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THROUGH THE LOOKING GLASS OF TEACHING:  
THE DEATH PENALTY AND THE POLITICAL CULTURE OF  
DETACHED PASSIONS

*Adelaide H. Villmoare*\*

More and more people are being executed in the United States. Although polls lately reveal a growing ambivalence about capital punishment,<sup>213</sup> Americans still seem shockingly wedded to the death penalty, while much of the rest of the world has moved definitively away from it.<sup>214</sup> Little prevents our enthusiastic endorsement of the death penalty:<sup>215</sup> not the suspension of the death penalty in Illinois by Governor George Ryan in the face of clear evidence of wrongful convictions of thirteen death row inmates<sup>216</sup> and not the support by two-thirds of Americans for a moratorium of executions until questions of procedural fairness are addressed.<sup>217</sup> [5] In the wake of the first federal execution since 1963, 323 survivors, victims and friends witnessed the execution of Timothy McVeigh on a closed-circuit large-screen

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213. Bob Herbert writes: "Wariness about the death penalty has steadily increased as more and more becomes known about the treacherous ways in which it is imposed." Bob Herbert, *Support for Death Penalty Rightly Dwindles*, SUN-SENTINEL, Feb. 7, 2001, at 29A. There does appear to be a growing support for a moratorium on executions in the face of concerns about the fairness of procedures and the growing awareness of DNA evidence resulting in the release of death row inmates. Cities across the country have supported symbolic moratoriums (which, however, do not have the force of law), and major newspapers have written editorials favoring them. See also Richard C. Dieter, *Sentencing for Life: Americans Embrace Alternatives to the Death Penalty*, in *THE DEATH PENALTY IN AMERICA* 116 (Hugo Adam Bedau ed., 1997); Phoebe C. Ellsworth & Samuel R. Gross, *Hardening of the Attitudes: Americans' Views on the Death Penalty*, in *THE DEATH PENALTY IN AMERICA* 90 (Hugo Adam Bedau ed., 1997).

214. Kristi Tumminello Prinzo, *Note: The United States—'Capital' of the World: An Analysis of Why the United States Practices Capital Punishment While the International Trend Is Towards Its Abolition*, 24 *BROOK. J. INT'L L.* 855 (1999) (arguing that capital punishment continues in the U.S. because there is such popular support for it, although she points out that it was abolished in other countries, like Great Britain, when there was also popular support for it).

215. One index of support for capital punishment is recent presidential contenders' unanimous support of the death penalty. Michael Dukakis' opposition is seen as having linked him to a soft on crime stance and contributed to his overwhelming defeat.

216. See Jo Mannies, *Carnahan, Ashcroft Use First Debate to Rip Each Other's Records*, St. Louis Post-Dispatch, Oct. 14, 2000, at 5.

217. Herbert writes: "Two separate polls have shown that nearly two-thirds of Americans favor a suspension of the death penalty until issues about the fairness of its application can be resolved." Herbert, *supra* note 1.

projection television.<sup>218</sup> There is, thus far, no end to the accommodations to executions in America.

Today, despite daily struggles in courtrooms against capital punishment,<sup>219</sup> there appears little legal room to challenge the death penalty. Most constitutional questions appear "settled."<sup>220</sup> Given the present composition of the Supreme Court, there is scant expectation of any major reversals. Also, the Court's future is to be decided by a President who was governor of a state that has executed more people since 1976 than any other state in the nation.<sup>221</sup> While abolitionist scholars and activists continue to raise constitutional issues, the most dramatic events challenging the death penalty have occurred in the larger political arena outside the courtroom. The many gestures across the country advocating moratoriums on executions<sup>222</sup> give hope to abolitionists that the political terrain of the death penalty could be shifting.<sup>223</sup>

Certainly the death penalty has surfaced as a more openly contentious political issue, particularly since Illinois Governor George Ryan announced a statewide moratorium on the death penalty in February 2001.<sup>224</sup> Over the last several years, activists have become re-energized

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218. Thomas Frank, *Haunted Forever: For Survivors and Families, The Pain McVeigh Caused Lives On*, NEWSDAY, June 12, 2001, at A5. This is only one step removed from broadcasting executions. Even without showing executions on television, the death penalty occurs within "a theater of punitive power." Austin Sarat, *Capital Punishment as Fact*, in *The Killing State* 15 (Austin Sarat ed., 1999). I discuss this idea further, *infra* text accompanying notes 82–86.

219. See Austin Sarat, *Representation and Capital Punishment: Bearing Witness and Writing History in the Struggle Against Capital Punishment*, 8 YALE J.L. & HUMAN. 451 (1996).

220. While recognizing that the debate over capital punishment has moved from the "courts to the streets," Louis D. Bilionis argues that there are still a number of significant constitutional arguments to be made along the lines of the "extraordinary unusualness of the death penalty as practiced in America." Louis D. Bilionis, *The Unusualness of Capital Punishment*, 26 OHIO N.U. L. REV. 601, 605, 611–12 (2000).

221. According to the National Coalition to Abolish the Death Penalty, Texas has executed 250 people, more than twice as many as any other state since 1976. See [www.ncadp.org/html/factsandstats.html](http://www.ncadp.org/html/factsandstats.html). This year alone, Oklahoma has executed fourteen people and Texas eleven, as of August 2001. See *id.*

222. See [ACLU Newswire](http://www.aclu.org/news/2000/w103100a.html) 10-31-00 that reports that more than two dozen cities have adopted moratorium resolutions: "None of the measures has the force of law: capital punishment is a matter for state legislatures, not local governments, and no legislature is actively considering abolishing its death penalty," [www.aclu.org/news/2000/w103100a.html](http://www.aclu.org/news/2000/w103100a.html).

223. Benjamin Soskis persuasively argues that the moratoriums do not herald the "death throes" of capital punishment but rather reforms that will secure the death penalty's place in American society for years to come. Benjamin Soskis, *Alive and Kicking: Why the Death Penalty's Not Going Away*, available at [www.thenewrepublic.com/041700/soskis041700.html](http://www.thenewrepublic.com/041700/soskis041700.html).

224. See *id.* During the last Senate race in Missouri Governor Mel Carnahan and Senator John Ashcroft matched barbs over the governor's commutation of Darrell Mease's death sentence in

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by the increasingly publicized evidence of innocent death row inmates, and the public is perhaps more aware of the death penalty today than it has ever been.<sup>225</sup> But capital punishment has long been a part of our political and legal culture, and that culture has in turn formed our approach to and opinion on the death penalty.<sup>226</sup> This article explores an aspect of that political culture which surfaced vividly and repeatedly in classroom discussions on the death penalty that my students and I have had over the years.

I first encountered this facet of the political culture of the death penalty when I assigned Robert Johnson's Death Work.<sup>227</sup> Johnson draws a vivid picture of capital punishment in action. His picture is a meticulous portrayal of the highly regimented, bureaucratized nature of contemporary executions which, he argues, along with life on death row, constitute torture. Students were outraged by this book. Saying Johnson talks too much about the men on the row and not at all about their victims. Why doesn't he delve into their crimes? Why should we listen to inmates rather than victims' families and friends? Why go into such detail on the steps to execution, on the condemned's last hours? In their view, Johnson has his priorities all wrong. It is outrageous, they argued, to discuss death row and not the crimes of those incarcerated there. After I recovered from my astonishment at the intensity of reactions to the book (an intensity greater than I can recall from any other text I have ever assigned), I began to appreciate the anger and discomfort students evinced toward the death row inmates and the execution Johnson describes. They did not want to be exposed to too much information about death row inmates or their final moments, and they wanted to always keep in mind the horrific crimes they assumed the condemned had committed.<sup>228</sup> They seemed to need to keep those being executed at a safe, impersonal distance and to affirm the justice of their fates. That reaction to Johnson has stayed with me through other, more temperate discussions of his book. But that classroom experience and students' passionate – yet remote – relationships with death row and the execution process continue to haunt my thinking about the death

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response to a plea from Pope John Paul II. In this instance the concern was which candidate was the stauncher death penalty advocate. *See* Mannies, *supra* note 4.

225. The evidence of the misuse of police and prosecutorial power continues to mount. *See, e.g.,* THOMAS FRISBIE & RANDY GARRETT, VICTIMS OF JUSTICE (1998).

226. *See* Sarat, *supra* note 7, for a valuable series of articles on this topic.

227. ROBERT JOHNSON, DEATH WORK: A STUDY OF THE MODERN EXECUTION PROCESS (1997).

228. Familiarity with the crimes of the condemned also affirms the "justice" of the treatment received at the hands of the state.

penalty.

Americans evince a definite enthusiasm for the death penalty yet keep a concerted distance from the people and processes of state killing.<sup>229</sup> The obvious interpretation of this combination of perspectives is that it is easier to support the death penalty if one does not view the condemned as a flesh and blood individual or listen to the condemned's life story. It is also easier if one does not know much about arrest, prosecution, conviction, and execution. One can readily grasp the psychology: do not get close to the individuals and the day-to-day details of the death penalty process and you can maintain your enthusiastic support for it.<sup>230</sup> This psychology is formed within a political culture of the death penalty that fosters both an appetite for and a detachment from capital punishment.

My thoughtful, independent, iconoclastic students have pushed me to consider further the political dynamics of this passion and its accompanying remoteness. Beyond the immediate psychology of this dual position, what is the role of this remote passion in the political culture of the death penalty today? My students' intensity and the sense of being at a pivotal moment in death penalty politics prompts this question, and I begin my exploration of it through the lens of my teaching. Although my students are not necessarily broadly representative of the larger populace in any systematic way, they reveal complex and conflicted beliefs and arguments that are echoed in political debates in the larger society and in scholarly writings on capital punishment. Their views are very much a part of the political culture of Americans' complicated relationships that include both a connection with and separation from the death penalty.

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I teach about the death penalty in two intermediate level political science courses, one about "law, society, and justice" (dealing with lower civil and criminal courts) and the other about the contemporary

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229. See Sarat, *supra* note 7, who uses this term in his collection of essays on the culture of capital punishment.

230. Of course, certain proponents would like to get up close to the executions. Some even fantasize about proportional killing where the condemned are killed by the methods of their own crimes; if there has been torture, the execution should be torturous. But our political culture has rejected this kind of proportionality. As death penalty proponent Louis P. Pojman writes, "Our intuitions are unclear on how to determine anything more than the death penalty, so we tend to accept that as the upper limit," LOUIS P. POJMAN & JEFFREY REIMAN, *THE DEATH PENALTY: FOR AND AGAINST* 31 (1998).

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American law and politics of death and dying.<sup>231</sup> These courses analyze philosophical, sociological, political, and legal aspects of a variety of topics. They address issues of power: the power of state, race, class and gender, and personal efficacy. In the law and society course, we look at significant class action civil cases and criminal justice processes from policing to prosecution to corrections. The course on death considers physician assisted suicide, abortion, murder, and execution. Both courses examine lynching in the 1950s and its aftermath.<sup>232</sup> By the time we arrive at the death penalty at the end of each course, students have already grappled with several topics related to officially sanctioned executions as practiced in the United States.<sup>233</sup>

We thus come to the study of the death penalty with a variety of predispositions and disagreements. The topic prompts lively debate as students read not only about the law and processes of capital punishment but also about the individuals most intimately involved with it. They briefly meet those living on death row, those who are executed, those who assist in execution, and those who witness the execution. For many students, this is a first major encounter with the philosophy, mechanics, and personalities of execution. As one student recently commented to me, "I wasn't very knowledgeable on the death penalty, but more than that I didn't realize that there was even much to learn about the issue. It seemed pretty cut and dry to me, an eye for an eye, if somebody kills somebody else then why shouldn't they be executed?"<sup>234</sup>

Some students strongly advocate the death penalty as just desserts; indeed, they see this as the most compelling reason to execute people. The tenet of "an eye for an eye" rests comfortably and unquestioningly within their values.<sup>235</sup> Others, although ultimately adopting this view,

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231. While constitutional law is clearly crucial to debates on capital punishment, I do not focus on it in either course. I attend to lower courts, everyday aspects of legal process, and the constitution of law in people's lives.

232. The law, society, and justice course begins with HOWARD SMEAD, *BLOOD JUSTICE: THE LYNCHING OF MACK CHARLES PARKER* (1986); Parker was lynched in 1959 in Poplarville, Mississippi. In the death course, we read STEPHEN J. WHITFIELD, *A DEATH IN THE DELTA: THE STORY OF EMMETT TILL* (1988); Till was lynched in Mississippi in 1955.

233. Lynching can be seen as a form of execution. There are striking parallels between patterns of lynching and capital punishment. As one text on the subject notes: "African-Americans have been heavily overrepresented in the process of capital punishment, both state-sanctioned and at the hands of lynch mobs, at least since nationhood . . ." KEITH HARRIES & DERRAL CHEATWOOD, *THE GEOGRAPHY OF EXECUTION* 38 (1997).

234. One student shared her views very openly with me in an e-mail in response to my soliciting views about our discussions on the death penalty.

235. MARK COSTANZO, *JUST REVENGE* 130 (1997)(arguing that "the often misinterpreted 'eye for an

are more critical proponents. They acknowledge capital punishment's inability to deter murder<sup>236</sup> and the arbitrariness of its application, and they would have an improved death penalty process.<sup>237</sup> They favor a moratorium in order to assure the fair application of capital punishment. Whether more or less critical of the process, proponents usually are repelled by gruesome forms of execution, like electrocution, even where the condemned has been convicted of a heinous murder. There are limits to the ways in which society should pursue an "eye for an eye;" the state should observe a certain execution decorum that is different or absent from the act of murder.<sup>238</sup> While students are deeply attached to capital punishment, they do not think executions should be passionate, bloody and messy; they endorse modern, well controlled and organized, physically painless executions. They favor a passionate outcome through a dispassionate mechanism.

Other students oppose the death penalty. Either they see the criminal justice process as fatally flawed and incapable of proper reform, or they deem state killing immoral in itself.<sup>239</sup> Evidence on deterrence is unpersuasive; racism is inextricably tied to death penalty cases. Innocent people are being convicted, and there is no failsafe method to assure that those guilty are the ones executed. Further, many who are guilty will never even be prosecuted under death penalty statutes. They believe in the eradication of capital punishment, and they express a felt need to distance themselves from the prosecution and execution process.<sup>240</sup>

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eye' passage [from the Bible] was meant to restrain rather than to require vengeance. Religious scholars point out that, taken in context, the passage does not tell us that we must exact proportional revenge, but that we may not take from others more than has been taken from us, that we must resist the urge to retaliate with ever greater violence.").

236. The single exception, of course, is the deterrence of the person executed.

237. This view supports Soskis' argument about the politics of moratoriums working more for than against the continuation of capital punishment. *See supra* note 11.

238. Illustrating the line most would probably draw to the "eye for an eye" rationale, Costanzo reasonably writes that "We would find it morally repugnant to torture torturers, rape rapists, or terrorize terrorists." Costanzo, *supra* note 23, at 136.

239. We did not talk much about state killing in wars or as self-defense. It was nonetheless clear that some who opposed capital punishment in principle would not necessarily oppose state killing in other contexts.

240. My own stance is in consonance with these latter views, although I take a more rigid position than most of my students embrace about the systematic and structural ills of capital punishment and the dangers of the state killing power. I do not mask my position when we discuss capital punishment. It would be disingenuous for me to keep a neutral stance on the death penalty in class, and I believe it dishonest to hide my position on this highstakes issue. In all my teaching I assume positions to challenge whatever view is being expressed in class, and, so I have taken on death penalty opponents during class just as I have argued against the proponents.

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Still others are torn. They are persuaded that capital punishment does not deter, is racist at its core, results from a grossly unfair process, is more expensive than life without parole, but they cannot fully abandon the position that there is justice in exacting a death for a death and that the most civilized way to accomplish this end is execution. An internal debate continues for these students that is not unlike society's disagreements over the death penalty. They are more uncertain than committed proponents, less passionate, but they are equally uncomfortable with assenting to abolition for fear society will lose a tool of "justice." This situation often results in a resistance to getting too close to the experiences of arrest, prosecution, and sentencing of death penalty cases.

Our class discussions encompass many perspectives on the death penalty, and the students wrestle with the core disputes on capital punishment. By the end of the course they appreciate the complexity of capital punishment and the stakes of state killing for the families of murder victims, the condemned, and the larger society. Some change their minds about support for capital punishment in the face of its financial cost, the "unusualness"<sup>241</sup> and inconsistency of its applications, and its finality. Those most deeply committed to it do not change their minds and tenaciously maintain their faith in the justice of it. These students have over the years interested and perplexed me the most. There is a passion in their attachment to the death penalty that survives often alongside a well developed understanding of all the arguments against it and a resistance to getting too close to executions and death row. It is this combination of passion and detachment and the political culture which sustains it, which I have often witnessed in my students, that I analyze.

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We in the United States are fascinated by killing, especially murder.<sup>242</sup> Our hearty appetite is not easily sated; we cannot read, hear, or see enough about killing, especially murder. Our media and popular culture are saturated with fiction and nonfiction stories of varieties of murder.<sup>243</sup> The primary attraction to my death course for a few students

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241. *See* Bilionis, *supra* note 8.

242. I am not arguing that Americans have a unique fascination with murder, just that our popular culture has always been caught up in killing.

243. Wendy Lesser explores our fascination with murder in asking: "Why are we drawn to murder, as an act and as a spectacle?" WENDY LESSER, PICTURES AT AN EXECUTION I (1993). Her remarkable

was the hope of reading about murder; a couple were disappointed that we did not study serial murderers. With an eye away from the more sensational,<sup>244</sup> we looked at political and philosophical questions like: what constitutes murder and lynching?<sup>245</sup> Are state executions a form of murder? Questions often turned out to be more difficult than students anticipated, as we wrestled with distinctions, for instance, between physician assisted suicide and murder. Still, there was not only a certain comfort level in taking on these topics in class, there was a lively engagement with them. My students and I, like many in our society, are drawn to the subject of killing.<sup>246</sup>

My courses discuss "simple" homicide and lynching.<sup>247</sup> In the death course, which examines capital punishment in greater depth, we touch on murder as a disproportionately southern phenomenon in the contemporary United States.<sup>248</sup> We move on to criminal justice

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book moves disturbingly between actual and fictional murders and execution, as she probes our intense interest in this phenomenon.

244. Even the more analytic and political examinations of killing are not without their sensational and spectacular qualities.

245. We did spend some time figuring out just what we thought murder was. This discussion took place foremost in our debates over physician assisted suicide and abortion. There was considerable disagreement over which specific acts constituted murder. But once determined to be murder, an action was condemned as anti-social, immoral, illegal, wrong.

246. Every once in a while a student has come to tell me that a family member or close friend has been murdered. Only once that I can recall did a student speak to this proximity to murder during class. Aside from this very painful and reluctant moment of sharing a personal connection to murder, conversations about murder flowed easily. There was a willingness, sometimes an appetite, to discuss murder learned about through the news media or fiction. As Lesser writes, there may be an "increasingly blurry borderline between real murder and fictional murder." LESSER, *supra* note 31, at 3. She demonstrates how we are truly fascinated with real and fictional murder, in part perhaps because we identify with murderers. See LESSER, *supra* note 31, "The Killer Inside Us." It is perhaps not accidental, then, that I teach about criminal justice and the death penalty and that one of my private indulgences is reading murder mysteries.

247. By simple I mean one-on-one killing where there is no question of self-defense. Recently we read Frisbie and Garrett about the abduction and slaying of ten year old Jeanine Nicarico and the police and prosecution's pursuit of innocent men for her murder. This is one of the thirteen cases that led to Governor Ryan's moratorium on the death penalty.

248. Roger Lane reports that "Back in 1974 the South still strongly led all regions in homicides, with a rate of 13.3 per 100,000, the Northeast trailing with just 7.4. By 1994 two long historic trends, population shifts and the nationalization of culture patterns, had closed this gap by about one-third, 11.0 to 7.0." ROGER LANE, MURDER IN AMERICA 321 (1997). Fox Butterfield explains that "[i]n fact, there are sharp regional differences in homicide, with the South having by far the highest murder rate, almost double that of the Northeast, a divergence that has persisted for as long as records have been kept, starting in the 19th century." Fox Butterfield, *Ideas and Trends: Southern Curse: Why America's Murder Rate is So High*, THE NEW YORK TIMES ON THE WEB, July 26, 1998. While executions today are concentrated in southern states, that has not always been the case. According to Keith Harries and Derral Cheatwood: "The half-century constituting the stability era [of executions] (1880-1929) is characterized by the most extensive geographic coverage of the four eras....The peak era (1930-39) suggests a heavily southern emphasis in relation to both counties with executions and those counties

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responses, race, and local and national political contexts. Injustices are often clear and riveting; we read on the one hand about lynchers (in the cases of Emmett Till and Mack Charles Parker) who went completely unsanctioned for their murders of young black men and on the other about young men condemned for crimes they did not commit.<sup>249</sup> Students express outrage at the obvious abuses of governmental powers, and there is no overt effort to distance themselves from the gruesome and disturbing details of these situations and the people involved in them. In class we do not hesitate to get up close to these phenomena. Murder, racism, injustice are all familiar themes in our popular and political culture, and they continually ignite our interests and passions.

There was a time in our history when legal executions equally gripped our social and political imaginations.<sup>250</sup> We were as caught up in executions as we are today with murder. During the seventeenth and eighteenth centuries, the condemned could achieve a celebrity status,<sup>251</sup> and executions and the literature they spawned were a cultural preoccupation.<sup>252</sup> Gallows sermons were popular reading in Puritan New England, and they were an indication of how fully executions and the values surrounding them constituted a significant part of community spirit. Not only did people enthusiastically embrace writings about crime and punishment, they loved to attend executions. According to Daniel A. Cohen, "few civic occasions aroused as much popular interest in early New England as public hangings."<sup>253</sup> From the seventeenth to the early

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above the mean for counties with executions in the period." *Supra* note 21, at 22.

249. Lynching and capital punishment are closely related, and the passions driving each are connected, although not precisely the same. There is a racial link between lynching and executions where white lives are deemed more worthy and more in need of vengeance than black lives. Lynchings and executions both used to be public, social affairs. See James W. Marquart et al., *From Lynchings to Executions*, in *THE ROPE, THE CHAIR & THE NEEDLE* (1994). Lynchings were more openly dramatic spectacles than executions today. See ROBERT JAY LIFTON & GREG MITCHELL, *WHO OWNS DEATH?* 36, 37 (2000). While I do not argue that the waning of lynching directly parallels a change in the demeanor of official executions, there appears a connection between these developments.

250. I focus on legal executions rather than the illegal ones, lynchings.

251. Daniel E. Williams notes that in Boston in 1686 the condemned James Morgan, "unknown and unimportant" prior to his conviction, "became a celebrity in death" when crowds "flocked to the jail to converse with him or simply to observe him" and thousands attended his execution. DANIEL E. WILLIAMS, *PILLARS OF SALT. AN ANTHOLOGY OF EARLY AMERICAN CRIMINAL NARRATIVES* 1 (1993).

252. Daniel A. Cohen includes in this literature: "execution sermons, conversion narratives, dying verses, last speeches, trial reports, crime novels, romantic biographies, and newspaper stories." DAVID A. COHEN, *PILLARS OF SALT, MONUMENTS OF GRACE* ix (1993). He writes further: "there can be no doubt that execution sermons of the late seventeenth and early eighteenth centuries were extraordinarily popular products in a marketplace of literary scarcity." *Id.* at 6.

253. *Id.* at 3.

nineteenth centuries, executions were not infrequently large, social affairs for the entire community. To illustrate, the hanging of John Lechler in the mid-afternoon of October 25, 1822 was attended by 15,000 to 40,000 people.<sup>254</sup> Food and liquor merchants benefited from executions since eating and drinking contributed to the sociality of the public spectacle. Usually orderly, onlookers managed to indulge their thirst for the direct contact with hangings until the 1830s.

The execution spectacle was deliberately moved in stages out of the public's eye. As Louis P. Masur explains, in the early nineteenth century there was still a public appetite for executions, but political elites, who gradually stopped attending them, grew ever more wary of "mobs" or any large assemblies of mixed classes of people.<sup>255</sup> They became worried about the public spectacle of hangings and the message they sent as a form of popular entertainment and political education. Advocates of the abolition of the death penalty also sought to remove executions from the commons.<sup>256</sup> As approaches to large open gatherings, crime, and punishment changed, so too did the public's experience of executions. While Lechler's hanging was on the town common of Lancaster, Pennsylvania, the gallows, unlike those in the eighteenth century, had a screened trap door to hide his final agonies from those in attendance.<sup>257</sup> His hanging was, thus, only partially visible to those who witnessed it. They could see the execution through just its first steps, not up until the condemned actually died by the rope; the dangling body was hidden from view. There was a shift away from public participation in the death penalty. Even the gallows' iconography of the first third of the nineteenth century displays a redirection of perspective "away from the assembled and toward the condemned...."<sup>258</sup> Where once citizens had been up close to executions—through attendance and reading gallows

254. LOUIS P. MASUR, RITES OF EXECUTION: CAPITAL PUNISHMENT AND THE TRANSFORMATION OF AMERICAN CULTURE 1776-1865 6 (1989).

255. *Id.* at 100; *See also* MICHAEL MERANZE, LABORATORIES OF VIRTUE. PUNISHMENT, REVOLUTION, AND AUTHORITY IN PHILADELPHIA (1996); JOHN D. BESSLER, DEATH IN THE DARK. MIDNIGHT EXECUTIONS IN AMERICA (1997).

256. A movement to end executions entirely occurred at the same time as the shift toward "private" executions. It met with some success as anti-gallows societies formed in many states and as laws abolishing the death penalty were passed during this period until the Civil War in Michigan, Rhode Island and Wisconsin. BESSLER, *supra* note 43, at 44.

257. MASUR, *supra* note 42, at 105.

258. *Id.* at 105. Masur summarizes his analysis of the "privatization" of executions: "The cultural origins of the abolition of public executions, then, can be traced to beliefs about the impressionability of the mind, anxieties over social order and public appearance, and ideals of privacy that made the public realm far less appealing than the private arena. These were the ideas and anxieties around which a middle class coalesced in the early nineteenth century." *Id.* at 109-10.

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sermons, confessions, and dying speeches—they were increasingly denied those immediate attachments to the death penalty.

Hangings went behind the walls of prisons, and the rituals and culture of capital punishment gradually, but significantly, changed.<sup>259</sup> Both abolitionists and proponents of capital punishment sought to make state killing less visible and less grotesque. Hangings were not only moved inside penal walls but also away from the control of county sheriffs into state institutions. Along with these reforms came new, “more humane” executions through electrocution and asphyxiation by lethal gas, which could be done very effectively behind closed doors in prisons.<sup>260</sup> In seeking further to contain public involvement with executions, states banned the press from attending. New York even went so far as to criminalize newspaper descriptions of executions.<sup>261</sup> Finally, executions began to take place after midnight, in the early morning hours.<sup>262</sup> Gone were the gallows sermons, large and enthusiastic attendance, the religious and civic symbolism of public, dead bodies hanging in the open for all to see. There were concerted efforts over the nineteenth century to erase executions from the popular political culture.<sup>263</sup>

Today executions are the most “humane,” tidiest, routinized, and remote that death penalty proponents and (in some instances)

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259. Masur observes: “By instituting private rather than public executions, legislators eliminated an occasion for public gathering, imposed control over public space, and precluded the open expression of certain passions and emotions. They also fashioned a new illusion of an ordered, consensual society that replaced an earlier depiction of hanging day as a ritual that affirmed communally shared civil and religious values.” *Id.* at 115. Where once public executions had been deemed necessary for social order, they were, by the mid 1800s seen as harmful to society. But executions themselves were not abandoned.

260. Prisons restricted women and children from witnessing “private” executions, and all states came to limit the number of spectators. BESSLER, *supra* note 43, at 68, 72.

261. Established in New York in 1886 to report on “the most humane and practical method known to modern science of carrying into effect the sentence of death in capital cases,” the Gerry Commission recommended: 1) electrocutions instead of hanging especially since they could be done privately; 2) that state prison officials rather than sheriffs conduct executions; 3) the barring of any members of the press from attending executions; and 4) making it a crime for newspapers to publish “the details of an execution.” *Id.* at 47, 48.

262. Bessler writes that in 1889 Minnesota passed a press gag law that also required executions to occur “before the hour of sunrise.” *Id.* at 56.

263. The press was often able to get eyewitness accounts even when laws prohibited eyewitnesses from discussing executions. There was still public interest in these events that could not be completely extinguished despite many policy attempts to do so. Public or semi-public executions in the U.S. did take place from time to time until 1937, when Roscoe Jackson was hanged in Galena, Missouri inside a stockade before fifteen hundred spectators who had bought tickets to be permitted to watch. The last fully public hanging was in Kentucky in 1936. *Id.* at 31, 32.

opponents have been able to establish.<sup>264</sup> The rituals of lethal injection reveal the degree to which the physically grotesque has evaporated from state killing. In Texas, several hours before execution the condemned eats a last meal, showers, shaves, and puts on “prison whites” in preparation for his death.<sup>265</sup> The process is sanitized and in some ways utterly unremarkable. As one execution team member has remarked:

The lethal injection setup ain’t much to look at. A needle is a needle. Gurney’s nothing special. ‘Cept maybe the straps. The straps are thick. But the room is small, cold. You walk in there and the whole business is cold as death.”<sup>266</sup>

It is cold. It is dispassionate.

The political culture of the death penalty process is one of professionalization, organization, routine, security, tidiness, and a facade of humaneness. With the advent of lethal injection, the state has achieved the clean form of execution it has sought since first doing away with public hangings. Popular passions originally associated with capital punishment have been neatly contained both outside and inside the prison.<sup>267</sup> Although demonstrations for and against capital punishment do take place outside prison walls on the days or nights of executions, most executions garner little media attention.<sup>268</sup> Descriptions of late twentieth century executions often try to capture the silence in the witness room. Emotional reactions to the event are to be expressed afterwards and away from the prison.<sup>269</sup>

Passions for the death penalty today, then, are different from those of the past in that they are not formed around any immediate or sensual

264. A few states keep secret the actual day and time of execution until it has taken place. *Id.* at 83.

265. Marquart et al., *supra* note 37, at 143. Johnson tells of a last minute request from “Jones” (a pseudonym) for a glass of water and a mint. Denied his request, Jones was told that they would have an adverse effect on his body after execution. While it is clear that this response was a way for the death team to keep its focus on the execution, one wonders if the mint and water would be seen somehow as sully the body because it was out of the routine of electrocution. JOHNSON, *supra* note 15, at 174.

266. JOHNSON, *supra* note 15, at 1.

267. Demonstrations at the moments of execution have been more vociferous and well attended when an execution is the first after a period of none or where the condemned is a serial killer. See BESSLER, *supra* note 43, Chapter 5. When James E. Rodden Jr. was executed in Missouri in 1999 only eighteen death penalty opponents stood outside the prison. Tim O’Neil, *18 Held Vigil Outside Prison*, ST. LOUIS POST DISPATCH, February 25, 1999, at B1.

268. According to Bessler, “Modern day executions do get very little media coverage. Of the ninety-three executions between 1977 and 1987, only thirty-three of them received coverage by one or more networks,” Bessler, *supra* note 43, at 184.

269. See SISTER HELEN PREJEAN, *DEAD MAN WALKING* 93-94, 175, 178 (1994).

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contact with executions. And even those who do witness state killings are, while in the witness room, in an entirely disciplined arena where emotions of any but the most private or quiet kind are banished. State policies and politics preclude open, democratic, volatile, messy, visual, sensual contact with death row and executions. Killing the condemned has become, as Johnson puts it, "largely a matter of procedure,"<sup>270</sup> a most dispassionate, remote procedure.

My students, as probably most in our society, find this kind of execution fitting. Understandably, they are in tune with the modern, seemingly nonviolent form of execution by lethal injection. It is right and proper that everyone involved in the process is calm, well organized, professional, not unkind to the condemned. Even those opposed to capital punishment prefer this form of execution to any of its predecessors. We are acculturated to this bloodless, remote form of state killing.

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Passions have been systematically eliminated from the execution process, but that does not mean that people do not hold passionate views about the death penalty. There is, as my students repeatedly demonstrated to me, passionate support for the death penalty in this country. People want the justice they believe results from executing murderers. Among the cultural sensibilities animating death penalty passions, two particularly figured into our class discussions.<sup>271</sup> One rests on a familiar, abstracted idea of retribution,<sup>272</sup> and the other derives

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270. JOHNSON, *supra* note 15, at 175.

271. Even those most directly affected by a murder -- relatives or loved ones of the victim -- may be motivated by these cultural factors. Their involvement with the death penalty may be more visceral and direct than most of us experience, but their posture toward capital punishment is supported by the culture within which they experience their loss. Ties to the death penalty are culturally complicated, as the readings in *The Killing State* illustrate. The two factors I discuss here obviously do not exhaust the cultural dimensions of passionate support of the death penalty. William E. Connolly, for instance, argues that "Capital punishment sacrifices the lives of killers to reassure a culture that would otherwise be perplexed and troubled by the constitutive uncertainty haunting some of its most cherished categories of self-interpretation" like free will. An appetite for punishment, a passion for execution, may well be a way of reaffirming a belief in individual free will and of avoiding the consequences of unstable categories for understanding ourselves and our society. The death penalty legitimates a stability that we know or suspect does not exist. William E. Connolly, *The Will, Capital Punishment, and Cultural War*, in *THE KILLING STATE* 197 (Austin Sarat ed., 1999).

272. Louis P. Pojman differentiates between revenge and retribution: "Revenge is a personal response to a perpetrator for an injury. Retribution is an impartial and impersonal stance to an offender for an offense done against someone." *Supra* note 18, at 52. My students did not necessarily accept this distinction for they reasonably asked themselves how they would feel if someone close to them were murdered. They tended to present the idea of just deserts as a combination of these two elements.

from a sense that if the state can do anything effectively it can execute. Both of these share the quality of certainty, a certainty that is difficult to shake. The idea of vengeance and justice occupied much more of our time and energies in class, where the effectiveness of state policy through execution seemed to be a given of our considerations.

In other political science courses the ability of the government to accomplish any particular policy goal is aggressively challenged; in the context of our discussions on the death penalty it is not. Students do not doubt that government can execute and can do so with the decorum and ritual deemed necessary of so serious a state action. Indeed, there is a faith that states have modernized executions quite effectively so they are no longer the cruel, gruesome sanctions they once were. Capital punishment could be considered the ultimate, successful domestic power of government.<sup>273</sup> Since the 1970s and 1980s, disenchantment with the federal government as the source of major social problem solving, and a confidence in government's ability to punish and to execute has held steady until very recently. Some would argue that executions, though largely token punishments because of their infrequency, remain significant symbolic reaffirmations of governmental power. For advocates, the death penalty is a reassuring statement of government's ability to act definitively at least in this circumscribed arena of policy making. Capital punishment may, therefore, occupy a peculiarly formidable place in defining the power of governance, particularly for those who would restrict government's role in society but who want that limited place secured by the ability to exercise the ultimate power of killing. As Jonathan Simon and Christina Spaulding comment:

There is every reason to believe that these capital tokens are more than trivial pursuits. The very activity of legislation suggests effective interest groups with strategic agendas. As we move into an era in which the state sloughs more and more of its active governing into private actors, government has less to give its own name (execution is one thing unlikely to be privatized), and such tokens inevitably increase in value.<sup>274</sup>

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273. Here I use domestic to distinguish it from foreign policy. Franklin A. Zimring argues that proponents view the death penalty as a "specific and discrete" policy relevant to the administration of criminal justice where abolitionists see capital punishment as "a fundamental issue" about basic values of governance like due process. Franklin A. Zimring, *The Executioner's Dissonant Song: On Capital Punishment and American Legal Values*, in *THE KILLING STATE* 138 (Austin Sarat ed., 1999).

274. Jonathan Simon & Christina Spaulding, *Tokens of Our Esteem: Aggravating Factors in the Era of Deregulated Death Penalties*, in *THE KILLING STATE* 100 (Austin Sarat ed., 1999).

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Following another source of passion, some students associate their strong attachment to the death penalty with religion. One, for instance, talked about her pro-death penalty stance as stemming from her growing up a Roman Catholic.<sup>275</sup> For her and students of other faiths, their understandings of justice and their unwillingness to reject the death penalty even in light of overwhelming evidence against its ineffectiveness as a general deterrent and its erratic and inequitable application are rooted in religion. It was difficult in class to move beyond the feeling that one's religion, almost regardless of which religion, supported the morality of "an eye for an eye."<sup>276</sup> There is nothing unusual about religious values as a basis of support for the death penalty; in colonial times executions had overt religious and civil components.<sup>277</sup> Passions supporting the death penalty have long been infused with religious fervor, although less overtly today than in colonial times. Without doubt, religion plays a critical, if differently configured, role in American politics today, as debates on abortion and the death penalty illustrate. Religion is a tenacious foundation for pro-death penalty passions.<sup>278</sup> Faith fuels contention over the morality of executions. Once asserted, religious faith tends to shut off further political engagement with death penalty debate or at least engagement outside the context of religious institutions.

Other students' more secular support of capital punishment derives from a belief in retribution. One student very concerned about equality and fair treatment, for example, continues to believe in the death penalty. Louis P. Pojman captures his perspective when he queries: "If you agree that people deserve the results of their voluntary deeds, then do we not have an obligation to enable them to receive their just

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275. Although a pro-death penalty stance is at odds with the Catholic Church's position, her very clear sense was that her commitment to it was based in Catholic upbringing.

276. The argument is not that religion necessarily provides the most compelling arguments in favor of capital punishment. *Contra*, John Howard Yoder, *Noah's Covenant, the New Testament, and Christian Social Order*, in *THE DEATH PENALTY IN AMERICA* 431 (Hugo Adam Bedau ed., 1997) (Contending that "Thus, the first of God in Genesis, counter to the ordinary reading, is not to demand that murder be sanctioned by sacrificial killing, but to protect the life of the first murderer.").

277. Masur observes that: "Magistrates and ministers designed public executions in the early American Republic as displays of civil and religious authority and order, as a 'spectacle for Men and Angels.'" Masur, *supra* note 42, at 26.

278. Religious belief also provides a moral foundation for opposition to the death penalty, as it did in the eighteenth and nineteenth centuries. Today Sister Helen Prejean gives eloquent voice to the connection between her religious beliefs and her abolitionist stance. See H. Wayne House, *The New Testament and Moral Arguments for Capital Punishment*, in *THE DEATH PENALTY IN AMERICA* 415, 428 (Hugo Adam Bedau ed., 1997) (discussing Christian arguments for capital punishment); See also, Yoder, *supra* note 64.

desserts?"<sup>279</sup> If one thinks we live in a society where individuals can exercise free will, we should hold them accountable for their behavior,<sup>280</sup> especially when it results in the murder of another.<sup>281</sup> That accountability means that there must be some equity between act and punishment, although no one in class has argued with any conviction that we should torture those who torture their victims. The retribution position does not take us along a road to comparable punishment but to the death penalty as the "upper limit" of what we as a society condone.<sup>282</sup> Both this stance – wedded to a concept of moral accountability for individuals—and the position more associated with religious precepts are so deeply and strongly held that they are, to some extent, insulated from the most pressing abolitionist political persuasions of today.

These passions for capital punishment remain squarely in the political arena, however, as vocal proponents carry their message into the political limelight. For many running for political offices it would be unthinkable not to favor the death penalty.<sup>283</sup> For example, Robert H. Macy, the District Attorney of Oklahoma County since 1980 and a "true believer" in the death penalty has enthusiastically prosecuted many death penalty cases. His support of the death penalty has been public, unapologetic, and unwavering. But he does not attend executions. Indeed, he seems little affected by particular executions; according to one report:

The district attorney was in his office on the morning after one of those executions—of Mark Fowler, who had been sentenced to death, along with a co-defendant, for killing three convenience-store workers. If Mr. Macy was affected by the execution, if he has even spent much time thinking about it, he did not give any sign. "I don't go to the

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279. Pojman and Reiman, *supra* note 18, at 15.

280. Connolly raises significant objections to this idea of free will as a stable category or absolute truth. Connolly, *supra* note 59.

281. Sometimes students also maintain a belief in the deterrent value of capital punishment even though they realize that most data on the unusualness of the death penalty demonstrate the impossibility of a broadly effective deterrent. Pojman's argument supporting deterrence comes close to their views. *Supra* note 18 at 37, 51.

282. *Id.* at 31.

283. According to Bessler, "A recent survey of New York legislators found that 42 percent of them believed that a vote against the death penalty would 'definitely hurt' their reelection chances, and some New York politicians in 1990 even opposed a life-without-parole bill because its passage might make the death penalty 'less of a campaign issue.'" BESSLER, *supra* note 43, at 139.

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executions,” he said.<sup>284</sup>

Macy’s passion for the death penalty, like that of most public figures, does not extend to his attending the executions of those he has prosecuted. His enthusiasm stops at the doors of the death house.

Those working in the death house do not display the enthusiastic passion so evident on the outside. They work hard to professionalize the process. Executions are tightly controlled events where personal emotions are contained within the routines and procedures. They are, for the most part, the bureaucratic phenomena Johnson depicts in Death Work.<sup>285</sup> This is not to say that those assisting in executions are not profoundly affected. They are, especially those most in charge, death house wardens. Clinton T. Duffy, who witnessed many executions between 1940 when he became warden of San Quentin prison and 1951, writes: “Each of the 150 executions I watched was a separate and distinct ordeal, unsavory, nauseating, and infuriating. I faced them all with dread and look back on them with revulsion.”<sup>286</sup> More recently, Donald A. Cabana, warden of the Mississippi State Penitentiary in Parchman, came also to oppose capital punishment after witnessing the “violent, repulsive” gas chamber execution of Connie Ray Evans, whom he had befriended.<sup>287</sup>

Other accounts from those involved in death work may appear more neutral in tone. A National Public Radio documentary, “Witness to an Execution,” is narrated by Jim Willett, the warden of Texas’ death house, in order to tell the public what it is like for prison workers to be involved in numbers of executions.<sup>288</sup> Descriptions from members of the tie down team are brief, clear, honest, and eerily mundane. Noting his volunteering for the job, one man says he is not morally opposed to execution. Then he explains how strapping the condemned to the gurney is honed “to a fine art;” it is done quickly and efficiently. He

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284. According to a pro-death penalty web site, Mr. Macy "has sent 54 people to death row... He has crusaded and campaigned on the necessity of the death penalty. ... Nothing seems to shake his faith in the death penalty." <http://www.pro-deathpenalty.com/>.

285. There are accounts of gas chamber seats and electric chairs from which the condemned has fleetingly been able to unleash himself, but by and large these are events of the past.

286. CLINTON T. DUFFY & AL HIRSHBERG, 88 MEN AND 2 WOMEN 18 (1962). Duffy became an active death penalty abolitionist.

287. Death at Midnight. The Confession of an Executioner 188 (1996).

288. Warden Willett says that in light of the large number of executions in Texas and the controversy surrounding the death penalty he thinks it is a good time for the public to know about the effect executions have on those who do the work in the death house. NPR: *All Things Considered* (NPR internet radio broadcast, Oct. 12, 2000).

recognizes that “not many people are willing to do this or can do this.... this process is clinical.” He copes with the job of execution, but another officer unexpectedly breaks down one day at home after working at one hundred and twenty executions. He resigns from the prison system to work as a carpenter.

The gap between current passions favoring the death penalty and the deliberate efforts at keeping the actual death work at a tightly controlled distance from those passions lies at the heart of contemporary support for capital punishment. People do believe in the justice of executions. But they and their passions remain remote from the process for the most part.<sup>289</sup> The separation of passions favoring the death penalty from actual executions is a matter not only of public taste but of public policy. Although the separation is often breached for those whose work routinely takes them into the death house and the execution chamber, our political culture works to sustain that separation.

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We cling to capital punishment across different eras, justifications, protests, effectiveness, costs. During the nineteenth century most things about execution were profoundly altered: locations, techniques, witnessing, underlying philosophy. But state killing remained. Through all its transformations the death penalty has stayed with us. Public support for capital punishment waxed and waned across the nineteenth and twentieth centuries. I am not, therefore, contending that our attachments to the death penalty have been constant over time but rather that we have been politically unable and unwilling to break those attachments completely. Even in the face of obvious, documentable failures, capital punishment has shown a remarkable tenacity. It has a passionate grip on us and our political culture.

In the last several years the media appear to have become more interested in the death penalty. It has re-entered our popular imaginations through films like “Dead Man Walking.”<sup>290</sup> Part of this engagement has resulted from the energized activities of abolitionists. Contention over the death penalty has intensified again in the wake of

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289. Families of victims who attend executions are probably the most directly involved. As important as they are, they make up a very small portion of death penalty supporters, and some are death penalty opponents.

290. *Dead Man Walking* (Gramercy Pictures 1995). Other films include: *The Thin Blue Line* (Miramax Films 1988), *Last Dance* (Buena Vista Pictures 1996), *Hurricane* (Universal Pictures 1999) and *The Green Mile* (Castle Rock Entertainment 1999).

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the American Bar Association call for, and the Illinois implementation of, a moratorium on executions. Despite renewed hope for abolition, we need to recognize and not underestimate the passion continuing to support capital punishment.<sup>291</sup> The question for abolitionists is how to challenge the political culture of death penalty passion.

The passion is largely sustained through its detachment from executions. We have prohibited most people from witnessing executions, we have limited the witnessing that does occur to a short, decorous time span, and we have cleaned up executions so that they are now efficient, sanitary, nongraphic, “humane.” This is a political culture where only a very few people, those who work or officially observe in the death houses and those who are the loved ones of both the murder and execution victims, feel the immediate impact of executions. In the professional world of bureaucratized punishment, most of us are not called upon to test our passion in any up close, visceral way. And, like my students angry at Johnson’s Death Work, we want to keep it that way.

In my classes I invite more passion and less detachment by looking at details of the state killing process and those involved in it. One student, interestingly a death penalty proponent, thought this a valuable step to take but wanted to approach the people more fully; he recommended that we meet death house inmates if possible, and at least to read their own words about death row. We should, he suggested, become acquainted with death row individuals as well as we could. Following on his recommendation and my consideration of the remote passion for the death penalty, in the future we will, for example, explore documents from Sing Sing’s death house: the visitation and letter writing rules, the surreptitiously taken photograph of the electrocution of Ruth Snyder, the list of personal property left behind by Ethel and Julius Rosenberg.<sup>292</sup> I shall ask them to read the words of those executed and those who feel most immediately responsible for the death penalty, death house workers and prison wardens. In other words, we will try to bring our passions as close as we can to the death penalty.

The larger political culture is the more significant arena through

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291. I recognize that the passion may not run as deeply as many proponents suggest. Dieter argues, for instance, that “Death penalty support becomes a minority opinion when the public is presented with a variety of alternative sentences.” Dieter, *supra* note 1, at 116.

292. SCOTT CHRISTIANSON, CONDEMNED. INSIDE THE SING SING DEATH HOUSE (2000) (provides ready access to these documents.).

which to reconnect the passions for the death penalty with the process. Perhaps it is impossible to alter the political culture of the death penalty when executions have been fine-tuned to resemble the beginning of an operation when a patient is put to sleep. But we should place a burden on the proponents to embrace executions fully and openly. Clinton T. Duffy's admonition from the 1960s is still apt:

If the death penalty were right and proper, it would be carried out in public places and anyone would be free to watch it. If it were a source of pride instead of shame, the participants would be heroes and the condemned the villains they were meant to be.<sup>293</sup>

Since it is difficult to imagine that we will move away from our tidy killings by lethal injection to more "unpleasant" or "barbaric" executions, we must at least make them public, have those directly or indirectly responsible for death penalty decisions required to attend or to carry out executions.<sup>294</sup> Joshua Dressler proposes that we extend "citizen jury duty to death duty."<sup>295</sup> As abolitionists have argued, executions should be televised live and be available for rebroadcast.<sup>296</sup> We should also see the daily life on death row and listen to interviews with the inmates there.<sup>297</sup> As best we can in a society where the media themselves foster a remoteness from acts and responsibilities (where we watch violence as we drink our sodas and eat our snacks), where we could

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293. *Supra* note 74, at 20.

294. Soskis observes that "by sanitizing capital punishment, states robbed the abolitionists of their strongest arguments: the practice's barbarity." He also points out that DNA evidence will make us more certain that those convicted are guilty and will, therefore, remove one more argument against executions. *Supra* note 11.

295. Joshua Dressler, "EX-ANTE: Death Duty: A Somewhat Modest Proposal to Bring Executions to the People," 2 *Green Bag* 2d, at 347. In a similar vein, Bessler recommends: "At the very least, the judge and jurors who preside over a capital trial should be required to attend executions, as they were in New York in the 1840s." BESSLER, *supra* note 43, at 152.

296. Dressler's article is an irreverent and oddly powerful proposal to televise not only the execution but the entire death row experience through an "Inmate-of-the-Month" television show and website, <http://www.olsparky.gov/>." Furthering the case for televising executions, Bessler remarks: "In the last fifteen years, public executions have taken place in at least twenty-two countries, and many of these executions -- including ones in Iraq, Saudi Arabia, and Vietnam -- have been shown on U.S. news programs. For example, American television stations broadcast the firing squad execution of Romania's former dictator, Nicolae Ceausescu." Dressler, *supra* note 83, at 192.

297. It is important to remember that the death penalty involves not just execution but years on death row. LESSER, *supra* note 31, at 141 (quoting David Bruck, a defense attorney who has witnessed two executions, who explains that "The thirty seconds or sixty seconds or two minutes that the public would see is almost no part of the death penalty... The death penalty is the process of waiting for death for years and then measured by the calendar and then finally by the clock. The death penalty is going to the families -- to the motel room where the man's parents or his wife and children are waiting afterwards. None of that would be on TV.").

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easily get bored with rather than moved by the perfunctory nature of modern executions, we must reconnect the passions with the people, the processes, and the aftermaths of the death penalty. We must try to make ourselves feel fully the passions. Dressler says it best: “The blood should really be on our hands.”<sup>298</sup>

Mass media would not recapture the experiences of the public executions of the eighteenth century nor would executions today be experienced as they were then. We should not expect them to. But we should not take the political culture of the death penalty as a given where passions in support of the death penalty are allowed to remain remote from the practices and consequences of killing the condemned. Executions will still be cold and meticulously calculated, but the carefully constructed protections of our passions can be torn down. Our responsibilities, our connections with the death penalty can be made less remote, more engaged, and more honest than they now are.

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298. Dressler, *supra* note 83, at 347.