world she is about to enter and scenes of the crime, set apart in black and white. We approach a car parked in the woods; we see the barrel of a rifle; we see a shot fired, followed by the legs of someone lying face down, then a twisted and bruised arm, and finally, a knife raised in slow motion in three repeated sequences and one dramatic, Psycho-like stabbing gesture. But in none of these scenes do we see the faces of the killers. We know something horrible has happened but we cannot yet fix responsibility. The anonymity of the criminal and the lack of narrative cohesion in this scene serve to keep our gaze fixed on the horror of the act that is presented to us and to warn us that we, like Sister Helen herself, are not yet in a position to judge or to assign blame.

After each image of the unfolding crime in this scene, the camera cuts back to Sister Helen’s increasingly disturbed facial expression, a kind of “what am I doing here; what have I got myself into” look. What remains undecided is whether her distress registers her image of the crime or the prospect of meeting the killer face-to-face, or both. But it is nonetheless important to note that at this point Sister Helen has not yet imagined the actual killing or the bloody bodies. The camera’s move to black and white and to slow motion suggests that we are seeing a fantasy. It is an incomplete fantasy, though one already filled with dread even as it brackets the most visually horrible image of the crime. Without its most graphic detail, the scene of the crime is registered on Sister Helen’s face as it would be on ours. Like Rick and Jill in Last Dance, hers is the face of the responsible subject reacting to horror.

In its gradual and partial reconstructions of the crime, Dead Man Walking also seems to highlight the problematics of viewing and representation. Perspective is everything; nothing is complete or certain. Thus, we see the crime sometimes only briefly, as when,

---

85. The film presents a transposition from the verbal to the visual where the verbal is at least initially given priority as an accurate rendition of events. On the significance of such transpositions, see Carol Emerson, Boris Godunov: Transpositions of a Russian Theme (1986). Jimmy Cagney also plays the lead in Angels With Dirty Faces (Warner Brothers 1938), one of the earliest death penalty films.
during a hearing of the pardon board, we look over the shoulders of its members as they listen to arguments about whether they should recommend clemency for Poncelet. The prosecutor arguing against clemency hands crime-scene photos to each of the board members. We see parts of several of the photos, shown in color to mark their status as representations of the real, as the camera moves behind the row of chairs on which the board members are seated. When the camera moves to the front we see them going through the photos, but the wide angle of the shot makes it hard to discern their facial expressions. Finally, we return to a position behind the pardon board and get a close view of a single photo of the naked body of a young woman bloodied by multiple stab wounds.

This is the very image that Sister Helen was unable or unwilling to conjure as she walked to her first encounter with Poncelet, and it provides a devastating moment in the film, a suggestion that only by refusing, at least initially, to contemplate the full horror of the crime can Sister Helen, or we, muster any compassion for someone who did what Matthew Poncelet did. The photo of the young, dead woman demands a response from the film’s viewers, just as the prosecutor hoped it would demand a response from the pardon board. Who did this? More critically, what kind of person could do this? The photo works to narrow consideration, to keep the question of responsible agency at the center of our consideration. In its vividness and its horror it blots out almost everything else.\(^6\)

A similar effect occurs when, later in the film, the parents of one of the victims, Hope Percy, retell the story of the discovery of their daughter’s body to Sister Helen. We see Hope’s body with stab wounds clearly visible, the use of color suggesting that what we see is an accurate recreation, not Sister Helen’s incomplete imagining. “My daughter’s body,” Hope’s mother recounts, “was found nude, spread eagled . . . . The police wouldn’t let us go down to the morgue to identify the body. They said it would be too traumatic.” Sister Helen listens intently, tears welling up in her eyes. This time the crime is viewed from the perspective of the surviving, grieving parents, their pain retold as if in a victim-impact statement, recounting the gruesome way their daughter died and the consequences for their lives.\(^7\)

Vision threatens; all reconstructions of horrible crimes astonish their viewers. As Connolly notes, “the desire to punish crystallizes at that point where the shocking, vicious character of a case blocks

---

86. See Sarat, supra note 72, at 1122.
87. On the significance of victim impact statements, see Austin Sarat, Vengeance, Victims and the Identities of Law, 6 SOC. & LEGAL STUD. 163 (1997).
inquiry into its conditions." A structuralist explanation, in which the perpetrator is himself portrayed as a kind of victim, seems morally inappropriate when confronted with the crime’s horror; only bilateral individualism supplies the stuff out of which blame and punishment can be forged.

This reconstruction of the crime is based on the Percys’ assumption that Sister Helen has come to share their belief that Poncelet is an "animal" who deserves to be executed for his crime. Their characterization of Poncelet contains twin, and somewhat contradictory, elements. In order to believe that crime merits commensurate punishment, they must hold Poncelet responsible, even if he does not take responsibility. He must be treated as a free agent who could have and should have made a different choice. At the same time, the anger that drives retributive punishment expresses itself in the view that Poncelet is, unlike us, an animal, a monster. Here Dead Man Walking captures something close to the heart of the desire that always fuels punishment. Punishment, as Connolly puts it, involves imagining the object of vengeance to be a responsible agent who deserves whatever he gets, and, at the same time, a dangerous monster with whom we must deal.

When we next are brought to Sister Helen’s imagining of the crime, the question of responsible agency begins to emerge more clearly. This is signaled by a return to black and white footage. Her revisiting of the crime is sparked as she is driven through the prison grounds to the special holding cell, where inmates are kept in the days immediately before their execution. The crime is revealed as a series of scenes interspersed with her observations of the prison.

On this occasion her view is somewhat more detailed than it had been. We see more than weapons and legs and arms; we are now able to identify the assailants and to see what they do. It is from this reconstruction of the crime that a tale of responsibility can be built. At this point, however, we must be wary because Sister Helen’s reconstruction is based on replaying what she has heard from the Percys.

Yet she adds important details; she imagines Poncelet holding a rifle on Walter Delacroix, while his accomplice rapes Hope Percy. In her image Poncelet is surprised by his accomplice’s brutality, scared and spooked when he comes over, grabs the rifle, and shoots Walter. This imagining is faithful to the story that, throughout the film, Poncelet has told to Sister Helen. It is a version of events that maintains some distance between him and the burden of full moral

89. See id. at 45.
responsibility. That she believes it is testimony to her willingness to take things on the terms on which they present themselves, the very trait about which she was warned by the prison chaplain. As Sister Helen later says to Poncelet, “You watched while two kids were murdered.” Throughout Poncelet insists that he is “innocent,” having neither raped nor murdered anyone. While his claim of innocence is not legally tenable, if true, it would diminish his moral responsibility and invite a reappraisal of the appropriateness of his impending punishment.

Late in the film, on the day of the execution, we finally get an apparently complete, authoritative, visual reconstruction of the crime. This reconstruction fixes responsibility at the same time that it allays any doubt that we can know the truth of the crime. Representational realism underwrites the narration of responsible agency. This double gesture comes in response to Sister Helen’s suggestion that Poncelet “talk about what happened. Let’s talk about that night.” The responding narrative is highlighted in its claim to truth because it is again accompanied by color photography of the crime scene. We follow Poncelet and his companion as they come upon Walter and Hope kissing in their car. The criminals force them out of the car by claiming that they are trespassing on private property. 90

*Dead Man Walking* fully reveals its modernist sensibility when Sister Helen demands that Poncelet take responsibility for these acts. “What possessed you,” she asks, “to be in the woods that night?” “I told you I was stoned,” Poncelet responds. “Don’t blame the drugs. You could have walked away,” Sister Helen replies, fully embracing the language of agency, will, and bilateral individualism. Echoing themes in the classic individualist tradition, 91 Sister Helen insists that the responsible agent makes choices and must accept responsibility for those choices. “Don’t blame [your accomplice]. You blame him. You blame drugs. You blame the government. You blame blacks. You blame the Percys. You blame the kids for being there. What about Matthew Poncelet? Is he just an innocent, a victim?” The language of responsibility directs attention away from the legal and political issues surrounding capital punishment just as it refuses to accept structure, accident, or conspiracy as justifications for actions. It insists that, whatever the external factors that made an act possible, it is the choice to act that is crucial.

90. This imitation of law initiates the scene of danger. Law, we are reminded, always establishes a terrain of danger from which law itself can never fully protect us. See Dunn, *supra* note 5, at 12. In this case, it is Walter and Hope’s respect and fear of law that becomes the lynchpin in their victimization.

91. See Morris, *supra* note 7, at 125.
The ultimate unfolding of responsibility for the crimes in *Dead Man Walking* comes in a telling just before we see the completion of this "truest" and most complete reenactment of the crime. After his last call to his family Poncelet says to Sister Helen:

It was something you said. I could have walked away. I didn’t. I was a victim. I was a fucking chicken. He was older and tough as hell. I was boozing up trying to be as tough as him. I didn’t have the guts to stand up to him. I told my momma I was yellow. She kept saying “It wasn’t you. It wasn’t you, Matt.” [pause] The boy, Walter, I killed.

In this moment Poncelet takes responsibility in quite the way Sister Helen has been urging him to do. Ultimately Sister Helen puts the question directly. “Do you take responsibility,” she asks, “for both of their deaths (referring to Walter and Hope)?” “Yes ma’am,” Poncelet responds. The construction of the legal subject as the responsible subject is completed as complex, uncertain causation is banished by a narrowly focused question and a simple response.

Sister Helen’s question and Poncelet’s response play out a “death bed” confession that sets the stage for an act of contrition. His assumption of responsibility is enacted as religious ritual and the constitution of the responsible subject is only completed through the intervention of spiritual necessity. The admission of guilt that law could not secure is finally obtained. Free will and responsibility are affirmed, and agency triumphs over structure. Poncelet’s “voluntary” assumption of responsibility reassures *Dead Man Walking*’s viewers of the validity of bilateral individualism and suggests that behind every narrative of shared responsibility for crime, of structure overcoming agency, is a deep, authentic truth about choice and voluntary, if misguided, action.

Assuming responsibility is enacted in *Dead Man Walking* as a journey in which the responsible agent comes to acknowledge that he could have acted differently; he could have “walked away,” but he chose not to. “Subjects, we say, are ‘free.’ They are not bound by the determined. They could always have done ‘more’ or done other than what they did. This is the basis on which we as legal subjects can be held legally responsible.”92 Yet while the discourse of responsibility insists on autonomy, the process through which Poncelet comes to take responsibility emphasizes his relationship to Sister Helen. “It was something you said,” he tells her. It is this relationship, with its promise that confession leads to forgiveness, that enables Poncelet to do what law, with its promise of punishment, was unable to get him.

to do. However, as Peter Brooks has recently argued:

The problem may be that the very act of confessing will so often be the product of a situation, a set of physical conditions, and a psychological state that do not conduce to the fullest expression of human autonomy. . . . [T]he search for the true confession, the moment of the baring of the soul, may uncover that moment as one of human abjection. Telling the shameful truth may reap all sorts of psycho-social benefits . . . but it does not necessarily promote an image of human autonomy and dignity. On the contrary it reveals pathetic dependency and a kind of infantile groveling . . . . Even the most indisputably “voluntary” confession may arise from a state of dependency, shame, and the need for punishment, a condition that casts some doubt on the law’s language of autonomy and free choice.93

The ultimate product of his confession is Poncelet’s public acknowledgment of responsibility in the ritual of the condemned’s last words, uttered while strapped to a gurney elevated with Poncelet in a Christ-like pose facing Walter and Hope’s families: “I ask your forgiveness. It was a terrible thing I did taking your son away from you. I hope my death gives you some relief.”

It is only as Poncelet is himself being executed that the “complete truth” of the crime is presented visually. In this presentation we move back and forth from the scene of the execution to the scene of the crime. This quite literal effort to raise the question of whether execution is a just and proportionate response to murder shows Poncelet raping Hope and shooting Walter. The question is further precipitated by the use of parallel images shot from above of Walter and Hope lying face down, arms and legs spread in the woods, and then of Poncelet lying face up, as if crucified. The film seems to ask, are the acts the same? Or, as Justice Scalia recently argued, does “death-by-injection . . . look pretty desirable next to [the murder of a man ripped by a bullet suddenly and unexpectedly] . . . How enviable a quiet death by lethal injection compared with that.”94 Does Dead Man Walking condemn capital punishment, as Poncelet does when he says at the time of his execution, “I think killing is wrong no matter who does it, whether it is me, or y’all, or your government”? Or does it provide the strongest justification for it by refusing to let us forget the nature and brutality of the crime to which it is a response? The film is rigorously indeterminate in its answers to these questions.95

93. Peter Brooks, The Overborne Will, 64 REPRESENTATIONS 1, 6-8 (1998).
95. As Harding suggests,
   [b]y alternating shots between the dying Matthew and the victims the filmmaker poses
It is not, however, indeterminate in its presentation of agency, will, and responsibility. Like Last Dance, it affirms the perspective of bilateral individualism against a more structural account of crime. As Connolly suggests, this "formula politely conveys a general cultural disposition to sacrifice socially defined others to protect the appearance of integrity and cleanliness in the messy cultural categories of agency and responsibility. Save the categories; waste those whose conduct or subject position disturbs them."96 Both Last Dance and Dead Man Walking provide cultural affirmation of the indispensability of responsibility against those who would blur the distinction between criminals and victims. They refute narratives that would implicate us all in the contingencies that produce crime and would undermine the moral and legal scaffolding on which the apparatus of punishment is built.

III. FETISHIZING THE TECHNIQUE AND THE REPRESENTATION OF DEATH

At first glance, Last Dance and Dead Man Walking seem to destabilize certain critical representational assumptions about the extent to which we can know crime. They do so through a series of visual reenactments, set off by particular markers to suggest their partiality or incompleteness. Yet, eventually, both films give us views of the crime that are identified as complete and accurate through the use of specific visual techniques. However, no such movement from doubt to certainty, from the partial to the complete, afflicts their presentation of the scene of punishment. Indeed, both films are unusually preoccupied with the techniques and technologies of execution, showing, often in minute detail, how those technologies work and what their effects are on the body of the condemned. Nothing is left to the imagination as the camera zeroes in on the apparatus of death.97

Both films play off contemporary legal prohibitions surrounding the sight (and the site) of execution.98 They respond by playing out a

---

96. Connolly, supra note 11, at 203.
97. On the priority of the imagination, see BURKE, supra note 50, at 31. See also LESSER, supra note 3. Lesser contends that murder stories are about "what must be imagined, what can't actually be seen—what can't, in any verifiable way, be known." Id. at 142.
98. For a discussion of those prohibitions, see Sarat & Schuster, supra note 15, at 417.
kind of representational realism.\textsuperscript{99} It is as if they are not just providing a rendering of reality but a rendering of a reality "made more real by the use of aesthetic device."\textsuperscript{100} For the realist, "the central nature of artistic activity becomes the presentation of a reality more real than that which could be achieved by a simple recording."\textsuperscript{101} Yet this realist epistemology is, at least in part, rendered problematic by the presence in the films of witnesses to the executions. These films remind us of what it means to see an execution by letting us watch others watch, by alternately merging our gaze with the witnesses depicted in the films and then separating our gaze from theirs.

The presence of witnesses marks a difference the films insist on, namely the difference between those who "really" see an execution and those who have access only to its representations. Both do this by giving the viewer a greater visual prerogative than is available to the witnesses. We get behind-the-scenes views of the "death work" that precedes an execution, close-up, slow-motion views of the technology—lethal injection—in action. We see switches being thrown, vials of lethal chemicals methodically emptying, fluid passing through tubes into the veins of the condemned. We are spectators to something that few are "privileged" to see.

We are made aware of our privilege because we see the witnesses in their tightly controlled, more limited viewing. We watch them; we are, if you will, voyeurs at someone else's voyeurism. The act of witnessing is then held up as a kind of mirror in which the viewer is herself captured.\textsuperscript{102} As Lesser says, referring to the prospect of televising executions, "[i]t creates a new kind of voyeurism. We, from the invisibility of our private living rooms, are given the opportunity to peer into the most intimate event in someone else's life: his death."\textsuperscript{103} Unlike the witnesses to an execution, who are there to be seen by the condemned just as they are to see him,\textsuperscript{104} the viewer of death penalty films sits at a safe remove, hidden from the condemned's gaze, real or fictive. That gaze is, of course, the gaze of death itself; we escape it, and, as such, we can imagine ourselves not


\textsuperscript{100} \textit{Id.} at 180.

\textsuperscript{101} \textit{Id.}

\textsuperscript{102} As Young notes, "[i]n film theory, analysis of the cinematic gaze pays attention to the suturing of the audience into and by the scenes displayed on the screen." Young, \textit{supra} note 68, at 32. For an example of what Young suggests, see generally TERESA DE LAURETIS, \textit{ALICE DOESN'T: FEMINISM, SEMIOTICS, CINEMA} (1984).

\textsuperscript{103} Lesser, \textit{supra} note 3, at 40.

being implicated in the fictive death that takes place before our eyes.

But perhaps the distinction between witness and viewer is less stark than might at first seem apparent. As Steffey says about his own experience of witnessing an actual electrocution, "This has to be a Charles Bronson movie... My thoughts even have trouble distinguishing whether tonight was another Bronson movie or reality."\(^{105}\) The real unreality of death at the hands of a liberal democratic state marks the experience of witnessing and viewing.

Nonetheless, we are invited through the detailed, close-up images that *Last Dance* and *Dead Man Walking* present to believe that we have seen what an execution is "really like."\(^{106}\) Catherine Russell suggests that:

As a symbolic act, the representation of death in film upholds the law of the text: the believability of the image. Insofar as this belief depends on the denial of the film's celluloid status, its twenty-four-frames-a-second "mortal" state, the illusion of reality sustains itself through a strict censorship of this reminder.\(^{107}\)

In *Last Dance* there is a deep and unambiguous investment in the believability of the image of the execution. *Dead Man Walking*, by contrast, plays out a somewhat more complicated representational strategy.

In *Dead Man Walking*, as I suggested above, the scene of execution is interspersed with flashbacks to the crime, and at the moment when Poncelet dies, we see the faces of Walter and Hope reflected in the glass window that separates the witnesses from the death chamber. These devices partially undercut the film's representational realism. They do so by proliferating images and specters of death, showing how Poncelet's death is inseparable from the deaths that he caused, and by bringing Hope and Walter to the site of the execution itself.

In *Last Dance* our witnessing begins as Cindy Liggitt is transported from the women's prison to the death house in the state's male correctional institution. From the high-tech, modern, clean confines of the former she descends into the archaic, fortress-like place where death is done by the law. There we wait with her as her execution approaches. As in many death penalty films, this one is quite literally

---

106. As Fitzpatrick notes, "the site of execution... is a place which is qualitatively different to what surrounds it." Fitzpatrick, *supra* note 27, at 125. Joan Dayan says about the death chamber, "[i]n this place of disposal, even the making of ghosts is defeated." Joan Dayan, *The Blue Room in Florence*, 85 YALE REV. 27, 46 (1997).
preoccupied with time, flashing scenes of clocks on the wall, marking the inexorable process of life's march toward death. Lesser notes that "[t]he very techniques on which the telling of a murder tale relies—the foreshadowing, delay, irony, surprise, a sense of determinism, the theatrical immortalization of the main character—
are techniques that play with the notion of time." 108

But juxtaposed against the seemingly inexorable movement of time—the clock on the wall—is the prospect of last-minute legal or executive intervention. Set against time is law itself, perpetrating death but also potentially saving life. "Death," Fitzpatrick says, "marks law's determinate being, its completeness distinct from what is beyond, but death is a relating of law to all that is beyond . . ." 109 Thus, for every clock, there is a telephone, the silence of which affirms the stillness of death, but which may, at any moment, come alive to end that stillness.

As Cindy waits in the special holding cell, caught between the clock and the telephone, the visual fetishizing of the technology of death and the marking off of the difference between the thing itself and its representations begin. We see the backstage work of filling vials with lethal substances and close-ups of the vials being fitted into the machinery that will mechanically do the job that no human is authorized to do, of delivering those lethal substances into the body of the condemned. When she is "escorted" into the room where she will be put to death, we again see what the witnesses cannot see, namely the condemned managed with military-like precision, strapped down, needle inserted into her outstretched arm. Through these tight shots and backstage scenes, viewers are invited to believe that this is what an execution is "really like," even as we are reminded that it is not a real execution that we will see. We are brought behind the scenes so we can see, and by seeing know, what the death penalty is and how it operates. 110

It is only as the curtain separating the room where the witnesses sit from the death chamber is opened that our view is merged with the view of the witnesses. But our view is quickly concentrated on the exchange of looks between Cindy and Rick. The privileged, almost omniscient view of a moment earlier dissolves and is replaced by the gaze of intimacy, the gaze of love. Can that look be our look? Can

---

108. Lesser, supra note 3, at 234.
109. Fitzpatrick, supra note 27, at 120.
110. Lesser quotes David Bruck, a prominent death penalty lawyer commenting on the prospect of televising executions, as saying, "[t]he truth of the matter is that the public's imagination of what this must be like—and I say this having seen two of these executions take place—the public's imagination is much truer than what they would see on TV." Lesser, supra note 3, at 42. What he says about television would seem to apply with equal force to the representational realism effected in Last Dance and Dead Man Walking.
the viewer move from engagement with the bureaucratic and technological details of state-administered death to embrace and identify with the look of love? *Last Dance* works visually to move us from one register of spectatorship to another, from almost clinical detachment to loving engagement. In this move there is no other visual space allowed. There is no space from which we can view the execution as neither bureaucrats nor as intimates. The space of citizenship, the juridical posture which this film otherwise seeks to cultivate, is evaporated in the moment of execution.

In *Last Dance*, however, the phone does ring, and in hurried response the execution is halted, as the warden shouts, “Stand down! Stand down!” In this moment two things are brought together. First, there is a lesson about the difference between the death penalty and murder, namely that the former is subject to the continuing normative standards and control of the community. As Cover notes, the last-minute stay of execution reminds us that

the violence of the warden and the execution [is] linked to the judge’s deliberative act of understanding. The stay of execution, the special line open, permits, or more accurately, requires the inference to be drawn from the failure of the stay of execution. . . . In short, it is the stay, the drama of the possibility of the stay, that renders the execution constitutional violence.¹¹¹

Second, the intervention of law ends the privilege of viewing, but only for the witnesses. Quickly the curtains are closed, but our gaze is neither terminated nor averted. We see Cindy, once unstrapped and removed from the table, collapse and scream, in a rage against her reprieve. The responsible subject having taken responsibility is turned into the victim of a legal process whose obsession with technical legalisms obscures issues of responsibility, justice, and punishment.¹¹² Cindy becomes the shrieking stand-in for a judiciary


¹¹² The much-publicized execution of Robert Alton Harris is a telling example of the drama of the last-minute stay and of the increasing pressure to compromise law’s highest values and aspirations in order to turn death sentences into state killings. See Judge Stephen Reinhardt, *The Supreme Court, The Death Penalty, and the Harris Case*, 102 YALE L.J. 205 (1992). See also Evan Camiker & Erwin Chemerinsky, *The Lawless Execution of Robert Alton Harris*, 102 YALE L.J. 2225 (1992). During the twelve-hour period immediately preceding Harris’s execution, no less than four separate stays were issued by the Ninth Circuit Court of Appeals. Beneath the headline “After Night of Court Battles, a California Execution,” the April 22, 1992, edition of *The New York Times* reported the tangled maze of last-minute legal maneuvers that immediately preceded the death in California’s gas chamber of Robert Alton Harris. As in many previous executions, the hope for clemency or the possibility of a stay of execution was in Harris’s case pursued until the last minute. Ultimately, in an exasperated and unusually dramatic expression of Justice Rehnquist’s aphoristic response to the seemingly endless appeals in capital cases—“Let’s get on with it”—the Supreme Court took the virtually unprecedented, and seemingly illegal, step of ordering that “no further stays shall be entered . . . except upon order of this court.” *Vasquez v. Harris*, 503 U.S. 1000, 1000 (1992).
and a public increasingly outraged by such obsessions. Having been ready to die in the consolation of Rick's gaze, she is wrenched back into life by a legal process that neither she, nor we, respect.

It is, of course, Rick's last-minute, frantic efforts to find the one sympathetic judge who might grant a stay that led to the excruciating agony of Cindy's last-minute rescue. She screams because she knows what the ultimate outcome will be, that she and we will return to the death chamber. But before her return, before the stay is lifted, Cindy talks about the redeeming power of the gaze, of a certain form of spectatorship. "I saw you," she says to Rick, "I could feel your eyes on me. I wasn't scared." After the stay is lifted she says "You have got to let me go now. Please . . . [d]on't take your eyes off of me." What redeems is that the spectator can himself be seen, that his gaze can be returned. Such a redeeming power, however, is not available to us. We are reminded, as if we need reminding, of our distance, our safe disengagement, of the limits of our power and role as spectators.114

When Cindy is subsequently returned to the death chamber there is no last-minute reprieve. The execution resumes as does our encounter with the machinery of death. We are given another extreme close-up as the procedure for dispensing the lethal chemicals proceeds. First one vial, then another is emptied in a slow-motion sequence that echoes the slow motion of our two views of the scene of the crime. But unlike the violence that Cindy dispensed, the violence done to her is bloodless, antiseptic, accompanied by no shouted obscenities.115 No human hand is seen. Death comes through the automatic operation of a machine. We are again brought to a scene of death, given the illusion of seeing what is generally forbidden, and through that seeing the illusion of knowing death.

In this scene viewers are positioned as seekers of knowledge that

---

The Court scolded Harris's lawyers for "abusive delay which has been compounded by last minute attempts to manipulate the judicial process." N.Y. TIMES, Apr. 22, 1992, at 22. In so doing it displaced Harris as the soon-to-be victim of law, and portrayed law itself as the victim of Harris and his manipulative lawyers. To defend the virtue of law required an assertion of the Court's supremacy against both the vexatious sympathies of other courts and the efforts of Harris and his lawyers to keep alive a dialogue about death. With this order, the Court stopped the talk and took upon itself the responsibility for Harris's execution.

113. For an interesting analysis of this public outrage and its translation into judicial opinions, see Anthony Amsterdam, Selling a Quick Fill for Boot Hill: The Myth of Justice Delayed in Death Cases, in THE KILLING STATE, supra note 8, at 148.


115. Cindy Liggitt dies with a single gasp, her face reflected in the glass through which Rick and we see her death. She dies in his eyes, and through him, in ours. Death is given its meaning, redeemed, through acts of viewing. However, unlike Rick, whose presence is crucial to Cindy, the witnessing audience to the film of an execution "becomes . . . a non-existent presence, an invisible crowd of spectators who yield up nothing on behalf of the performer." LESSER, supra note 3, at 205.
we can never attain, knowledge of death itself. What Lesser says about the desire to see an execution is the desire that *Last Dance*’s fetishizing of technique seeks to satisfy. “We want . . . [the condemned] to enact something for us; we want to live the terror of death through him [or her], and then be able to leave it safely behind.”116 Yet the representational realism of the execution promises a knowledge it cannot produce. “Death remains ever beyond us.”117 Seeing an image of the technology in action cannot produce for us the experience of the death that technology produces.

Like *Last Dance*, *Dead Man Walking* fetishizes the technology of death. It too uses the extreme close-up of the machinery of death to bring us behind the scenes at an execution. But, unlike *Last Dance*, its representational strategy is more unsettling to the viewer, who is brought to and then away from the execution, and who is, through that gesture, not allowed to forget the fictive quality of what he sees. Unlike *Last Dance*, what we see of the preparations for the execution initially is seen only through Sister Helen’s eyes; we get no privileged preview. We watch as she catches a glimpse of the death-squad practicing its drill, asks about the witness forms and sees preparations being made to feed the witnesses before the execution. We later see the distress on her face when she sees them eating, distress that registers the cruel juxtaposition of their preoccupation with life’s necessities even as they are about to see the end of life. We follow as she is led into the witness room. It is only then that our gaze is separated from hers.

In this moment of separation the privileged position of the film’s viewer is reasserted. We see Poncelet strapped to the table and a nurse searching for a vein into which she inserts the IV tube that will soon carry the substances that will end his life. Over her shoulder we catch a brief sight of the vials containing those substances. But from here our gaze is now fixed on the witnesses, as the camera pans from Sister Helen to the faces of the families of the victims. For a moment it seems as if our choice is to see the scene of execution through one or another of these sets of eyes. But in the back row we can see an unidentified, impassive female face. In her anonymity and distance, the viewer is reminded of his or her position, poised looking at the execution from further away than either Sister Helen, Mr. Delacroix, or the Percys. We are again made aware of the fact that executions are today, as they always have been, about a particular form of spectatorship. We are again invited to believe that we will see and, through our seeing, come to know more than those whose witnessing

116. *Id.* at 60.
is so tightly controlled. But the camera shifts, fixing its gaze on the eyes first of Poncelet and then of Sister Helen. They stare into each other's eyes; their truest connection is expressed in what they see. But his gaze is also fixed on us. He watches and in his look seems to ask how we will see him. Finally, as in *Last Dance*, we are given first one close-up, and then an even more intense view, of the vials. The camera follows the lethal substances as they leave the vials, travel through the tube into Poncelet's arm, and to his head. We follow as if we too could enter his consciousness and know in the last minutes what it is like to lose consciousness forever. The visual device is quite stark in its invitation to exchange positions, if only for a minute, with the condemned in order to possess and bring back knowledge forbidden to the living. Like Cindy Liggitt, Poncelet dies quietly, as if falling gently to sleep. Only in this moment is his gaze ended and ours released.

In both *Last Dance* and *Dead Man Walking*, the scenes of execution, of an execution presented as if the act of a machine, are stripped of grandeur. How far have we come, these films seem to say, from the awe-inspiring majesty of the scaffold? There is, in fact, now almost nothing to see. Death comes quickly; it leaves no visible signature of the body of the condemned. We are invited to see that there is nothing to see in the bureaucratization and medicalization of death.118

Yet the sight of execution is, in this age, always a moment of transgression. In this transgression there is a mixture of fear and pleasure, of what we know and what we cannot know. This is especially true of the seeing that exceeds the carefully controlled visual field of the witnesses; such sight is a fleeting refusal to acquiesce in the state's definition of the death that it dispenses and in its determined effort to regulate the privilege of seeing. In addition, the representation of death in films like *Last Dance* and *Dead Man Walking* is "a harbinger of mortality.... But it is also, at the same time, a means of disavowing this recognition."119 We are reminded that we too will die and that our death may be as untimely and gruesome as the deaths we are shown. Yet because as film viewers we confront death from a distance, we are allowed to walk away unscathed.

As in *Last Dance*, the preoccupation with the act of witnessing and the focus on the gaze in *Dead Man Walking* suggest that even a

119. Russell, supra note 107, at 24. This disavowal occurs in *Dead Man Walking*'s visual reminders that we really are not there, even as the film provides a sight of that which is forbidden to us.
bureaucratized, medicalized execution "is—as Foucault implied—more of a show, spectacle, and theater than a closed structure."\(^\text{120}\) Show, spectacle, theater—these representational media are central to the rituals of execution. But by focusing on the act of watching and by fetishizing the technologies of death, both Last Dance and Dead Man Walking play out the limits of representation itself, limits imposed by law (the prohibition of televising executions) and life (the unknowability of death). "The ability to produce the spectacle of death," Russell argues, "is both a discourse of control and of transgression. An uncanny conjunction of crisis and possibility, narrative mortality delineates the threshold of the representable."\(^\text{121}\) These films want to give us what life itself will not allow. They domesticate the death penalty and allow us to believe that we can know what the state does in our name, that we can measure the effects of capital punishment, and that in that act we can precisely fix the balance of pains necessary to make the punishment fit the crime.

IV. CONCLUSION

Last Dance and Dead Man Walking, I have argued, are meditations on responsibility and representation. They juxtapose crime and punishment as a figuration of law's commitment to proportionality and, in so doing, affirm bilateral individualism against more radical, structuralist accounts of crime. They make clear the distinction between being legally responsible and taking responsibility. In this distinction they chart a space in which the modern legal subject can be said to reside, a space of individual autonomy, choice, and desert, a space in which those who take responsibility are accorded "the right to make promises."\(^\text{122}\) Despite their "transgressive" efforts to visually represent the sites and processes of execution, they redeem their central characters—Liggett and Poncelet—through the high moralist discourse of a believing world, a world not yet willing or able to come to terms with its disenchantment. In this sense they embody a conservative cultural politics, one quite unwilling to explore the instability of the very categories on which the modern apparatus of punishment depends.

The films, and the cultural politics in which they participate, resist the developments and possibilities of postmodernity, which fragments identities, exposes contingencies, and opens up new possibilities of human connection.\(^\text{123}\) Punishment, as represented in

\(^{120}\) Id. at 48.
\(^{121}\) Id. at 46.
\(^{122}\) NIETZSCHE, supra note 4, at 189.
\(^{123}\) See JEAN FRANÇOIS LYOTARD, THE POSTMODERN CONDITION (Geoff Bennington
Last Dance and Dead Man Walking, demands that we know who the criminals and the victims are, and that we know the difference between them. It refuses contingency and interdependence and insists that the conditions of failure that accompany brutality are irrelevant to the question of responsibility. These films show, without critiquing, the ways those whose identities are jeopardized by the play of difference and contingency in modernity construct objects of resentment to protect the identities thus jeopardized. Contingency in identity, Connolly claims, requires that we acknowledge tragic possibilities in the life of the individual. To take one instance, one might have violent, destructive dispositions inscribed in oneself, dispositions neither chosen in the past nor susceptible to reconstruction now. . . . Typically it is unclear in such cases whether failure [to control those dispositions] represents a refusal, an inability, or a complex unamenable to these fixed categories.

Neither Last Dance nor Dead Man Walking engages the tragic possibilities Connolly describes or the instabilities that lie at the heart of modern conceptions of responsibility.

What I am calling the conservative cultural politics of these films is also reflected in the way they position the viewer and in the consequences of that positioning. While viewers are positioned in several different ways in both films—as investigators, truth seekers, voyeurs—the basic structure of viewing is juridical. Though neither film takes us into a courtroom, they invite the spectators to judge as if they were making a life and death judgment. As Carol Clover notes,

[Anglo-American] movies are already trial-like to begin with . . . . [T]he plot structures and narrative procedures . . . of a broad stripe of American popular culture are derived from the structure and procedures of the Anglo-American trial . . . . [T]his structure and these procedures are so deeply embedded in our narrative tradition that they shape even plots that never step into a courtroom . . . .

The juridical role offered to the spectator of these films is, however, not the role of adjudicator of guilt or innocence; instead we sit as if on a jury in the penalty phase of a capital trial.

The films' brief reconstructions of the lives of the condemned and

---

125. Id. at 179-80.
the reasons for their acts play out evidence in mitigation. Through their extensive focus on the brutality of the crime and the suffering of those left behind, we are presented with the aggravating factors. If Liggitt and Poncelet take responsibility for their brutal acts, then, the films seem to ask, are they worthy of mercy? Or is the only mercy that can and should be provided God’s mercy, not ours?

The consequence of this juridical role is to bracket, or to derogate, broader questions about the legitimacy and meaning of capital punishment and to focus our attention on the particularities of a single case. The bracketing of these questions is recognizable in certain silences in both films as well as in the way they portray the political and legal controversy surrounding capital punishment. Toward the end of Last Dance the political controversy surrounding the legality and morality of capital punishment appears in a series of scenes focused on the gathering of pro- and anti-capital punishment groups outside the prison where Cindy Liggitt is to be executed. Those scenes suggest the simultaneous routinization and irrationality that lie at the heart of all such gatherings—routinization in the sense that they are part of the ritual and “ceremony” surrounding every execution and irrationality when they erupt into angry shouting.127

In Dead Man Walking the gathering of demonstrators plays a smaller role in the controversy surrounding capital punishment. We are shown a brief scene of Sister Helen in a candlelight vigil at the execution immediately preceding Poncelet’s; there we also see the parents of his victims strongly defending the right of the state to use the death penalty. “It is the only way we can ensure that they won’t kill again,” says Mr. Delacroix during a television interview outside the prison. “These people are mad dogs, maniacs,” adds Hope’s father. The clearest political message against capital punishment is delivered in Dead Man Walking by the least credible speaker, Matthew Poncelet, when, as his last words, he says “I think killing is wrong no matter who does, me, y’all, or your government.”

Each of these scenes seems jarring, out of place in films that focus so intently on the question of whether a single person deserves to die for her or his crimes. That biographical focus invites the viewer to accept, in a spirit of resignation if not celebration, the legal and political status quo. Thus, cultural conservatism ends up serving the cause of legal and political conservatism. In both films

the basic categories through which we judge murderers and

127. The shouting of the demonstrators is contrasted with the cool dispassion of the death squad that manages Cindy during her execution. In addition, a close-up of two nuns carrying signs that say “Thou Shalt Not Kill” suggests the ironic indeterminacy of a message that could apply with equal force either to Liggitt or to the state that is about to kill her.
assess penalties are themselves treated as stable and unshakable. The harsh childhood of the killer, for instance, is taken to "mitigate" the crime or to provide "extenuating" circumstances; but these experiences are not treated as elements that may enter into the very formation of the perpetrator's will itself. 128

Last Dance and Dead Man Walking legitimate capital punishment by insisting that all that counts is the question of responsibility and by deploying representational strategies designed to convince their viewers that they can know the reality of the death penalty and, as a result, assess its proportionality.

The cultural conservatism of these films is seen as well in the way they depend on a representational realism about execution and in their confidence in the possibility of conveying, through sight, its meaning. Last Dance and Dead Man Walking use a model of sight and vision in which the visual is rendered reliable and stable, in which vision is privileged in its access to the truth of things, and in which visual connections have the power to soothe and redeem.

Yet there are at least two suggestions to the contrary that call into question the representational realism on which the films depend. First, as I have already noted, is the juxtaposition of the past and present, the embodied and the spectral in the execution scenes of Dead Man Walking. Second is the description that Poncelet provides to Sister Helen of the way lethal injection works, with the first chemical designed to tranquilize such that the horrible physical effects of the remaining chemicals are not registered on the body of the condemned.

In this description we are reminded that the visual field of the modern execution, the fact that there is "nothing to see," depends on a technologically induced condition. Yet it is another such condition, film itself, with its angles, pans, and close-ups, that produces the illusion that seeing is knowing, 129 that to see an execution enacted in film is to know the meaning of death at the hands of the state.

As I have argued, death, whatever its cause, marks the limits of representation. Films can neither capture death nor help us know what cannot be known. We can and do watch others die without being able to capture death's meaning or significance. Yet neither Last Dance nor Dead Man Walking acknowledge that "both death and film are negotiations with absence, and that the representation of violent death in film constitutes a special crisis of believability, a

---

128. Connolly, supra note 124, at 199.
threshold of realism and its own critique."130 In the end, whatever our particular judgments about whether their main characters are justifiably or unjustifiably condemned to death, neither film invites us to do more than comfortably embrace the conceptual categories of responsibility and representation that justify the apparatus of criminal punishment and keep the machinery of state killing in place and operating.

130. RUSSELL, supra note 107, at 23. The "violent deaths" to which Russell refers apply both to the death of the victims and to the executions in Last Dance and Dead Man Walking.