# Cruel and Unusual Performance: (Re)producing Capital Punishment on the U.S. Stage

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## Abstract

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This dissertation examines theatrical representations of state-sanctioned executions in the U.S. from the late eighteenth century to the early twentieth century alongside real-life executions and federal capital punishment policy. Through an in-depth engagement with stage performance, contemporaneously circulating scholarly and legal discourses regarding the death penalty, and Foucauldian concepts of punishment, governmentality, and liberalism, my research reveals how theatre artists reformulated their works, genres, and the art form to engage and enter into a dialogue with oppressive death penalty politics. A majority of the stagings of death, dying, and the death penalty throughout the late eighteenth, nineteenth, and early twentieth centuries with which this dissertation engages did not simply (re)produce the conditions under which capital punishment in the U.S thrived. Rather, they reveal the nuanced ways in which theatre artists sought to consistently reassess their works, the genres, and the art form for the betterment of

society. Moreover, when read through the lens of death penalty politics and stagings, these productions offer up new ways of understanding how liberalism was practiced throughout these eras.

By turning to the theatre's engagement with capital punishment and death penalty politics, nearly an additional century of critical engagement with the topic is unlocked, as Supreme Court cases surrounding the death penalty did not begin until 1879. Through plays by William Dunlap, Dion Boucicault, George Aiken, John Wexley, Elliott Lester, and Sophie Treadwell, as well as their relevant production records, this dissertation traces the development of execution on the U.S. stage alongside major wars in the country and major political, cultural, and technological developments that aided and/or hindered capital punishment. Through each work, not only are themes are liberalism read through in-depth critical readings, but also concepts of civility, security, and danger, which have proven paramount to the maintenance of capital punishment in the U.S.

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# DEDICATION

To my parents—Lisa and Kris—firm believers in the death penalty and firm believers in compassion.

# Preface.

Throughout writing this dissertation, I have pondered my own journey as a scholar and birthright citizen of the U.S. who has long been indoctrinated into much of what I research and whose tax dollars still pay for executions at the federal level. I grew up in Texas for a majority of my life, only truly leaving the state for the first time to obtain my master's degree at Florida State University in 2014 at the age of twenty-two. Even then, Florida still actively uses the death penalty, most recently executing Gary Ray Bowles on August 22, 2019. I was raised by Republican parents that supported—and still do support—the death penalty and grew up surrounded by a constant news stream of executions that normalized the death penalty alongside car accidents and other nightly news programming. When researching the death penalty for this dissertation, I found out that the first execution in Texas during my lifetime—the execution of Curtis Lee Johnson—took place when I was just seven days old and that there were 479 executions in Texas from August, 1992 until I moved away in August, 2014 (Chart 2).[1] While I knew that Texas executed the condemned at a much higher rate than other states, these numbers appalled me looking back. That is an average of about twenty-one executions a year in just one state. To a child born and raised in Texas, the death penalty felt like an unchangeable fact of life. To a child born and raised in Texas who now feels different, the normalization of the death penalty feels overwhelmingly frustrating.

[1] "Death Row Information," *Texas Department of Criminal Justice,* accessed March 20, 2020, https://www.tdcj.texas.gov/death_row/dr_executions_by_year.html. The Supreme Court denied Johnson's stay of execution on the day I was born.

**CHART 1:** Executions in the Texas from August, 1992 to August, 2014[2]

| Year | Number of Executions |
|---|---|
| 1992* | 4 |
| 1993 | 17 |
| 1994 | 14 |
| 1995 | 19 |
| 1996 | 3 |
| 1997 | 37 |
| 1998 | 20 |
| 1999 | 35 |
| 2000 | 40 |
| 2001 | 17 |
| 2002 | 33 |
| 2003 | 24 |
| 2004 | 23 |
| 2005 | 19 |
| 2006 | 24 |
| 2007 | 26 |
| 2008 | 18 |
| 2009 | 24 |
| 2010 | 17 |
| 2011 | 13 |
| 2012 | 15 |
| 2013 | 16 |
| 2014* | 7 |

[2] Ibid. A "*" denotes that the year is only tracked from or to August, as the title of the chart mentions.

As I moved away from Texas and the values that had been normalized in me as a child, I began to question how capital punishment could ever feel normal to me. The journey initially led me to Foucault, reading *Discipline and Punish* in a Barnes and Noble café during a holiday break to very confused parent. There I was, horrified that I once felt that anyone deserved to be killed at the state's hands no matter how egregious their crime. An eye for an eye? That's just revenge, not justice. And here I am six years later, devoting myself to uncovering how we as a society, as global citizens, and—some of us—as Americans, have been indoctrinated into codes of civility that reinforce capital punishment to be necessary. I turn to the theatre not to indict the art form nor its audience—or even to indict those who never attend the theatre but support capital punishment—but rather to uncover the ways in which we have all been built up to believe in a system that is entirely broken and based on half-truths. My arguments have little to do with any party or administration, but rather are buried deep in this nation's history, a history we all need to uncover for the sake of the lives that are at stake still today.

# Chapter 1. Introduction

> Make your way to death row and speak with the tragic victims of criminality. As they prepare to make their pathetic walk to the electric chair, their hopeless cry is that society will not forgive. Capital punishment is society's final assertion that it will not forgive.
>
> — Martin Luther King, Jr.[3]

> As one whose husband and mother-in-law have died the victims of murder and assassination, I stand firmly and unequivocally opposed to the death penalty for those convicted of capital offenses. An evil deed is not redeemed by an evil deed of retaliation. Justice is never advanced in the taking of a human life. Morality is never upheld by a legalized murder.
>
> — Coretta Scott King[4]

Stephen Sondheim's *Assassins* (1990) tells the story of nine of the men and women who have attempted to or have successfully assassinated Presidents of the United States all while using the American musical form.[5] The show blurs together two hundred years of history,

[3] Martin Luther King, Jr., A Gift of Love: Sermons from Strength to Love and Other Preachings (Boston: Beacon Press, 2012), 36.

[4] Coretta Scott King, "Speech to the National Coalition to Abolish the Death Penalty," Washington D.C., September 26, 1981.

[5] Charles J. Guiteau assassinated President Garfield on July 2, 1881. John Wilkes Booth assassinated President Lincoln on April 14, 1865. Leon Gzolgosz assassinated President McKinley on Steptember 6, 1901. Giuseppe Zangara attempted to assassinate President F.D. Roosevelt on February 15, 1933. Lee Harvey Oswald assassinated President Kennedy on November 22, 1963. Samuel Byck attempted to assassinate President Nixon on February 22, 1974. John Hinkley, Jr. attempted to assassinate

multiple realities—historical narratives, a carnival, and limbo—and various theatrical genres in an effort to critique the sweeping claims of the American Dream sold to any and all willing to buy in. All of the assassins claim that "Everybody's got the right to be happy," the foundational belief of American mythology, and each questions their right to happiness and how they can achieve it. The duplicitous line "If you keep your goal in sight / you can climb to any height" calls into focus the work-success correlation demanded of the American Dream and capitalism and challenges that all some people must do is put a President in the sight of your gun to achieve true happiness.[6]

Right before the fictionalized version of presidential assassin Charles J. Guiteau takes the stage for his solo number/execution, he declares, "I am more than all right! I am extraordinary! I am to be reckoned with!"[7] He defiance never wavers as he sings straight forward to the audience. The character sings lyrics pulled from a poem read upon the real-life Guiteau's historical scaffold while the Balladeer (narrator) character spectates the execution. The number, sung from theatricalized gallows, teetertotters between cheery and solemn:

GUITEAU. I am going to the Lordy…

---

President Reagan on March 30, 1981. Lynette "Squeaky" Fromme and Sara Jane Moore attempted to assassinate President Ford on September 5, 1975 and September 22, 1975 respectively.

[6] Stephen Sondheim and John Weidman, *Assassins* (New York: Music Theatre International, 1991), 86.

[7] Ibid., 46. The first production of *Assassins* opened off-Broadway on December 18, 1990 at the Playwrights Horizons Theatre, a proscenium theatre with 198 raked seats focused toward a small platform stage. Based upon an idea from Charles Gilbert Jr., John Weidman wrote the book at the direction of Sondheim, who wrote the music and lyrics. Directed by Jerry Zakes, the original cast included Broadway mainstays such as Victor Garber, Annie Golden, Terrence Mann, and Debra Monk. Despite this powerhouse team, the production only ran until February 16, 1991 and closed after a measly 73 performances, never transferring to Broadway, which is seen as a rite of passage for any big-name musical. The failure of the musical is often attributed to the difficult—sometimes controversial—subject matter addressed in the musical and how Sondheim addresses.

BALLADEER: Charlie Guiteau

Had a crowd at the scaffold—

GUITEAU. I am so glad…

BALLADEER:—Filled up the square,

So many people

That the tickets were raffled.

Shine on his shoes,

Charles mounted the stair,

Said, "Never sorrow,

Just wait till tomorrow,

Today isn't fair.

Don't despair…"[8]

Guiteau's song sounds like a ballad—hopeful and dreamlike—and yet is tonally sad. His character's emotions are immediately juxtaposed, however, with the folk-like melodies of the Balladeer—melodies that are playful and childlike— as the narrator dramatizes the spectacular elements of the execution, into which spectators have filed in droves.[9] The song places a majority emphasis on Guiteau's soul, as both he and the Balladeer are examining the what happens to the soul in death..

Perhaps most startling is that the 1991 production of *Assassins* chose to place a noose around Charles J. Guiteau's neck, played by Jonathan Hadary (Figure 1). In this way, *Assassins* re-staged an actual execution, up to the final moment of the body actually hanging from the

[8] Ibid., 48-49.

[9] Link to song from original cast: https://www.youtube.com/watch?v=QEN16GHuwvg

noose. This staged execution, mixed with the solemn blue lights seen in the image and a constant switch between musical consonance and dissonance challenged the audience to either sympathize with Guiteau's character in his moment of death or participate joyfully as spectator. As the song crescendoed to a cheery climax, the Balladeer sang, "LOOK ON THE BRIGHTSIDE / TRUST IN TOMORROW" while Guiteau stood in a noose in the final moments of his life. The final line of the song, sung in harmony between Guiteau and the Balladeer, told the audience to trust in "THE LORD."[10] With a swift pull of a lever by a hangman, a loud boom, and a quick blackout, the jovial music of the Balladeer was immediately met with onstage horror. In this moment, spectators were forced to exist in both spaces at once: complicit spectators of the death penalty and sympathizers of a broken man. This is perhaps the most pivotal moment in *Assassins,* as it brought forth the act of spectating, both in the theatre and as a citizen of the World, including at the scaffold. This staging invited the audience to question their own complicity through an intense entanglement of consonance and dissonance, color and bleakness, and joy and disruption.

[10] Sondheim and Weidman, *Assassins*, 50.

**FIGURE 1**
Charles J. Guiteau (played by Jonathan Hadary) in his hanging scene "Assassins," Playwrights Horizons, 1991.[11]

[11] Martha Swope, "Actor Jonathan Hadary (R, as Charles Guiteau) w cast member in a scene fr. the Playwrights Horizons' production of the musical "Assassins." (New York). 1991". T-VIM 2010-048. Bill Rose Theatre Division. New York Public Library, New York City, New York, United States.

Guiteau's execution in this 1990s musical comes after centuries of staging executions. To place a man onstage in a noose will never be an exact copy of the real-life corollary, even when it attempts to recall a historical execution. The relationship between the death penalty, the theatrical audience, and public displays of power via execution also have histories that long precede the staging of *Assassins,* global histories as well as distinctly American ones that entangle concepts of freedom and civility within them. While *Assassins* provides a clear example how contemporary theatre artists grapple with/critique capital punishment, this dissertation examines works that long precede the musical and have actually made such brazen critiques of capital punishment in U.S. theatre possible. *Assassins* exists within a long genealogy of performance that needs to be traced to understand theatre's role in the preservation and/or upheaval of capital punishment policy in the U.S.

This dissertation therefore examines the theatrical representations of state-sanctioned executions in the U.S. from the late eighteenth century to the early twentieth century alongside real-life executions and federal capital punishment policy. Through an in-depth engagement with stage performance, contemporaneously circulating scholarly and legal discourses regarding the death penalty, and Foucauldian concepts of punishment, governmentality, and liberalism, my research reveals how theatre artists reformulated their works, genres, and the art form to engage and enter into a dialogue with oppressive death penalty politics. A majority of the stagings of death, dying, and the death penalty throughout the late eighteenth, nineteenth, and early twentieth centuries with which this dissertation engages did not simply (re)produce the conditions under which capital punishment in the U.S thrived. Rather, they reveal the nuanced ways in which theatre artists sought to consistently reassess their works, the genres, and the art form for the betterment of society. Moreover, when read through the lens of death penalty

politics and stagings, these productions offer up new ways of understanding how liberalism was practiced throughout these eras. By turning to the theatre's engagement with capital punishment and death penalty politics, nearly an additional century of critical engagement with the topic is unlocked, as Supreme Court cases surrounding the death penalty did not begin until 1879. Pulling upon archival records of executions from 1780-1930, as well as plays by William Dunlap, Dion Boucicault, George Aiken, John Wexley, Elliott Lester, and Sophie Treadwell and their relevant production records, this dissertation traces how constructions of punishment, civility, security, and danger have proven paramount to the maintenance of capital punishment in the U.S.

This introduction will thus establish the premise of my project and includes my literature review and a detailed chapter outline. It will also explore the theoretical crux of the work—security—and delve into how conceptions of liberalism are fundamentally linked to capital punishment. Since Foucault articulates his formulations of security across numerous books, I spend time excavating the term, its particular liberal conceptions, and how the tenets seep on the U.S. theatre's stage throughout the eighteenth, nineteenth, and early twentieth centuries. I work through my theory and methodology meticulously as a set-up to the nuanced historical work in the chapters to come, and I bring in outside Foucault scholars to support my ideas and bridge such scholarship into theatre and performance studies.

Since the reinstatement of the death penalty in the United States in 1976, 1493 people have been executed in 34 states and by the U.S. Federal Government.[12] Of those 1493 people, 34.5% have been Black and 55.6% have been White, although the Federal statistics note that

[12] "Number of Executions by State and Region Since 1976," *Death Penalty Information Center,* Updated March 1, 2019, https://deathpenaltyinfo.org/number-executions-state-and-region-1976.

"White" includes the ethnicity Hispanic.[13] As of October 1, 2018, there are 2721 people awaiting execution in the U.S.[14] These numbers, however, must also be informed by the numerous studies regarding the juridical effectiveness of capital punishment in the U.S.[15] Study after study has found that the death penalty has been inaccurately and often unfairly levied. A 2002 Columbia University Study, looking at capital punishment cases from 1973-1995, found that seven out of ten cases had "conditions evidently pressuring counties and states to overuse the death penalty and thus increase the risk of unreliability and error [including] race, politics and poorly performing law enforcement systems."[16] This means that more than 1800 of the over 2700 people awaiting execution could have potential issues with their cases that could have seen the removal of the death penalty. A 2014 study on capital punishment cases from 1981-2014 in Washington State from the University of Washington found, "implicit racial biases matter the most at the sentencing phase of capital trial."[17] This study ended the death penalty in Washington State, as it found, "jurors are more than four times more likely to impose a death sentence if the

[13] "Race of Death Row Inmates Executed Since 1976," *Death Penalty Information Center,* Updated March 1, 2019, https://deathpenaltyinfo.org/race-death-row-inmates-executed-1976. These statistics are disproportionate against their relative populations.

[14] "Death-Row Prisoners by State and Size of Death Row by Year," *Death Penalty Information Center,* Updated October 1, 2018, https://deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year

[15] *Capital punishment* and *death penalty* are often used interchangeably. The terminology, however, is more nuanced. *Capital punishment* refers to the enacted, state-sanctioned system of punishing by death. *Death penalty* is a specific sentence that exists when the system of capital punishment but can be enacted outside the system of capital punishment as well. *Execution* is the specific act of killing, either by the state or not.

[16] James S. Liebman, et al., "A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It," *Columbia Law,* February 11, 2002, http://www2.law.columbia.edu/brokensystem2/report.pdf.

[17] Katherine Beckett and Heather Evans, "The Role of Race in Washington State Capital Sentencing, 1981-2014," *Washington State Appellate Project,* January 27, 2014, 2, https://deathpenaltyinfo.org/documents/WashRaceStudy2014.pdf, 1

defendant is black."[18] Whether one agrees with the death penalty as a means of justice, are vehemently against it as a mode of state killing, or find themselves caught somewhere in the middle, these studies reveal a questionable system that has repeatedly failed to provide U.S. citizens due process.

With these preliminary numbers and subsequent research in mind, I situate my research alongside scholars such as Michael Foucault, Dwight Conquergood, Austin Sarat, and many more: the systems in which capital punishment is levied in the United States are excessive, violent, racist, cruel, and unusual. And yet, the death penalty endures. Conquergood's call to action in his 2002 article, "Lethal Theatre: Performance, Punishment, and the Death Penalty," reminds contemporary scholars, "Theatre and performance studies have an ethical as well as intellectual obligation to examine this resurgent theatre of death."[19] The conception of capital of punishment as a "theatre of death" or a "performance of power"—discussed by Foucault in *Discipline in Punish*—is long solidified within theatre and performance studies. The role of U.S. theatre in the fighting against the maintenance of capital punishment in the U.S., however, has taken a back seat in academic discourse.

My dissertation therefore serves to fill this important gap in contemporary scholarship by researching the ways in which theatre has historically commented on and critiqued capital punishment in the U.S. To do so, I first articulate the ideologies foundational to the maintenance of capital punishment throughout the establishment of the U.S. through a heavy reliance on political science, political theory, and historiography. I then investigate how such ideologies

[18] Ibid.

[19] Dwight Conquergood, "Lethal Theatre: Performance, Punishment, and the Death Penalty," *Theatre Journal* 54:3 (2002): 339.

have been enunciated, commented on, and/or critiqued during theatrical stagings of state-sanctioned execution, including both direct play sentiment—i.e., pro- and anti-death penalty—and through more subtle formations of liberalism and conceptions of the security/freedom paradigm fundamental to the preservation of capital punishment. This theoretical apparatus unlocks the ways in which governments levy myths of danger to infringe upon societal norms. In the case of capital punishment, the security/freedom paradigm helps to uncover how capital punishment can continue in the U.S. despite shifting social, political, and ethical understandings of the system and its mechanical outcomes. For this in-depth inquiry, I turn to the lectures given by Michel Foucault at the College de France in the 1970s and early 1980s, where Foucault formulates the relationships among liberalism, neo-liberalism, Western civil society and biopower. This theoretical analysis expands upon many of the foundational ideas found within *Discipline and Punish,* the fundamental treatise used in prison theatre and death penalty studies. I then investigate if/how these theatrical stagings of state-sanctioned executions have (re)produced and/or upheaved the ideologies foundational to capital punishment's maintenance. I articulate the complex and ever-shifting relationship between liberalism, the theatre, and capital punishment as a means to interrogate and potentially upheave the subtle mechanisms to which the ideologies foundational to capital punishment are formed and maintained.

Through this project, I endeavor to fill a gap in contemporary theatre and performance studies, one caused by Michel Foucault's *Discipline and Punish.* Although his formative work provides tools with which to excavate Western carceral history and politics, the sole use of *Discipline and Punish* has limited contemporary theatre and performance studies scholars. The ideas put forth in *Discipline and Punish* exist in conversation with numerous works before and after its publication and should not be considered in isolation from the rest of Foucault's oeuvre

related to these discourses. My intervention thus explores Foucault's greater body of work through his diverse lectures from the Collège de France. Through this decade-long lecture series, Foucault formulates numerous concepts fundamental to the preservation of capital punishment. In order to more fully excavate capital punishment and the performance of power often discussed within *Discipline and Punish*, a deeper engagement of Foucault's other concepts that exist beyond *Discipline and Punish* is thus necessary.

The parameters of my project thus help to keep my research both urgent and manageable. This dissertation project is thus solely concerned with sites that stage currently legal methods of execution in the United States: lethal injection, electrocution, hanging, firing squad, and lethal gas (Chart 1). Many plays are also either directly or loosely based on some historical event within the U.S. The work of these choices is twofold. First, they allow me to contextually place the plays, their method of execution, and the relevant historical event among a slew of Supreme Court cases—including their opinions and dissents—surrounding the formation of each method of execution and arguments surrounding capital punishment writ large. Second, the relationship between reality and their fictive representations will hopefully allow the research to crystalize and interrogate artistic manipulations. I do not endeavor at this time to take on extra-judicial executions, also known as extrajudicial killings. These types of executions, carried out by any individual without any reverence for due legal process, include lynchings, counter-terrorism attacks, and more. Although these topics are often discussed in the theatre, are undoubtedly vital, and should be subject to much scholarly investigation, they would open up this dissertation to a

scope beyond what is possible if I am to treat my object of inquiry with the time and depth it deserves.[20]

Throughout this dissertation, I not only consult myriad secondary sources in and around theatre and performance studies and carceral studies, but also rely heavily upon primary sources, including theatre archives and legal archival material relating to the legal formation of "cruel and unusual punishment" since its ratification. I consulted archival documents related to each of my sites and their original productions. I collected scripts for each original production, including numerous academic and newspaper reviews, programs, etc. In order to collect more of the necessary resources, I have visited digital repositories for the New York Public Library's Billy Rose Archives, the Harry Ransom Center's Theatre Archive, and more to look for un-catalogued material surrounding these productions. When possible, I also contacted archivists who so generously made available materials via email, including from the Library of Congress's Rare Book & Special Collections Reading Room and Amherst College who were able to scan physical materials I found to be helpful based upon my search of their finding aids.

[20] I will discuss in this dissertation deaths that take place outside the legal system in *The Octoroon* and *Uncle Tom's Cabin*. These do not fall under the category of extrajudicial killings, however, as the characters attempt to follow due legal process but are forced to act otherwise

**CHART 2:** Current Executions in the U.S. by Method[21]

| Method | # of States Authorizing the Method | Jurisdictions that Authorize the Method |
|---|---|---|
| Lethal Injection | 32 states, U.S. Military, and U.S. Gov't | "Alabama, Arizona, Arkansas, California, Colorado^, Delaware,* Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire,** North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington*, Wyoming, U.S. Military, U.S. Government<br><br>^Colorado abolished the death penalty prospectively on March 23, 2020, and those on death row at that time had their sentences commuted. Lethal injection could only still apply if someone capitally charged before July 1, 2020 is sentenced to death.<br><br>* Delaware and Washington have declared their capital sentencing procedures unconstitutional and have resentenced all death-row prisoners to life without parole.<br><br>**New Hampshire abolished the death penalty but the repeal may not apply retroactively, leaving a prisoner on death row facing possible execution." |

[21] "Executions by Method," *Death Penalty Information Center*, https://deathpenaltyinfo.org/methods-execution. Brackets indicate that the state authorizes the listed method as an alternative method if other methods are found to be unconstitutional or are unavailable/impractical.

| | | |
|---|---|---|
| Electrocution | 9 states - all use lethal injection as primary method of execution | "[Alabama], [Arkansas], Florida, Kentucky, [Mississippi], [Oklahoma], [South Carolina], [Tennessee], Virginia<br><br>The supreme courts of Georgia (2001) and Nebraska (2008) have ruled that the use of the electric chair violates their state constitutional prohibitions against cruel and unusual punishment. |
| Lethal Gas | 6 states - all use lethal injection as primary method of execution | [Alabama], Arizona, California, [Mississippi], Missouri, [Oklahoma], [Wyoming]" |
| Hanging | 3 states - all use lethal injection as primary method of execution | "Delaware, [New Hampshire],** Washington<br><br>**New Hampshire abolished the death penalty but the repeal may not apply retroactively, leaving a prisoner on death row facing possible execution." |
| Firing Squad | 3 states - all use lethal injection as primary method of execution | "[Mississippi], [Oklahoma], [Utah]" |

Throughout my research and writing process, I also continually pulled upon as many of the Supreme Court Cases that debate capital punishment from 1879-2016 as possible, such as the cases discusses above. I am fortunate to not go into such dense legal documents blindly, but rather am drawing upon my training in political science. While at Baylor University, I received a minor in political science where my sole focus was on constitutional law and reading the types of case law relevant to my current research. I undoubtedly relied on the one asserting the legality of electrocution—*In re Kemmler* (1890)—and the only one to debate and affirm lethal injection—

*Baze v. Rees* (2008).[22] The 1905 case—*Rooney v. North Dakota*—asserts the legality of implementing private executions post-conviction. *Furman v. Georgia* (1972) and *Gregg v. Georgia* (1976) are pivotal cases that saw the removal and reinstatement of capital punishment and are particularly fruitful in their examination of a fundamental debate within U.S. civil society.[23]

[22] "In re Kemmler, 136 U.S. 436 (1890)," *Justia,* accessed April 1, 2019, https://supreme.justia.com/cases/federal/us/136/436/. "Baze v. Rees, 553 U.S. 35 (2008)," *Justia,* accessed April 1, 2019, https://supreme.justia.com/cases/federal/us/553/35/.

[23] "Furman v. Georgia, 408 U.S. 238 (1972)," *Justia,* accessed April 1, 2019, https://supreme.justia.com/cases/federal/us/408/238/. "Gregg v. Georgia, 428 U.S. 153 (1976)," *Justia,* accessed April 1, 2019, https://supreme.justia.com/cases/federal/us/428/153/.

## LITERATURE REVIEW

The most common theoretical text scholars deploy when discussing the death penalty, as mentioned above, is Michel Foucault's *Discipline and Punish: The Birth of the Prison* (1977). Foucault's influential work is often considered the foundational work within U.S. prison studies, and performance studies scholars Dwight Conquergood and Austin Sarat use the text to conceptualize the development of spectacular punishment within the United States. *Discipline and Punish* is broken down into four parts: torture, punishment, discipline, and prison. Each part, building upon the historiographical and theoretical mechanisms of the previous part, explores how the carceral state has developed in Western society. Foucault's discussion of machines and technologies marshaled for the purposes of punishment throughout the work, however, are specifically helpful in tracing how execution functions alongside the development of the carceral state.

I then bring to bear Foucauldian theories of security and danger, the fundamental cornerstones of my methodology on these initial readings. Formulated by Foucault during his lectures at the Collège de France from the 1970s through the early 1980s, paradigms of security and danger under liberalism are explored across numerous published works: *The Punitive Society* (1972-1973), *Society Must Be Defended* (1975-1976), *Security, Territory, and Population* (1977-1978), *The Birth of Biopolitics* (1978-1979), *The Courage of Truth* (1983-1984), and more. Through this turn to security and danger—and thus Foucault's greater repertoire of work—I expand upon the traditional turn to *Discipline and Punish* within the field of theatre and performance studies and incorporate more theories that Foucault himself relied upon in his exploration of capital punishment, governmentality, and biopower. The theoretical apparatuses of security and danger offer more complete means with which to interrogate how the United

States' capital punishment has developed alongside its theatrical representations and how the theatre's staging of state-sanction executions have played a role in maintaining capital punishment.

Foucault begins *Discipline and Punish* by tracking the change from spectacular public torture as a means of punishing the physical body to private punishment, torturing the soul. According to Michel Foucault, "By the end of the eighteenth and the beginning of the nineteenth century, the gloomy festival of punishment was dying out, though here and there it flickered momentarily into life."[24] For Foucault, this transition was twofold. First, punishment as spectacle disappeared, including the ceremonial aspects that seemed fundamental to the executions of days past. This ultimately led to punishment becoming the "most hidden part of the penal process."[25] Foucault himself dates this global—i.e., western—rapid transition between 1760 and 1840. This timeline places the ratification of the U.S.'s cruel and unusual punishment clause right in the middle of a drastic shift in American public sentiment towards how the condemned should be executed by the state. Foucault writes, "great spectacle of physical punishment disappeared; the tortured body was avoided; [and] the theatrical representation of pain was excluded from punishment"[26] Instead of hangings on publics scaffolds, the publicity of punishment shifted to the courtroom, through the trial and sentencing process. The actual execution was now imposed through a sanitized bureaucratic process with masked executioners, where the goal of

[24] Michel Foucault, *Discipline and Punish: The Birth of the Prison,* trans. Alan Sheridan (New York: Vintage Books, 1995), 8.

[25] Ibid., 9. Foucault goes into detail about the consequences of privatizing punishment; however, the consequences are not relevant to this particular conversation as this paper investigates the moments before such consequences take hold.

[26] Ibid., 14.

punishment was ultimately to punish the soul. As Foucault points out, "Physical pain, the pain of the body itself, is no longer the constituent element of the penalty."[27]

In the chapters that follow, Foucault recounts the transitions listed above in great detail through the history of (mostly) France. He begins by looking at the spectacles on the scaffold in the seventeenth century, public hangings *par excellence*. "People were summoned as spectators: they were assembled to observe public exhibitions and *amendes honorable*; pillories, gallows, and scaffolds were erected in public squares or by the roadside," Foucault writes. "Not only must people know, they must see with their own eyes. Because they must be made to be afraid."[28] This performance of power by the sovereign state sought to employ direct power over the public through the act of immediate witnessing of the state's ability to conquer the body of the condemned. These public acts of power, however, were protested by the end of the eighteenth century by philosophers and theologians. According to Foucault, "Another form of punishment was needed: the physical confrontation between the sovereign and the condemned man must end; this hand-to-hand fight between the vengeance of the prince and the contained anger of the people, through the mediation of the victim and the execution, must be concluded."[29] Foucault's tracing of this transitory moment is particularly helpful in my own study, as the end of the eighteenth century is where the my own case studies begin.

Foucault traces the changes and development in punishment and execution through this pivotal moment: "how was this man-measure opposed to the traditional practice of punishment? How did he become the great moral justification of the reform movement? Why this universal

[27] Ibid., 11.

[28] Ibid., 58.

[29] Ibid., 73.

horror of torture and such lyrical insistence that punishment be 'humane'?"[30] Foucault traces numerous simultaneous developments within French society that allow for such a transition to occur, including changes in economic systems, crime intensity, attitudes toward punishment intensity, and more. I will turn to this equation in the U.S. during this time period to locate why and when such a transition occurred.

From there, Foucault looks into the incorporation of chain gangs into the punishment repertoire of the early eighteenth century in France, a tradition born out of the ritual public executions. Inmates were processed in front of the public, judged by spectators who guessed profession, class, and crime. Such punishment was a transition away from the sovereign state's "excessive force" towards a more localized, yet "carefully articulated disciplinary mechanism."[31] The chain-gang, however, was replaced by the cell-carriage in the mid-1800s in France, a more private form of transportation straight to the scaffold, where "hasty executions were organized at unexpected times."[32] This development removed some of the spectacular witnessing from executions, as processionals and planned spectatorship was removed from the ritual. Foucault's intricate tracing of technologies is of vital importance. Aside from the archival material that proves entirely beneficial, his methodology will be helpful in my own research.

After such meticulous tracing of public punishment, Foucault moves into a detailed explication of the prison system through the twentieth century, including how discipline has moved into reforming the soul. Although Foucault seeks to explore such developments on a global scale, his sites continue to be Europe- (mostly French-) centric. He investigates historical

[30] Ibid., 74.

[31] Ibid., 264.

[32] Ibid., 15.

conceptions of delinquency and their fundamental links to class. He traces the implantation of ritualized discipline within the penal system, borne out of the disciplining of soldiers. To conceptualize the development of the carceral state, according to Foucault, "one should think rather of a simultaneous system that historically has been superimposed on the judicial deprivation of liberty."[33] This idea, explored through Foucault's conception of the panopticon, is fundamental to many of his other works. Surveillance becomes the key mechanism to which the carceral state—and ultimately society—can continue.

Dwight Conquergood brought capital punishment politics into the theatre and performance studies forefront with "Lethal Theatre: Performance, Punishment, and the Death Penalty" (2002). He begins the article by recounting Foucault's *Discipline and Punish,* specifically where Foucault traces the western history of capital punishment. He highlights the three major phases of punishment that Foucault discusses: 1) where punishment existed as "a theatre of violence and repression," 2) a model of "rehabilitation metonymically connected to others normalizing mechanisms and internalized techniques of coercion, compliance, and surveillance…," and 3) a place where capital punishment is separate from excess and violence.[34] This third phase, however, is a misreading of *Discipline and Punish*, as Conquergood fails to recognize Foucault alluding to the ways in which violence and excess are now veiled, not non-existent. Moving forward with Conquergood's reading of Foucault, however, the basis for his argument comes from his own experiences protesting the executions of Timothy McVeigh and Juan Raul Garza in 2001, where he witnessed a performance of punishment resoundingly different from the death of excess and violence discussed in *Discipline and Punish.* Conquergood

[33] Ibid., 271.

[34] Conquergood, "Lethal Theatre," 339.

helpfully historicizes Foucault's own understanding of this third phase, written from France in the 1970s. France, post-World War II, was on the cusp of outlawing capital punishment, along with Britain and the United States.[35]

As Conquergood notes, the ruling case in the U.S. Supreme Court that banned capital punishment left ambiguity for it to be reinstated just four years later. The discussion of sentencing, however, opened up a loophole. Although Conquergood is vague in his discussion on how the death penalty was reinstated, the 1976 case, *Gregg v. Georgia,* clearly antagonizes the previous decision of the court. The court ruled that states could reinstate the death penalty if they clearly removed "arbitrary or discriminatory effects" in the sentencing process that would thus satisfy the cruel and unusual punishment clause. With *Gregg v. Georgia,* the U.S. saw a reinstatement of the death penalty through the use of a bifurcated trial, where guilt was determined in a first phase and sentencing was determined in a second phase focused solely on aggravating factors.[36]

Conquergood investigates the dramaturgy of execution in the U.S. through three major phases: public, mass spectacles, private executions, political efficacies of mourning. His vast historiographical study of the performance of power helps to locate Foucault's work in a specific U.S. history. He first investigates executions of seventeenth-century new England, where the public spectacles of the gallows were at their height. He notes that these executions were, "Public, open-air, communal, hortatory rituals of redemption in colonial and revolutionary era America"[37] Conquergood gives the example of the 1686 execution of John Morgan in Boston,

[35] Ibid., 352.

[36] "Gregg v. Georgia."

[37] Conquergood, "Lethal Theatre," 343.

where crowds gathered a week before his execution and ultimately drew an estimated 12,000 spectators.[38] He then turns to interrogate the shift in punishment in the nineteenth century that saw the creation of private punishment. This system "symbolized a broader trend towards privatization and class segmentation; it turned the execution of criminals into an elite event centered around class and gender exclusion."[39]

Conquergood then investigates the final, new phase of punishment through the news coverage of Timothy McVeigh's execution, where newspapers show images of people mourning the Oklahoma City Bombing under headlines of his execution. This "political efficacy of mourning," according to Conquergood, positions executions "as necessary therapies of collective healing and closure."[40] "Lethal Theatre" aptly points to a new phase of punishment, one extending beyond that of Foucault's inquiry. The localization of and argument against Foucault's own statements by Conquergood is perhaps the most helpful for my own scholarship. Conquergood adeptly weaves through U.S. case law and historiographic material surrounding executions to present alternatives to a perceived "foundational" work. The analysis of McVeigh's execution, additionally, leaves space for expansion beyond the "scapegoat" trope within contemporary U.S. society presented by Conquergood, where individuals are politically positioned to legitimate and revitalize the death penalty despite "its shaky premises."[41] Conquergood's work is fundamental to my own research in three ways. First, Conquergood relies heavily on solely *Discipline and Punish,* a problem within theatre and performance studies

[38] Ibid., 344.

[39] Ibid., 343-344.

[40] Ibid., 366-367.

[41] Ibid., 342.

that I discuss above. Second, I will turn to Conquergood's dramaturgy of execution throughout my dissertation. Lastly, Conquergood provides the moral imperative for theatre and performance studies to discuss death penalty politics which I discuss above in "Lethal Theatre" that has propelled this work forward.

Austin Sarat is the other foundational scholar who has published on the death penalty and is perhaps the most prolific within the field of death penalty studies. Although his work is not regularly categorized as performance studies, he writes about the intersection of politics and representation via film and media studies. He has dedicated his career to researching the death penalty and has published several books that prove to be foundational to my own work. Two of Sarat's numerous works, however, prove to be the most pivotal for me moving forward: *Gruesome Spectacles: Botched Executions and America's Death Penalty* (2014) and *When the State Kills: Capital Punishment and the American Condition* (2018).

*Gruesome Spectacles* charts the history of botched executions in the U.S. from 1890 to the book's publication in 2014. In his introduction to *Gruesome Spectacles,* Sarat charts how technologies of killing have "advanced" throughout the history of the United States, often the leading developer in the world:

> The recent history of state killing in the United States reads like a story of the triumph of progress applied to the technologies of death. From hanging to electrocution, from electrocution to lethal gas, from electricity and gas to lethal injection, the law has moved, though not uniformly, from one technology to another. With the invention of new technologies for killing or, more precisely,

> with each new application of technology to killing, the law has proclaimed its own previous methods barbaric, or simply archaic….[42]

This Hegelian system of development—where time equals progress—is clear in the invention, innovation, and implementation of killing technologies within United States' history. These "advancements", however, have proven false, as needs for older technologies proves rapidly increasing and the logic of rationales put forth throughout the centuries increasingly falls flat. Although my sites rarely address the failure of such technologies, Sarat's discussion of how these technological developments relate to each other will prove especially relevant.

In *When the State Kills: Capital Punishment and the American Condition,* Sarat traces the development of U.S. death penalty politics, ethics, and rationales. He seeks to understand how certain individuals have been deemed condemnable through in-depth research of the legal process and film representation of the death penalty. "[C]apital punishment is alive and well as one of the most prominent manifestations of our killing state," he writes, "defying the predictions of many scholars who thought it would fade away long ago."[43] According to Sarat, two-thirds of Americans are in favor of capital punishment, so his work attempts to bring to light the complex negotiations within twenty-first-century U.S. culture that abstract justice and state killing. This work is vital for me, as Sarat meticulously works through the relationship of film representation and the maintenance of capital punishment both consciously and unconsciously. Sarat's works provided insurmountable support to my research, as his readings of the death penalty in the U.S.

[42] Austin, Sarat, *Gruesome Spectacles: Botched Executions and America's Death Penalty* (Stanford: Stanford Law Books, 2014), 7.

[43] Ibid., 12.

as performance, as well as his history of U.S. death penalty, are fundamental to my own research.

In his *The Tears of Eros* (1961), Georges Bataille assembled a collection of visuals—from Greek sculptures to photographs of Chinese torture rituals—that explores the intersections of violence.[44] The work is a reflection of Bataille's lifelong fascination with both Surrealism and death, both of which are thematically and visually represented in his collections. Although Bataille's links to public execution and the interest in spectatorship are less direct than other theorists, Bataille's theories on humanity are fruitful, as they help to conceptualize the deep-seated human interest in death. Bataille was immensely focused on the relationship of life and death, specifically how humanity grappled with death while actively living. In his foreword, Bataille wrote, "Civilization in its entirety, *the possibility of human life,* depends upon a reasoned estimation of the means to assure life. But this life—this civilized life—which we are responsible for assuring, cannot be reduced to these *means*, which make it possible. Beyond calculated means, we look for the *end—or the ends*—of these means."[45] Bataille is looking at the ways in which civilized society explores the means to an end: the end of erotic desire, the end of joy, the end of reason, and the end of life. J.M. Lo Duca, writing about Bataille's own life and research in the introduction to the work, writes, "To question suffering is then simply a way of approaching the question of death"[46] This thus reveals why many of Bataille's images focus on suffering;

[44] Bataille (1897-1962) was a French philosopher and writer and is helpful in filling in such gaps on the desire to witness suffering. He trained as an archivist at the École des Chartes in Paris and worked at the Bibliothèque Nationale and Orléans Library. On top of writing numerous essays and novels of his own that have gone on to influence the fields of phenomenology and psychoanalysis.

[45] Georges Bataille, *The Tears of Eros,* ed. J.M. Lo Duca, trans. Peter Connor (San Francisco: City Light Books, 1989), 19.

[46] J.M. Lo Duca, "Georges Bataille, From Afar…," introduction to *The Tears of Eros,* ed. J.M. Lo Duca, trans. Peter Connor (San Francisco: City Light Books, 1989), 5.

suffering is a means to which civilized society can approach the unknowing imminence of death. What are the ends of the means of the human body? What are the ends to the means of the human spirit/soul? These are questions that plagued Bataille and—as Bataille believed—plague humanity.

In *Public Executions: The Death Penalty and the Media*, Christopher S. Kudlac questions why certain death row cases since the 1970s—such as the ones Conquergood engages with—have become have highly publicized and sustained extreme public intrigue why others are not. In an intensive sociological study Kudlac engages with media theory, death penalty statistics, and archival material surrounding executions from the past century in the United States. His study investigates the complex interactions between the public and the media, which ultimately questions how the public internalizes state power via executions. Kudlac's research relies on the given that the public overwhelmingly recognizes the faults of the U.S. capital punishment system:

> Another national poll showed that, when reminded about cases in which death row inmates had been released on the basis of DNA evidence, 64 percent of Americans favored a temporary halt to executions while steps are taken to ensure that the system works fairly. A large part of the public's changing feeling regarding capital punishment was due in part to accounts of DNA testing results establishing that ordinary, innocent people were sometimes convicted of murder, among other offenses, perhaps not regularly but not rarely either.[47]

[47] Christopher Kudlac, *Public Executions: The Death Penalty and the Media* (Westport, Connecticut: Praeger Publishers, 2007), 4-5.

If Kudlac's statistical research proves apt, and an overwhelming portion of the population recognizes that the contemporary U.S. death penalty system is a faulty one, why would people's interest in execution remain?

Kudlac argues that since the abolishment of the public execution, "the media has been the primary source through which the public learns about executions."[48] Thus, to explain the public's return to executions, let alone their fascination, we must interrogate the ways in which the media has chosen select cases as "newsworthy." He writes, "While murder and murderers still attract an overwhelming amount of interest in society, executions themselves are no longer automatically deemed interesting or newsworthy."[49] According to Kudlac, "Ninety-nine percent of executions take place unnoticed by the public, garnering little, if any, media attention. But then a Ted Bundy or Karla Faye Tucker comes along and breaks this mold wide open. Intense media coverage and public debate accompany these high-profile cases." To understand why some cases are picked up—and others are discarded—, Kudlac looks at the five sets of unofficial rules for reporting violence offenses from Steven Chibnall's *Law and Order News:*

1. Visible and spectacular acts
2. Sexual and political connotations
3. Graphic presentation
4. Individual pathology
5. Deference and repression[50]

[48] Kudlac, *Public Executions,* 3.

[49] Kudlac, *Public Executions,* 10.

[50] Kudlac, *Public Executions,* 8.

According to Kudlac, all executions in the United States fall under 1, 3, and 5 simply through the ways in which they are completed. This leaves characteristic 2 and 4—sexual and political connotations and individual pathology, respectively—left to distinguish executions as unusual or newsworthy. Kudlac points out that these two characteristics reveal why an overwhelming amount of famous executions have been covered, including Ted Bundy, Aileen Wuornos, Karla Faye Tucker, and more.

Other contemporary works within theatre studies have sought to explore theatrical representation of the death penalty throughout history. Most works, however, focus on theatrical representations of execution within the early Modern era, including Kate Cregan's *The Theatre of the Body: Staging Death and Embodying Life in Early-modern London* (2009) and Amnon Kabatchnik's *Blood on the Stage* series. Many of the works focusing on this time period use Foucault's *Discipline and Punish* as the sole theoretical treatise with which to argue through the complex ways in which execution functions within society. Molly Smith's 1992 article "The Theatre and the Scaffold: Death as Spectacle in *The Spanish Tragedy*" explores the ways in which spectacular executions were transferred onto the stage through a detailed historiographical explication of Thomas Kyd's *The Spanish Tragedy.* Smith's close reading the text seeks to find moments that mirror the real-life ritual of execution existing in the era, a model very helpful to my own research.[51] She relies on a small portion of Foucault's *Discipline and Punish* to discuss how criminals sought to defy repressive authority during the executions of the seventeenth and eighteenth century, but moves on quickly. Jennifer Lillian Lodine-Chaffey's 2013 thesis, "Performing at the Block: Scripting Early Modern Executions," explores representations of the

[51] Molly Smith, "The Theater and the Scaffold: Death as Spectacle in *The Spanish Tragedy,*" *Studies in English Literature, 1500-1900* 32:2 (Spring, 1992) 217-232.

scaffold that mirrored the real-life executions of Tutor and Jacobean nobles in early Modern England. [52] Her analysis of real-life executions and their paralleled theatrical representation proves to be a helpful model for my own work.

Lodine-Chaffey also uses Foucault's *Discipline and Punish* to affirm that spectacles on the scaffold are acts of state power. Lodine-Chaffey does not, however, use any other of Foucault's works, which limits the range of her analysis. In the 2007 thesis "Staging Executions: The Theater of Punishment in Early Modern England," Sarah N. Redmond explores the relationship of pamphlet literature, drama, and the scaffold in the early Modern era.[53] Through works such as Kyd's *The Spanish Tragedy,* Thomas Middleton's *The Revenger's Tragedy,* and William Shakespeare's *Measure for Measure*, Redmond questions the prominence of execution in multiple facets of early Modern life, and how/if such presence helped the public to question authority. She specifically investigates the role of pamphlet literature in the circulation of facts and ideas surrounding criminals and executions and how pamphlets influenced the public. Like many, Redmond pulls upon Foucault to argue that executions functioned as performances of power. She does minimally reference Foucault's *Crime and Punishment,* but only as a means to incorporate a piece of archival material. Works treating more contemporary sites and/or sites within the U.S., specifically, tend to focus on representation within film and television. Such works include Sean O'Sullivan's "Representing 'The Killing State': The Death Penalty in Nineties Hollywood Cinema" (2003), Yvonna Kozlovsky-Golan's *The Death Penalty in American Cinema: Criminality and Retribution in Hollywood Film* (2014), and Christopher S.

[52]Jennifer Lillian Lodine-Chaffey, "Performing at the Block: Scripting Early Modern Executions," (Master's thesis, University of Montana, 2013).

[53] Sarah N. Redmond, "Staging Executions: The Theater of Punishment in Early Modern England," (Master's thesis, 2007, Florida State University).

Kudlac's *Public Executions: The Death Penalty and the Media* (2007). Although these works are helpful tools in understanding how representation informs reality, their focus is often on the scapegoat cases that Conquergood discusses and privileges sites within the last fifty years. The longevity of the theatre, as mentioned above, thus allows a more thorough investigation.

## THEORY & METHODOLOGY

As one continually dives into the history of U.S. theatre they find, time and time again, how tangled real-life executions are with staged ones. More often than not, plays written about the death penalty in the U.S. are based on, inspired by, or discuss real-life executions and even when they don't, find themselves incapable of escaping the capital punishment politics of their contemporaneous moment. Some may initially attribute the interconnectedness of the real and the theatrical to the interest in the occasional "scapegoat." An element of this argument is partially correct, as we will witness with the execution of Major John André during the American Revolution discussed in chapter one. In this imagined debate, theatre historians may counter such an argument by saying that theatre has historically been the place to critique such social, culture, and political subject-matter. And rightly so: components of this relationship are fundamentally revealed through the disparate relationship between the three electric chair dramas discussed in chapter four. Either argument, however, does not explicitly take into account that executions are highly performance-based in their existence.

As I briefly discussed at the beginning of this chapter, executions are often referred to as performances or spectacles of power. These phrases, discussed vaguely by Foucault, have a well-established use within theatre and performance studies. They are so widely accepted that many of the scholars mentioned above do not spend time any time exploring the etymology of the

term, however. In *Discipline and Punish,* Foucault writes argues the elements necessary to constitute an execution as a performance of power:

> In the ceremonies of the public execution, the main character was the people, whose real and immediate presence was required for the performance. An execution that was known to be taking place, but which did so in secret, would scarcely have any meaning. The aim was to make an example, not only by making people aware that the slightest offense was likely to be punished, but by arousing feelings of terror by the spectacle of power letting its anger fall upon the guilty person.[54]

Foucault is clearly talking about a historically specific instance where public execution acted as an execution.[55]While punishment shifted, the public element was retained in regard to many portions of the death penalty, which also allows such instances to be read as performances of power. Conquergood reinforces these historical claims against his own experiences witness executions, which were discussed above:

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[54] Foucault, *Discipline and Punish, 57-58.*

[55] Jacques Derrida, "The Death Penalty: Volume 1," ed. Geoffrey Bennington, Marc Crépon, and Thomas Dutoit, trans, Peggy Kamuf (Chicago: University of Chicago Press, 2012), 2. Albert Camus, "Resistance, Rebellion, and Death," trans. Justin O'Brien (New York: The Modern Library, 1963), 132.Albert Camus and Jacques Derrida, also writing from post-WWII France similarly reflected on the performance of power seen in executions. Jacques Derrida in Volume I of his two part work, *The Death Penalty*, writes, "By definition, in essence, by vocation, there will never have been any invisibility for a legal putting to death, for an application of the death penalty; there has never been, on principle, a secret or invisible execution for this verdict. The spectacle and the spectator are required. The state, the polis, the whole of politics, the co-citizenry—itself or mediated through representation—must attend and attest, it must testify publicly that death was dealt or inflicted, it must *see die* the condemned one." Albert Camus in "*Resistance, Rebellion, and Death,* writes, It is obviously no less repulsive than the crime, and this new murder, far from making amends for the harm done to the social body, adds a new blot to the first one. Indeed, no one dares speak directly of the ceremony. Officials and journalists who have to talk about it, as if they were aware of both its provocative and its shameful aspects, have made up some sort of ritual language, reduced to stereotyped phrases.

> According to Foucault, the performance of power in modern society has changed radically from spectacular capital punishment—that point at which the violence of the state is most nakedly displayed—to undercover capillary penetrations, insinuations, secretions, and circulations of power that is difficult to flesh out. He closed the book with the confident claim that "we are now far away from the county of tortures," the spectacle of the scaffold, because contemporary legal punishment "appears to be free of all excess and all violence."[56]

While Conquergood embraces the term performance of power, he also historicizes Foucault's own understanding of the performance ending. Foucault was, as discussed above, writing from France in the 1970s. France, post-World War II, was on the cusp of outlawing capital punishment, along with Britain and the United States. Conquergood notes, however, that the ruling case in the U.S. Supreme Court that banned capital punishment left ambiguity for it to be reinstated just four years later.[57] While the words of Foucault and Conquergood—and countless others—gesture towards the fact that executions will always be sites of performance, the histories of real-life executions and their staged counterparts prove beyond intertwined and inseparable. To study one in any dutiful fashion is to study the another. The performance of power matters insofar as its context, as Conquergood points out. Within the U.S., the defining

[56] Conquergood, "Lethal Theatre," 265.

[57] "Furman v. Georgia, 408 U.S. 238 (1972)," *Justia,* accessed December 10, 2018, https://supreme.justia.com/cases/federal/us/408/238/. In *Furman v. Georgia*, the Supreme Court outlawed capital punishment in a 5-4 verdict, recognizing that states were inconsistent in their application of the death penalty. The five justices ruling in favor of abolishment could not agree on a reasoning for the case's violation of the eighth amendment's "cruel and unusual punishment" clause. Instead, judges delivered multiple concurrent opinions focused on an array of reasonings, such as the disparate crimes across the fifty states that resulted in the death penalty. Others focused on the particular practices of execution at the time, such as hanging, firing squad, and electric chair and argued that the technologies themselves saw an unfair level of stress and pain upon the criminal. Some opinions discussed the ways in which capital punishment was—and still is—unfairly levied against people of color.

governmental institution with which this performance has been both threatened and has thrived is liberalism.

In the following theory and methodology section, I will first trace the development of liberalism from the eighteenth century to the early twentieth century as it relates to the histories told within Foucault's own work, which tend to be the history of France. I will then focus on tracking the development of capital punishment policies throughout the development of Foucault's concept of liberalism and how more subversive practices within liberalism play a role in the maintenance of capital punishment. To understand how theatre artists in the United States have historically grappled with, contributed to, and/or subverted capital punishment policies and conceptualized the cultural and political environment around them, a more in-depth investigation into capital punishment and its relationship to liberalism is necessary. Opening up the nuances of liberalism—as well as the security/freedom paradigm often contained within it—offers up a new approach on how to read plays that discussed and/or debate execution and the death penalty. In addition, Foucault's theories of liberalism prove fundamental when understanding how and why particular real-life individuals in the U.S. were executed, which this dissertation also does, and why certain executions were theatricalized. In order to accomplish these endeavors, I turn to Foucault's greater body of work, as I discuss in this introduction. While *Discipline and Punish* provides an in-depth examination of penal practices in the West throughout the last few centuries, the text fails to explore the complex socio-political circumstances in the U.S. and how they influenced key decisions on capital punishment in the last few centuries. *Discipline and Punish*, while a phenomenal contribution, simply provides too limited of a scope with which to understand the sites within this dissertation.

According to Foucault in *The Birth of Biopolitics,* liberal thought is deeply rooted in the society that upholds it:

> [Liberal thought] starts instead from society, which exists in a complex relation of exteriority and interiority vis-à-vis the state. It is society—as both condition and final end—that makes it possible to no longer ask: How can one govern as much as possible at the least possible cost? Instead, the question becomes: Why must one govern? That is to say: What makes government necessary, and what ends must it pursue with regard to society which permits the development of a technology of government based on the principle that it is already in itself 'too much,' 'excessive'—or at least that it is added as a supplement whose necessity and usefulness can and must always be questioned.[58]

Liberal societies are wholly concerned with freedom, and yet their governments find their power through threats of danger. Danger allows the government to intervene on the behalf of the people. "Liberalism is an art of government that fundamentally deals with interests," according to Foucault. It cannot do so without at the same time managing dangers and mechanisms of security/freedom, the interplay of security/freedom which must ensure that individuals or the community have the least exposure to danger."[59] The security/freedom paradigm gives liberal governments leeway for intervention, including in issues of public health, criminality, etc. Acts of power within liberal societies were thus often cloaked in myths of danger, where governments were acting in the interests of the people.

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[58] Michel Foucault, *Birth of Biopolitics: Lectures at the Collège de France, 1978-1979* (New York: Picador, 2008), 319.

[59] Ibid., 66.

During the Reign of Terror in France (1793-1794), revolutionaries used extreme measures, including execution, to ensure liberalism's security in the national government. As the name suggests, the period was bloody, but also filled with prolonged scarcity of food and other resources, as well as fear by those on the sidelines. Of this period, Foucault discussed the relationship between the revolution and liberal morality in *Power/Knowledge*:

> A fear haunted the latter half of the eighteenth century: the fear of darkened spaces, of the pall of gloom which prevents the full visibility of things, men and truths. It sought to break up the patches of darkness that blocked the light, eliminate the shadowy areas of society, demolish the unlit chambers where arbitrary political acts, monarchical caprice, religious superstitions, tyrannical and priestly plots, epidemics and the illusion of ignorance were fomented…. The new political and moral order could not be established until these places were eradicated.[60]

The revolutionaries fought for liberalism and the incorporation of a constitution, the primary liberal document. The French Constitution of 1791, much like that of the U.S. Constitution years earlier, formally ended sovereignty by vesting powers in the newly formed Legislative Assembly and giving equal rights to all:

> The National Assembly, wishing to establish the French Constitution upon the principles it has just recognized and declared, abolishes irrevocably the institutions which were injurious to liberty and equality of rights.

[60] Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977,* ed. Colin Gordon, trans. Colin Gordon, et al. (New York: Pantheon Books, 1980), 153

> Neither nobility, nor peerage, nor hereditary distinctions, nor distinctions of orders, nor feudal regime, nor patrimonial courts, nor any titles, denominations, or prerogatives derived therefrom, nor any order of knighthood, nor any corporations or decorations requiring proofs of nobility or implying distinctions of birth, nor any superiority other than that of public functionaries in the performance of their duties any longer exists.[61]

The constitution—as a formal document—according to Foucault in *Society Must Be Defended,* "designates both a relationship of force between good and evil, and a relationship of force between adversaries."[62] By constructing an antagonistic relationship between the civil, liberal subject and "those against," liberalism finds ways to subtly govern and control. To protect the civilian under liberalism, the government must act, providing inroad of governance, which will be explored in later chapters of this dissertation within the U.S. context.

In the wake of the Reign of Terror, so too did the norms of execution change in France. Before the political and social upheaval at the end of the eighteenth century, according to Foucault, chain-gangs were the prominent form of punishment. Chain-gangs, born out of the ritual of public executions, displayed inmates to the public as they were processed through the streets. These processions offered spectators the opportunity to guess the condemned's profession, class, and crime. As the inmates were paraded through town, all spectators were temporarily of one class, engaging in critiques, comments, and profanity as a community and witnessing a clear display of state power. Such displays of power, according to Foucault, were a

[61] Unk., trans., "The Constitution of 1791," (The National Assembly, 1791), 1.

[62] Michel Foucault, "*Society Must Be Defended": Lectures at the Collège de France, 1975-1976,* ed. Mauro Bertani, et al., trans. David Macey (New York: Picador, 1997), 192.

transition away from the sovereign state's "excessive force" towards a more localized, yet "carefully articulated disciplinary mechanism."[63]

Beginning in the 1830s, however, punishment and execution moved away from the view of the public. As the theatre bifurcated the class systems into different genres—tragedy for the elite and melodrama for the middle class—executions simultaneously became a game of class warfare. French historian Louis Masur recounted the significance of this shift:

> The creation of private executions […] was an act charged with multiple meanings: 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 towards privatization and class segmentation; it turned the execution of criminals into an elite event centered around class and gender exclusion.[64]

Executions moved from within the view of public to within the prison walls, where only the elite, upper-class could be invited. The chain-gangs were replaced by the cell-carriage, a more private form of transportation straight to the scaffold, where "hasty executions were organized at unexpected times."[65] They were no longer public, communal events, but rather an elitist experience. Conquergood, building upon Foucault, argues that this shift is a result of "an emergent middle-class ethos of restraint, propriety, gentility and new standards of bourgeois taste

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[63] Foucault, *Discipline and Punish,* 264.

[64] Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1989), 6. Quoted in: Dwight Conquergood, "Lethal Theatre Performance, Punishment, and the Death Penalty," in *Theatre Journal* 54:3 (2002), 344. On Masur's history Conquergood comments, "The withdrawal and relocation of executions from the public green to censored enclosures signaled a major shift in structures of feeling about criminals and capital punishment." (344-345).

[65] Foucault, *Discipline and Punish*, 15.

and refinement."[66] The middle-class sought a moral discipline far from that of yelling profanities at a chain-gang, a sensibility reflected in the melodrama.[67]

In *Security, Territory, and Population,* Foucault defines governmentality, a portmanteau for government and rationality:

> I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument. Second, by "governmentality" I understand the tendency, the line of force, that for a long time, and throughout the West, has constantly led towards the pre-eminence over all other types of power—sovereignty, discipline, and so on—of the type of power that we can call "government" and which has led to the development of a series of specific governmental apparatuses

[66] Conquergood, "Lethal Theatre," 343.

[67] Ibid., 360. Conquergood also aptly argues through the relationship between civility and the death penalty. He writes, "The real violence of state killing is veiled behind protocols of civility and the pretense of courtesy toward the condemned—hence the hollow gestures of permitting the condemned to order his or her last meal and to speak his or her last words. Some guards and wardens even eat with the condemned to give them some company during the ceremony of the last meal. The prison staff show an unusual attentiveness and air of concern for the condemned during the final countdown hours of the death-watch. But all this consideration is as much about controlling the performance, making sure that it proceeds smoothly without a glitch, as it is about compassion or empathy for the condemned."[67] Civility is thus a construct of kindness which reinforces the power of a liberal government through a construction of an enemy.

(*appareils*) on the one hand, to the development of a series of knowledges (*savoirs*).[68]

Foucault uses governmentality as an umbrella term for specific logics and processes of governing throughout Western history. These processes are intricately tied to the governing of populations rather than individuals. Until the eighteenth century, *rasion d'état* (reason of state)—often called policing—was the disciplinary mechanism by which society was regulated. From there, liberalism emerged and was the norm until the "crisis of liberalism" in the mid-twentieth century. The crises paved the way for neo-liberalism, also called neoliberal governmentality.

While Foucault often talks about technologies, the ones that are discussed in works such as *Discipline and Punish* and *The History of Sexuality* are technologies focused on the individual body. He never clearly defines how/if these technologies of government function separately from, in opposition to, or in accordance with technologies of the individual. Thomas Lemke, in *Foucault, Governmentality, and Critique,* seeks to sort out these complexities through an exhaustive reading of the technologies across Foucault's work. He finds that technologies of government "denote a complex of practical mechanisms, procedures, instruments, and calculations through which authorities seek to guide and shape the conduct and decisions of individuals and collectives in order to achieve specific objectives."[69] These technologies of government thus allow society to feel as though they have autonomy in their own decisions. These technologies of government can only thrive due to the indirectness of the mechanisms

[68] Michel Foucault, *Security, Territory, and Population: Lectures at the Collège de France, 1977-1978*, ed. Michel Senellart, trans. Graham Burchell (New York: Picador, 2007), 144.

[69] Thomas Lemke, *Foucault, Governmentality, and Critique* (New York: Routledge, 2016), 74.

compared to those that aid sovereign rule, and yet can result in total control over society by the liberal state.

One type of governmental technology, according to Foucault, is civil society.[70] Foucault refutes the stance that civil society is a philosophical idea birthed by society, but rather asserts it as a governmental technology that seeks to impose means of self-limitation. Civil society, as a technology, does not infringe upon economic or political systems, thus providing society with senses of autonomy. Civil society, instead, creates "an omnipresent government, a government which nothing escapes, a government with conforms to the rules of right, and a government which nevertheless respects the rules of the economy."[71] For the sites within my dissertation that exist within liberal societies—or societies seeking to be liberal—I seek to unpack tropes of civil society and how they are formulated on stage alongside myths danger that can rationalize such invention by the government. Such interventions lead to a crisis, according to Foucault, called the "crisis of liberalism." This crisis began in the 1930s following World War I when liberalism and its economic system—capitalism—began to fail a large majority of population. Concepts of civil society play a vital role in the maintenance of order during this crisis, as individuals needed to feel as though they had order. As discussed above, the security/freedom paradigm became even more paramount, because it allowed governments to continue to intervene in the interest of safety.

[70] Foucault, *Birth of Biopolitics*, 296.

[71] Ibid., 296. In his formulations of civil society as a tool of liberalism, Foucault pulls upon Immanuel Kant, who argues, "The more you allow freedom of thought, the more sure you will be that the people's mind will be shaped to obedience." Civil society was instead rooted in systems of surveillance programs in populations, such as the panopticon.

**CHAPTER OUTLINE**

The structure of this dissertation was born from both historical and theoretical understandings of how the capital punishment and the cruel and unusual punishment clause have functioned in the US. First, my understanding regarding the relationship between acts of war, societal shifts, and capital punishment in the twenty-first century led me to focus my sites around wartime. In the years following 9/11, there were a slew of Supreme Court cases that reassessed the cruel and unusual punishment clause, as the Supreme Court does. In *Atkins v. Virginia* (2002), a 6-3 majority found that those were deemed as "mentally retarded" should not be executed. Justice Stevens, who wrote the majority opinion, said, "Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against mentally retarded defendants."[72] The 5-4 majority in the 2005 case, *Roper v. Simmons,* found that those whose crimes were committed when they were under the age of eighteen cannot be executed due to the evolving standard of decency. In Justice Kennedy's majority opinion, he wrote, "The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'"[73] Similar cases follow in 2007 and 2008—*Panetti v. Quarterman* and *Kennedy v. Louisiana,* respectively—where the

[72] "Atkins v. Virginia, 536 U.S. 304 (2002)," *Justia,* accessed April 1, 2020, https://supreme.justia.com/cases/federal/us/536/304/#tab-opinion-1961117.

[73] "Roper v. Simmons, 543 U.S. 551 (2005)," *Justia,* accessed April 1, 2020, https://supreme.justia.com/cases/federal/us/543/551/#tab-opinion-1961712.

terms under which states and the federal government could levy capital punishment were narrowed.[74]

One of the core tenets of the majority opinions that pulls these cases together aside from their timeframe and that they expand the cruel and unusual punishment clause is that their majority opinions rely heavily upon overturning Supreme Court precedent. As Thomas G. Hansford and James F. Spriggs, II, write in *The Politics of Precedent on the U.S. Supreme Court* about the relationship between the Supreme Court and their own precedent:

> The justices recognize the need to legitimize their policy choices by basing them on precedent. But, not all precedents are equally capable of justifying a Court decision. The Court's ability to justify, and thus legitimize, current policies defends in part on the vitality of the precedents relied on in a decision. The incorporation and treatment of cases with greater legal authority better serves to legitimize the Court's current decisions in the eyes of those who have an interest in them, most notably those interpreting or implementing them.[75]

Often, justices pull upon their previous cases to legitimize their rulings. For the cases listed above, however, precedent is overruled. As briefly mentioned in *Roper v. Simmons,* the justices' gesture towards an evolving standard of decency is an effort to rationalize their decisions, which can be seen as groundbreaking and/or upsetting. Justices need to more explicitly prove their reasoning for overruling precedent in these cases, however, as the cases they are overturning are

[74] "Panetti v. Quarterman, 551 U.S. 930 (2007)," *Justia,* accessed April 1, 2020, https://supreme.justia.com/cases/federal/us/551/930/. "Kennedy v. Louisiana, 554 U.S. 407 (2008)," *Justia,* accessed April 1, 2020, https://supreme.justia.com/cases/federal/us/554/407/.

[75] Thomas G. Hansford and James F. Spriggs, II, *The Politics of Precedent on the U.S. Supreme Court* (Princeton, New Jersey: Princeton University Press, 2006), 27.

not particularly old, such as *Thompson v. Oklahoma* in 1988. If the justices are overturning recent precedent under the rationale of an evolving standard of decency, what then has caused such a drastic shift in sentiment in the U.S. in such a short amount of time? As mentioned above, 9/11 played a pivotal—albeit unspoken—role in these Supreme Court cases and their majority decisions, as the attack on U.S. soil and subsequent wars cause the American publics' opinions towards capital punishment to evolve in unforeseen ways. While surveys conducted in May, 2001 and May, 2002 reveal that the same number of people supported the death penalty as opposed to life imprisonment, these Supreme Court cases reveal a narrowing of who can and should be executed.[76] Instead of executing minors or those who have low IQ, society became much more comfortable with executing scapegoats such as Osama bin Laden, as Conquergood discusses above.

The relationship between 9/11, its wartime aftermath, and capital punishment policy informed the structure of this dissertation as I sought to understand the ever-shifting relationship between theatre and capital punishment. I decided to shape my chapters around times of conflict, times of war, as I realized that war had an immense effect on sentiment toward and policy about capital punishment in the U.S. in the twenty-first century. I wondered if such a dynamic previously existed. In order to investigate the relationship, each chapter in my dissertation is set against the background of a singular war—the American Revolution, the Civil War, and World War I—as a way to understand how conflict shapes not only official policy, but also American sentiment towards the death penalty.

[76] George H. Gallup, Jr., "The Death Penalty: American Views Over Times," *Gallup News*, October 29, 2002, accessed April 10, 2020, https://news.gallup.com/poll/7075/death-penalty-american-views-over-time.aspx.

Some may ask, however, why I do not simply trace the Supreme Court cases that discuss the death penalty, and why I have instead turned mostly to the theatre to find my answers. The answer lies in the Supreme Court's legal inability to deal with individual death penalty cases until 1868. The Eighth Amendment, which contains the Cruel and Usual Punishment Clause, only allowed individuals to challenge Acts of Congress. This meant that citizens could not challenge the government's actions through any other avenues from the time the Bill of Rights was ratified on December 15, 1791. When the Fourteenth Amendment was ratified on July 9, 1868, only then could citizens individually challenge any and all laws. This meant that individuals could confront the actions of any governmental agency they felt were not following the law as it should be interpreted. For the Cruel and Usual Punishment Clause, citizens after 1868 could challenge exactments of the death penalty they felt violated their rights as a citizen. The first person to do so in front of the Supreme Court was Wallace Wilkerson in *Wilkerson v. Utah* (1879).[77] The Supreme Court only took seven cases regarding the death penalty in the next ninety years, making the case law archive rather thin. The rapid fire of cases regarding the Cruel and Usual Punishment Clause does not start until the 1970s, where they have delivered opinions on forty-three cases in fifty years, many of which have been or will be discussed in this dissertation.

Theatre, since the birth of the Cruel and Usual Punishment Clause, has been discussing and debating the morals, traumas, and sentiments towards capital punishment long before individuals could even challenge it. For a scholar like me—working on sites in the 1930s and before—the Supreme Court cases that do exist can only get me so far. In the time preceding the

[77] "Wilkerson v. Utah 99 U.S. 130 (1878)," *Justia,* accessed April 1, 2020, https://supreme.justia.com/cases/federal/us/99/130/. In *Wilkerson v. Utah,* a 9-0 majority affirmed that execution by firing squad was constitutional.

ratification of the Fourteenth Amendment in 1868 and the ten years it took for citizens to learn the mechanisms of challenging the U.S. government—which is the period most of my dissertation covers—there are no Supreme Court cases regarding capital punishment on which I can rely. The lack of Supreme Court cases actually make theatre such a fertile place of discovery and discussion. Theatre was—and is—a platform to which society could begin to think through the complexity of politics, as discussed above, particularly the U.S.'s standings on capital punishment, the death penalty, and execution.

In chapter two, "To Hang or Not to Hang: Staging the Executions of Major John André in a Newly Liberal Nation," I delve into the execution of British Major John André in 1780 during the American Revolution and two subsequent theatrical restagings written by William Dunlap twenty years later: *André* (1798) and *The Glory of Columbia, Her Yeomanry* (1803). I place these stagings and re-stagings of capital punishment alongside Foucault's historical account of liberalism and the death penalty in both the context of colonial American and the newly-formed U.S. In doing so, I argue that calling out the contradiction fundamental to American liberalism struggled on the U.S. stage insofar as it detracted from the forwarding the burgeoning "myth" of America and its founding fathers. Pulling upon the work of contemporary theatre historians Heather S. Nathans and Odai Johnson, this historiographical examination works to both localize Foucault in the U.S. while also investigating the complex relationship between theatre and politics in the era.

Chapter three, "The Suffering Liberal Subject: The Double-Edged Sword of Death and Dying in Nineteenth-Century American Melodrama," delves into melodramas in the U.S. pre- and post-Civil War and how tropes of good and evil were constructed in accord with a liberal civil society and a liberal agenda. I argue that these tropic characters—and their onstage

deaths—have immense ramifications when read through the lens of liberalism and the security/freedom paradigm. Through readings of George Aiken's *Uncle Tom's Cabin* (1852) and Dion Boucicault's *The Octoroon* (1859), I trace how each playwright utilized sentimentalism, particularly in regard to the spectacular suffering of the virtuous character. From there, I conjecture as the implications of the suffering of the evil character as it relates to formations of liberalism. With the second half of the chapter, I turn to Boucicault's lesser-known work, *Belle Lamar* (1874), a post-Civil War melodrama. I challenge that theatre returns to normal after the war and investigate how the ending of slavery and the stakes of sentimentalist melodrama has changed the needs of the content and form of the genre.

In chapter four, "Shocking Audiences and the Condemned: The Crises of Liberalism, the Theatre, and Capital Punishment," I explore a peculiar moment in American theatre history in which a slew of electric chair dramas hit Broadway: Sophie Treadwell's *Machinal* (1928), John Wexley's *The Last Mile* (1929), and Elliott Lester's *Two Seconds* (1931). Though their works were byproducts of a highly mechanized and destructive World War I more than of the invention of the electric chair itself, I triangulate how three different theatre artists worked to comment on capital punishment politics in the early twentieth century during the crisis of liberalism. To do so, I trace how formation of security and danger show up within each play, and how it either critiques and upheaves or submits to capital punishment policies in the early nineteenth century as a means to explore the vast ways in which theatre splintered in its engagement with the death penalty. After in-depth critical readings of each play, I argue that the afterlives of these works have opened up new avenues for thinking about and/or evading critical engagement with corrupt capital punishment practices in the U.S.

While these theatres artists and their respective works varied in just about every aspect, many had one thing on common: they commented on the cruelty of the death penalty and formalized punishment at the hands of the state. From Dunlap to Treadwell, these artists did not simply sit idly by and (re)produce the conditions under which capital punishment thrived, but rather revealed the nuanced ways in which theatre artists and their audiences can think of the country, the government, citizens, and the condemned differently.

# Chapter 2. To Hang or Not to Hang: Staging the Executions of Major John André in a Newly Liberal Nation

> In any case, frequent punishments are a sign of weakness or slackness in the government. There is no man so bad that he cannot be made good for something. No man should be put to death, even as an example, if he can be left to live without danger to society.
>
> — Jean-Jacques Rousseau[78]

> The law which attempts a man's life is impractical, unjust, inadmissible. It has never repressed crime—for a second crime is every day committed at the foot of the scaffold.
>
> — Marquis de Sade[79]

In his 1833 theatrical treatise and memoir, *The History of the American Theatre,* William Dunlap recounted the opening night of his most well-known play, *André* (1798) at New York City's Park Theatre. Throughout that night's performance, which Dunlap himself attended, the actors were "received with warm applause."[80] The historical tragedy staged a re-imagined

[78] Jean-Jacques Rousseau, *The Social Contract,* trans. G.D.H. Cole (New York: E.P. Dutton & Co, 1920), v.

[79] Marquis de Sade, "Philosophy in the Boudoir," in *The Hundred Books,* ed. Glyn Hughes (Winster, England: Denver House, 2016), 278.

[80] William Dunlap, *History of the American Theatre* (London: Richard Bentley, 1833), 20.

General George Washington in 1780 as he debated the need to hang a treasonous British Major John André, who was arrested for helping the notorious General Benedict Arnold defect from the American Revolutionary forces. The catch? André was beloved in Colonial America and revered for his wit and artistic talents as he occupied the cities and homes of the highest tier of the colonial elite. The applause for Dunlap's play, however, abruptly ended at the end of Act IV when Bland, a fictious American soldier, threw down his Union cockade in protest of the André's impending execution. Bland argued that André's execution, particularly its method, was an unfair end to a masterful life, regardless of political allegiance. The audience's reaction clearly signaled that, while they liked André, the idea that an American soldier should reject his new country out of anger was a step too far. The audience's unfavorable reaction to this moment forced Dunlap into immediate rewrites to be staged for the second performance.[81] Dunlap's published version of the text suggests replacing ten lines of the script—the original ten lines met with the audience's reproach—with a lengthier monologue in which a still-angered Bland removes then replaces the American cockade despite his anger, recognizing that the American Revolution is bigger than his own sadness about the execution of André.

Dunlap wrote in the character of Bland and his protest of the execution to reveal the overwhelming bipartisan sympathy towards the real-life Major John André, executed on the gallows just twenty years earlier than his staged version despite an overwhelming push by the political elite to grant André clemency. Dunlap sought with these emotions to encapsulate the blurred moral realities of the actual execution, which he felt still reverberated in upper echelons of colonial society at the end of the eighteenth century, many of which now sat in the New Park Theatre. When Dunlap published his treatise on American theatre years later, he blamed the

[81] Ibid., xxxii.

negative uproar during the opening night of *André* on Mr. Cooper, particularly the actor's bad, overacting.[82] This rationale, however, fails to account for the audience's reaction. The audience in this moment, instead, called into presence complexities surrounding execution and identity that even Dunlap could not have predicted.

Major John André's real-life execution was mourned by not only the British, but also by the American loyalists and patriots. His existence and untimely ending deteriorated the harsh political binary between the redcoats and patriots, and Dunlap's play sought to grapple with this deterioration in a moment of political betrayal. Due to the play's commentary on two political groups fundamental to the formation of American identity, *André* has been loosely canonized into American theatre history. Despite the rollercoaster, three-day run, Dunlap's *André* is perhaps best remembered as the first tragedy written by an American on a distinctly American subject. Dunlap, born in the then-colony of New Jersey, wrote the play about contemporaneous events on American soil experienced in his lifetime and successfully staged the play in 1798. The play—when it is taught at all—is often engaged with primarily through bullet points that state basic facts about the play in relation to Colonial American theatre and perhaps read in advanced theatre history courses. As many passively accept the play's accolades, many also gloss over deeper implications the play and its subject matter may have.

Dunlap's play in point of fact reveals deep connections between the formation of American identity during and after the Revolutionary War and its fundamental relationship to execution. In fact, *André* and its lesser-known rewrite, *The Glory of Columbia, Her Yeomanry* (1803) both attempted to discuss the real-life hanging of British Major John André in the decades following his death in 1780. Although other forms of media attempted to discuss execution in

[82] Ibid.

this moment—including books, newspapers, etc.—the American theatre provided a space in which execution and its relationship with American identity could be discussed among mixed community: people of multiple classes and those of differing political views. All three events—the execution and its two subsequent re-stagings by Dunlap—stood at a crux in American social and political history. An ideology of state power, inherited from sovereign England, was fighting against the emergent liberalism of Revolutionary and post-Revolutionary America. All events are thus testaments to a deeply rooted antagonism between the state's performance of power and the condemned body, executed to maintain order over the public.

The relationship between the state, the public, and the condemned body was in transition throughout the end of the eighteenth century. The American Revolution (1775-1783) began as a rebellion by the thirteen British colonies in North America. The main narrative regarding the cause of the Revolution revolves around unfair taxes placed the British colonies by the British, including the Stamp Act (1765), the Townshend Act (1767), and the Tea Act (1773). After redcoats and patriotic colonists exchanged gunfire in two major battles in 1775 and with the signing of the Declaration of Independence in 1776, the American Revolution officially began and the colonies formed their own, new nation. In the following eight years, over 200 battles of various sizes were fought on the new nations' soil and in British colonies around the world with an estimated 30,000 people dead of various causes on both sides.[83] With this new nation—the United States of America—came the adoption of a new government: liberalism.

[83] The number of deaths vary widely, due to poor record keeping as well as questions surrounding what constitutes "death caused by war." This number includes those killed in battle, those who died as a result of infection from battle wounds, and those who died of disease and starvation due to wartime conditions.

The U.S. Constitution, ratified in 1788, stands at the core liberal document for the nation, as its writers sought to reflect the ideas of John Locke, Jean-Jacques Rousseau, Alexis de Tocqueville, John Stuart Mill, Thomas Jefferson, and Adam Smith.[84] The pillars of liberalism for these men included "rational choice, capitalism, free trade, and representation democracy. These liberals effectively sought to abolish social barriers to citizenship status and rights."[85] These ideas existed in direct contrast with the oppressive rule that many felt they had experiences under British thumb. Those who fought for the installation of liberalism were not only uninterested in the concentrated power of British sovereignty but also the displays of state of power that came with it. When the Bill of Rights was ratified in 1791, as discussed in the introduction, along with it came the "Cruel and Unusual Punishment" clause, which allowed courts to assess whether acts of Congress were unfair against the European way of life.

Although the ability of U.S. citizens to legally challenge the death penalty was nearly one hundred years away, attitudes towards capital punishment were shifting in this time period as well. According to Michel Foucault in *Discipline and Punish,* "By the end of the eighteenth and the beginning of the nineteenth century, the gloomy festival of punishment was dying out, though here and there it flickered momentarily into life."[86] For Foucault, this transition was twofold. First, punishment as spectacle disappeared, including the public executions popular in sovereign governments in early centuries. This shift ultimately led to punishment becoming the

[84] Patrick M. Garry, *Liberalism and American Identity* (Kent, Ohio: Kent State University Press, 1992), 49.

[85] Ibid.

[86] Foucault, *Discipline and Punish,* 8.

"most hidden part of the penal process."[87] Foucault himself dates this global—i.e., western—rapid transition between 1760 and 1840. This timeline places the execution of André and its subsequent theatrical stagings right in the middle of a drastic shift in American public sentiment towards how the condemned should be executed by the state. "[G]reat spectacle of physical punishment disappeared," Foucault writes, "the tortured body was avoided; [and] the theatrical representation of pain was excluded from punishment"[88] Instead of hangings on publics scaffolds, the publicity of punishment shifted to the courtroom, through the trial and sentencing process. The actual execution was now imposed through a sanitized bureaucratic process with masked executioners, where the goal of punishment was ultimately to punish the soul. "Physical pain," as Foucault points out, "the pain of the body itself, is no longer the constituent element of the penalty."[89] To be clear, the U.S. had little interest in fully disposing of capital punishment, but rather sought to use it for different purposes than those of the sovereign government.

Such a negotiation was not simple, however. Transitions from public to private, unmasked to masked, and body to soul could not happen overnight. These shifts were far from complete by the time Major John André was executed in 1780 or by the time Dunlap's plays were performed decades later. Although the distaste for public punishment in America was clearly dying out by the turn of the eighteenth century, Major John André's execution and its reenactments flickered capital punishment back momentarily into public view, where the condemned body had to be painfully conquered to allow the state to preform power. This

[87] Ibid., 9. Foucault goes into detail about the consequences of privatizing punishment; however, the consequences are not relevant to this particular conversation as this paper investigates the moments before such consequences take hold.

[88] Ibid., 14.

[89] Ibid., 11.

flickering, however, was not without its burns. In this chapter, I delve into the real-life execution of Major John André and the two re-stagings of it—*André* and *The Glory of Columbia*—as a way to interrogation how execution functioned alongside liberalism and concepts of Americanness in the new country. I first interrogate the real-life execution to understand the ways in which the soul was understand in this transition moment and why different methods of execution were administered. I then move into the theatrical performances and grapple with how André's life was restaged and how the audiences' distaste and love for certain parts reveal their own understanding of liberalism and the US.

## THE LIFE AND EXECUTION OF MAJOR JOHN ANDRÉ

The real-life Major John André was born in London, England on May 2, 1750. His father was a Swiss-born merchant, and his mother a French immigrant who moved to England at a young age. Growing up, André attended numerous schools in London and in Geneva, where he studied the arts, science, geography, and more. His father passed away in 1769, when André was nineteen and had just returned to London after his studies. When he was twenty years old, he joined the British Army, which was five years after the beginning of the American Revolutionary War. The British Military sent André to Canada, where he served for a short time. During a mission in the Winter of 1775, American forces captured the British soldier, but his capture was seemingly friendly compared to the contemporary understanding of colonial wartime actions. André was temporarily released on promise he would not run away and was freed in a subsequent prisoner exchange. By early 1777, the British Army promoted him to Captain and by 1779, British Major. He also held the title of Adjutant General of the North American British Army and was the head of the British Secret Service.

Throughout his service to the British Army in Colonial America, André occupied many homes of the colonial elite, including Benjamin Franklin, and completed missions across the East Coast. As a well-educated London man, André spoke multiple languages and was wildly artistic, with skills in theatre, art, and music. He often spent his days socializing with and entertaining colonial Americans, regardless of political allegiance. During his time in North America, he quickly became regarded as a charismatic and delightful gentleman that many enjoyed being around, despite being under occupation. Even after fulfilling looting orders and numerous spy missions, both the Patriots and the Loyalists respected Major John André, and he was specifically beloved by American colonial elite who knew him. George Oberkirsh Seilhamer, in *History of the American Theatre: During and After the Revolution* detailed rumors that André performed numerous times on stage during the war at amateur theatres, which operated despite a mandated shutdown by the Continental Congress.[90] André more likely, according to Seilhamer, helped the theatres as a scenic artist due to records of a singular landscape he helped with in Philadelphia in the late 1770s.[91]

André's captivating life, however, was turned upside down just ten years after setting sail to Canada in the later years of the Revolution. On September 21, 1780, André was intercepted in civilian clothes in Tarrytown, New York and arrested after he mistakenly disclosed his British ties to Americans. Traveling under the pseudonym John Anderson, André dressed in disguise to deliver six papers that revealed how British forces could overtake the fort at West Point from American forces. The papers, which were given to him by American General Benedict Arnold,

[90] George Oberkirsh Seilhamer, *History of the American Theatre: During and After the Revolution* (Philadelphia: Globe Printing House, 1889), 31.

[91] Ibid.

who sought to defect from American forces, revealed the general to be a treasonous spy. When André was arrested for aiding Arnold, many were shocked. People on both sides of the war felt conflicted, as their beloved colonial figure was now on trial for the highest of crimes.

André's case went in front of the not-yet United States' first-ever military tribunal. George Washington, then Commander-in-Chief of the Continental Army, wrote a letter to the Board of General Officers heading the case. The tribunal was to determine whether André was captured as a prisoner-of-war or as a spy. This crux forced the tribunal to debate why André was arrested in plainclothes using a false name and carrying six highly incriminating letters. Washington's letter to the Board concentrated on André disguise and was read to the tribunal on September 29, 1780:

> MAJOR ANDRÉ, Adjutant-General to the British army, will be brought before you for your examination. He came within our lines, in the night, on an interview with Major-General Arnold, and in an assumed character, and was taken within our lines in a disguised habit, with a pass under a feigned name, and with the enclosed papers concealed upon him. After a careful examination you will be please, as speedily as possible, to report a precise state of his case, together with your opinion of the light in which he ought to be considered, and the punishment that ought to be inflicted.[92]

Washington reasoned that André sought to get behind American lines by use of the disguise. André argued, however, that his plainclothes were simply a means to escape his capture days

[92] "Proceedings of A Board of General Officers, Held by Order of His Excellency General Washington, Commander in Chief of the Army of the United States of America: Respecting Major Andre, Adjutant General to the British Army," United States, Continental Army, Court-martial, published by Order of Congress, Sept. 29, 1780, 5-6.

before, not to subvert American forces.[93] Later that afternoon, André was found guilty of spying on American forces and, "it [was] their opinion he ought to suffer death."[94] He was sentenced to death by hanging, the automatic punishment for being a spy.

Hanging, however, was seen as a lowly criminal's execution, unlike the other option, death by firing squad. According to Richard Stites in *The Four Horseman: Riding to Liberty in Post-Napoleonic Europe,* "hanging had been traditionally reserved for the plebs and for 'villains' as a demeaning death. Garroting, held to be neutral, was used for nobles, and the firing squad was reserved for the military."[95] This tiered system of execution proved vital to the preservation and/or destruction of a condemned memory. Simon Webb, in *Execution: A History of Capital Punishment in Britain,* delves into the history of the firing squad specifically:

> From the beginning, the firing squad was recognized in Britain as being primarily a military punishment. Honourable [sic] death by powder and lead was regarded as a perfectly respectable way to go; almost on a par with falling on the battlefield. It was a soldier's death. […] At the very top were executions by beheading. These were reserved for the aristocracy or even […] for royalty themselves. Slightly below this came death by shooting, always provided that it was conducted by a firing squad. Hanging came at the bottom of the league, with

[93] Ibid., 8.

[94] Ibid., 13.

[95] Richard Stites, *The Four Horsemen: Riding to Liberty in Post-Napoleonic Europe* (New York: Oxford University Press, 2014), 119.

> the sub-division of hanging, drawing and quartering being the lowest type of death of all.[96]

Hanging was the lowest form of execution, truly dishonorable. Having your body hanging from the gallows was a public act that included civilians solely as spectators, where they watched as the condemned often suffered due to inconsistent drop lengths before the invention of mass-produced machinery in the nineteenth century. The goal with publics hangings, as Foucault argued, was to reveal the power of the government. Louis P. Masur, in *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865,* argues, however, that such displays were potentially ineffective:

> Execution day summoned the inhabitants of numerous towns to bear witness to the fate of those whose actions, social leaders claimed, undermined the order and virtue of the Republic; the state demonstrated that those who were caught would hang. But how could authorities know whether spectators internalized the civil message of obedience to government? What if behind blank stares lurked contemptuous criminals? What of those who were not discovered?[97]

Hangings were thus both a relic of the past—a display of state power inherited from sovereign Britain—and a potentially ineffective tool with which spectators would simply enjoy death and dying.

Many people believed that death by hanging would be inconsistent with the life led by André. British General Clinton, Benedict Arnold, Alexander Hamilton, and André, himself, all

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[96] Simon Webb, *Execution: A History of Capital Punishment in Britain* (London: The History Press, 2011), 19.

[97] Masur, *Rites of Execution,* 40.

sought different means to sway Washington from hanging the major. Many recognized he must die but wanted a more honorable death. In his final letter to George Washington, André begged for a "soldier's death":

> BUOY'D above the terror of death, by the consciousness of a life devoted to honorable pursuits, and stained with no action that can give me remorse, I trust that the request I make to your Excellency at this serious period, and which is to soften my last moments, will not be rejected. Sympathy towards a soldier will surely induce your Excellency and a military tribunal to adapt the mode of my death to the feelings of a man of honor. Let me hope, sir, that if aught in my character impresses you with esteem towards me, if aught in my misfortunes makes me as the victim of policy and not of resentment, I shall experience the operation of these feelings in your breast, by being informed that I am not to die on a gibbet.[98]

In this letter, André sought to convince Washington to change his execution from the gibbet—derived from the Old French *gibet*, meaning gallow—to an honorable death, one befitting of an honorable major. Regardless of the grotesque contemporary connotations of the firing squad, that form of execution had a higher social standing that would have been seen as honorable death suitable for a major. Moreover, the firing squad was known for being a quick, private death, highly less public and exposed than that of the lowly gallows. Death by firing squad would allow André to maintain his honor, despite death.

Wartime firing squads were public only to those in the military, except under particular circumstances. According to Harry M. Ward in *George Washington's Enforcers: Policing the*

[98] "Proceedings of A Board of General Officers," 21.

*Continental Army*, firing squads were completed by the military, who felt feelings of "horror and revulsion" for having to do the task.[99] During the execution, multiple executioners—all military men—held guns that were mostly loaded with blanks, with only one gun containing *the* lethal bullet. This preserved the anonymity of the executioner for their own sanity, as well as for their safety should there be any backlash regarding the condemned's execution. Ward argues that the multiple shooters helped create a "staged communal experience.[100] Based upon his own assertions that the military men did not want to participate in the executions, however, the only community formed during these firing squads seems to be one of communal trauma. Unlike hanging, spectators were not invited to witness the suffering of the condemned, as death by firing squad is actually a highly effective form of execution.[101] This is perhaps why it was upheld as honorable.

His letter, however, did not sway General Washington. Major John André was executed in Tappan, New York, on October 2, 1780 by hanging after Washington himself signed the death warrant.[102] The execution was attended by a large, public crowd estimated to be in hundreds or thousands, including officers and civilians.[103] One eye witness recounted, "I cannot, at this distance of time, recollect his dress, except his cocked hat, which I never shall forget seeing him

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[99]Harry M. Ward, *George Washington's Enforcers: Policing the Continental Army* (Carbondale: Southern Illinois University Press, 2009), 183.

[100] Ward, *George Washington's Enforcers*, 183.

[101] According to Austin Sarat in *Gruesome Spectacles: Botched Executions and America's Death Penalty,* between 1900 and 2010, there were 34 executions by firing squad. Zero of them were botched, resulting in a zero perfect botched rate. The next lowest botched rate is that of lethal gassing at 5.4%, which resulted in 32 botched executions out of the 594 administered in 110 years.

[102] William Abbatt, *The Crisis of Revolution* (New York: William Abbatt, 1899), 69-70. According to Abbatt, the signing of the warrant caused Washington great distress.

[103] Abbatt, *The Crisis of Revolution,* 70.

give to his weeping servant after he had mounted the cart […] ]. The general impression among our officers, and among the people, so far as I can judge, has been that he suffered in his regimentals."[104] After a highly public procession, at odds with the shifting sentiments happening across European countries noted by Foucault, André was hanged at the hands of a prisoner offered freedom for performing the hanging. The prisoner/executioner chose to smear black charcoal on his face in an effort to maintain secrecy. According to Ward, it was difficult to obtain an executioner—as discussed above that many in the military did not want to participate—so "actual executioners remained under a cloud of anonymity, often with faces blackened or other disguise."[105] This gesture reveals the enactment of sanitation, à la Foucault, enacted by the individual themselves. Although there was no mandate by the state to maintain levels of secrecy in order to keep the focus of the punishment on the soul, one member of the public, in this instance, was clearly rejecting the sovereign executions of days passed through this gesture.

Despite public execution that tortured the body being transitioned out of public favor in the United States, André's execution stood as an exception. André was hung in the gallows in the full view of the public, and he suffered, as the witness recounted . Such a display of state power could only be rationalized through the severity of Andre's crime—spying on the U.S.—and the highly public nature of the crime's fallout. According to Foucault, "Punishment had gradually ceased to be a spectacle. And whatever theatrical elements is still retained were now downgraded, as if the functions of the penal ceremony were gradually creasing to be understood,

[104] James Thatcher, "Observations relative to the execution of Major John Andre as a spy, in 1780, correcting errors and refuting false imputations," *New England Magazine,* May 1834, 353.

[105] Ward, *George Washington's Enforcers*, 183.

as if this rite that 'concluded the crime' was suspected of being in some way linked with it."[106] The rationalization of hanging can be found through discussion of André as spy. "Everything was done that could be by Sir Henry Clinton to save his life; but Washington was inflexible," wrote one journalist. "Andre [sic] himself was entreated that he might be shot; but the punishment for spies was hanging, and Washington thought that, if the punishment was changed, it would be an admission that Andre [sic] was not a spy."[107] The linkage to André's crime as spy can be seen as Washington grasping for the last vestiges of public execution, remnants of specular execution that allow the state—colonial America—to exert power over the body, in particular the British body, in a public forum.

Attempts at memorializing and remembering the life of Major André were immediate and have been continuous since his death. Images of his hanging, in particular, were immediately circulated in both colonial American and England to commemorate both his life and death (Figure 2). The image of his hanging body, however, reveals the tensions of the competing ideologies of this transitional era. As André's corpse swings lifelessly in the middle of the drawing, viewers are asked to remember the state's conquering of André body, followed by text rationalizing the hanging for his criminality as spy. These components find direct linkage to the sovereign ideology inherited from England where the physical body must endure pain in sight of the public in order for the state to maintain its direct power. The drawing also reveals, however, the burgeoning ideologies of liberalism via private execution. The public, liberal body—i.e., the soldiers spectating—are faceless and the epigraph calls the death "unfortunate." In this image,

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[106] Foucault, *Discipline and Punish,* 9.

[107] "Meeting Place of Andre and Arnold," *The Juvenile Instructor,* November 25, 1871, 186. *The Juvenile Instructor* is a Latter-Day Saint's periodical. Although some article that appear in the periodical are rather religious, this particular article appears to contain more secular reporting.

widely circulated in both England and the Colonies, the antagonism between the old and new is wholly apparent. As viewers of this image, you participated in the public act of state power, the old way of execution inherited from the British sovereign government. As readers of the text, however, you participated in a shift toward the new, emergent way of execution, in which the focus is on the crime as a rationale for the power exhibited.

This image was not the only one circulating following the execution. The night before his hanging, André drew a self-portrait. (Figure 3). Many hailed the portrait as a testament to both his beloved artistry and a rejection of the highly public execution he was about to endure. Although André was not conceptualizing himself alongside Foucault, his self-portrait, in conjunction with letters to friends, clearly reveals how deeply he was interrogating his death, his soul, and spectatorship in the days leading up to his execution. When no response immediately came from Washington regarding a change in execution, André wrote a letter to Lieutenant Colonel William Crosbie thinking through his impending death: "The manner in which I am to die at first gave me some slight uneasiness; but I instantly recollected that it is the crime alone that makes any mode of punishment ignominious—and I could not think an attempt to put an end to a civil war, and to stop the effusion of human blood, a crime."[108] André's letter defends his actions as an act of preservation of all humans during the bloodshed of war. More so, he attempts to separate the act of hanging from himself as a human and sees it as attached solely to his crime. This rationalization works twofold. First, it reveals that André himself had embodied the transitionary idea that hanging can only be administered when the crime itself justified it.

[108] Abbatt, *The Crisis of the Revolution,* 68.

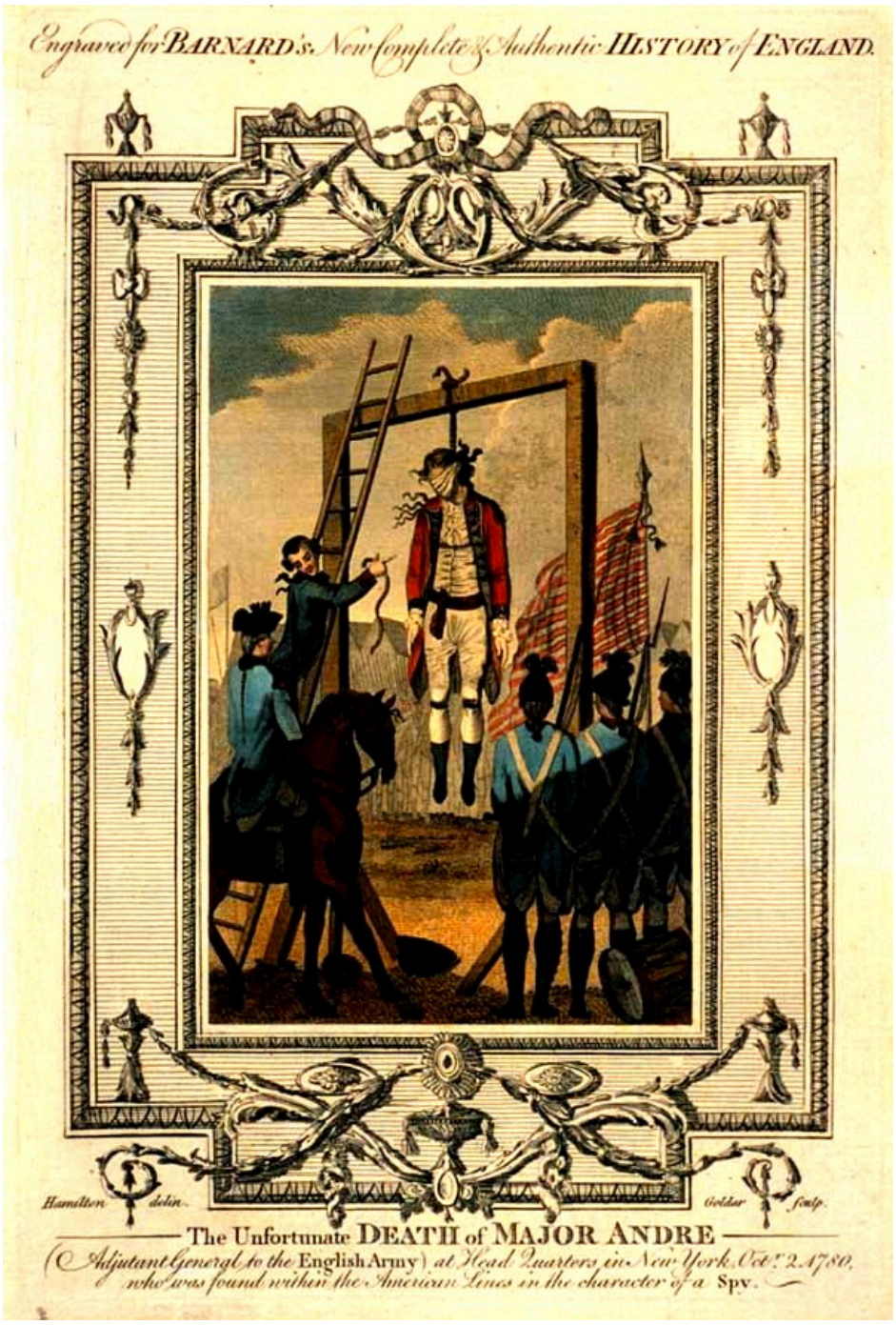


**FIGURE 2**
"The Unfortunate Death of Major Andre
Adjutant General of the English Army at Head Quarters in New York, Oct. 2, 1780,
who was found within the American Lines in the character of a Spy."[109]

[109] Edward Barnard "The Unfortunate Death of Major Andre," *The New Complete & Authentic History of England* (London: A. Hogg, 1783) 694.

**FIGURE 3**
Self-Portrait, Major John André
New York, October. 1, 1780[110]

[110]John André, "Fac-simile of Major Andre's miniature, drawn by himself, October 1, 1780, the day preceding his execution," New Haven: Yale College, 1890), https://www.loc.gov/resource/rbpe.00701500/?sp=1.

No longer was hanging the go-to punishment simply given to reveal state power, but rather a lowly punishment related to the crime itself. Second, André's letter reveals that he conceptualized himself to be something greater than his crime. He recognized his soul to be honorable, which allows to him to die a noble death despite the lowly execution he was to experience. This line of thinking directly antagonizes the two-fold transition discussed by Foucault above, where liberal government were no longer focused on death, but rather punishing the soul through a sanitized, bureaucratic process of execution. Since André was not being executed due to matters of the soul, however, André believed that his soul was thus spared of wrongdoing. The preservation of self is revealed in André's self-portrait, where he draws himself contemplating deeply at a table where he was presumably writing. The drawing is rough, and yet André is not drawn as prisoner. In the image, he is seemingly wearing upper-class clothes, sits in a decorative chair, and has a plume at the ready. This imagery is at odds with that of the lowly hanging he is about to face and thus seeks to reclaim the honor of which many believed he was about to be stripped of.

## WILLIAM DUNLAP'S *ANDRÉ*

Throughout the 200 plus years since Major John André's death and the circulation of these images, many have sought to recalibrate his life. These remembrances, however, often focus on maintaining André's honor, or at least debating how his death was at odds with his life. There are rarely searing indictments of his actions or the fallout they caused, unlike those still reserved for Benedict Arnold, a man who is recurrently cited as America's worst traitor. Major John André not only dutifully served his country in a time of war but was a phenomenal human. Two such works are Dunlap's *André* and *The Glory of Columbia*.

William Dunlap, born on February 19, 1766 in Perth Amboy, New Jersey, was the only child of retired British officer Samuel and Margaret Dunlap.[111] His family was well-to-do, providing Dunlap with access to an upper-class life and quality education. His family had numerous enslaved people, an unfortunately normal, oppressive habit of the era, and often partied with soldiers from his father's time in the military. In the spring of 1777, his family moved to New York City, where the British military had their headquarters. Dunlap's time in New York, during his teenage years, was said to be highly influential in his theatre career, as he saw his first play shortly after arriving.[112] Due to the Dunlap family's status, Dunlap himself met George Washington on both public and more personal occasions, which also highly influenced his portrayal of the Washington and the political elite in his plays.[113] Dunlap traveled to England in 1784 to study scenic painting, only to be demanded home by his father in 1787 after wasting time and money traveling the country and not studying.

Upon returning home, Dunlap wrote his first play, *The Modest Soldier; or, a Love in New York* (1787), a comedy about the revolution.[114] The play was never staged, but just two years later in 1789, *The Father; or, American Shandyism* and *Darby's Return* were fully staged at the John Street Theatre in New York.[115] Throughout the 1790s, Dunlap regularly plays and had many of them either published or produced by the John Street Theatre. He became the manager

[111] Oral Sumner Coad, *William Dunlap: A Study of his Life and Works and of his Place in Contemporary Culture* (New York: The Dunlap Society, 1917), 4. It should be noted that his family retired from the British military *before* the start of the American Revolution.

[112] Ibid., 7.

[113] Ibid., 7.

[114] Ibid., 137.

[115] Ibid., 284-285.

of the theatre in 1796 until 1798 when he opened the Park Theatre and ran it until 1805. Much of his career at these theatres was intertwined with the Old American Company, whom he actively produced. [116] In addition to numerous other theatrical contributions, Dunlap established the National Academy of Design in 1825, which lasted for thirteen years.[117] Dunlap died on September 28, 1939 in New York, survived by his wife, Elizabeth Woolsey, and a son.[118]

Of all his contribution, *André* is remembered most prominently in American theatre history. *André* opened in New York City on March 30, 1798 at the Old American Company's Park Theatre (Figure 4). The show was produced by the Old American Company's actor-managers John Hallam and John Hodgkinson, who also originated the roles of General George Washington and André, respectively. Situated just southeast of City Hall and City Hall Park, the New Park Theatre struggled from its inception (Figure 5). Even though its original design had to be scaled back due to a lack of funding, the theatre excitingly opened on January 29, 1798 with 2000 seats costing an average of 50¢.[119] Hallam and Hodgkinson built the theatre near the new City Hall as a way of attracting audience members across every social stratum. New York's City Hall, perceived as a highly democratic space, was to be transmitted into the ideology of the new

[116] The Old American Company, co-run by Hallam and Hodgkinson at this time, was originally the Hallam Company. The Hallam Company was the first professional theatre company in Colonial America beginning in 1752. After its founder Lewis Hallam died during a tour in Jamaica, David Douglass changed the named to the American Company in 1758 and then the Old American Company in 1783 following the end of the American Revolution. The company was known for Shakespeare, which they are herald for popularizing in the U.S. At the turn of the 19th century, the Old American company attempted to produce new works, including *André,* but the failure of such works and numerous theatre shutdowns due to plagues led to the company going bankrupt in 1805.

[117] Coad, *William Dunlap,* 105-106.

[118] Ibid., 127.

[119] According to the U.S. Inflation Calculator, 50¢ in 1798 equaled the buying power of approximately $10.21 in 2018. Also, the original New Park Theatre building burning down in 1820, only to be rebuilt.

theatre in both its ticket prices and the plays they staged. As Odai Johnson states in *Absence and Memory in Colonial American Theatre,* "As a civic space, the playhouse represented a social free zone, relatively unburdened by the formal protocols that governed most subdivided social spaces, where anyone with five shillings could sport in the panopticon of seeing and being seen."[120] The low prices would seemingly yield a space of mixed assembly, one fruitful for thought and conjecture.

Despite the intention of a democratic theatrical experience, however, audiences were relegated to seating areas that related to their relevant social class, much like that of the British theatre. Heather S. Nathans, in *Early American Theatre from the Revolution to Thomas Jefferson,* argues "the post-war theater of New York became a means for the city's merchant elite to define who could and could not participate in their community. By the nineteenth century, their theatre would become means of defining those in the center and those on the periphery of political and economic power."[121] The New Park Theatre was highly influential in this shift. The theatre prioritized upper-class voices through its tiered prices and seating system and through the way audiences influences the plays, such as Dunlap's forced rewrites of *André.*

[120] Odai Johnson, *Absence and Memory in Colonial American Theatre* (New York: Palgrave Macmillan, 2006), 67.

[121] Heather S. Nathans, *Early American Theatre from the Revolution to Thomas Jefferson: Into the Hands of the People* (New York: Cambridge University Press, 2003), 149.

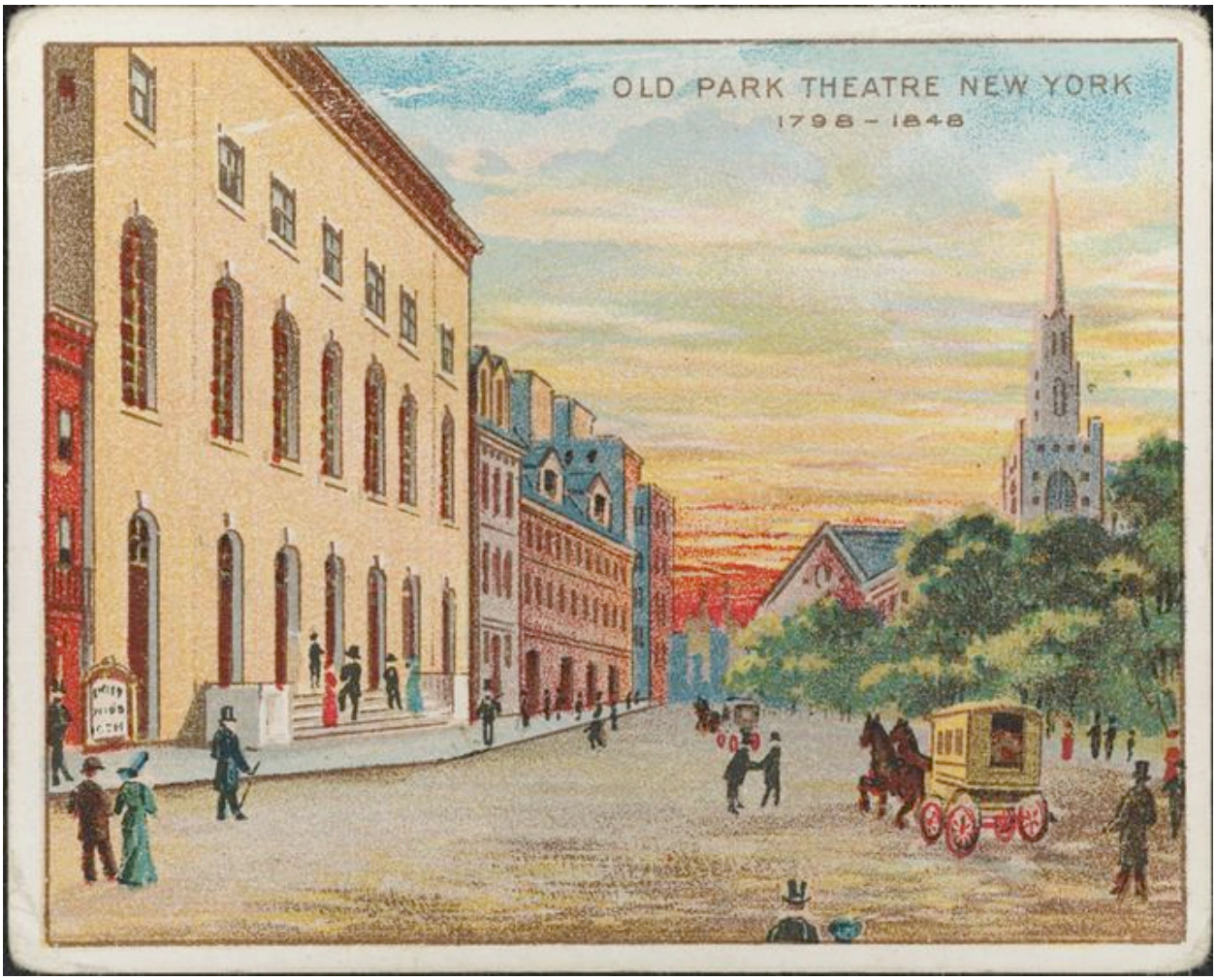


**FIGURE 4**
Old Park Theatre, New York[122]

[122] Cigarette card. Old Park Theatre New York, 1798-1848. ca. 1910. Museum of the City of New York.


**FIGURE 5**
"Plan of the City of New York," Survey by William Bridges, 1807
#43 is listed as "Theatre" in the key and is the "New Park Theatre."[123]

[123] D.C. Haskel, *Manhattan Maps, A Co-operative List*, 643, *Manhattan in Maps 1527 - 1995*, p. 96-99. New York Public Library, Map Division, Map Div. 88-5214, New York, New York, United States.

*André* opened just two months after the New Park Theatre's first show, Shakespeare's *As You Like It*. Despite the negative reception, the company saw a swell of income. *André* took in $817, nearly double the typical nightly receipts averaging $450. After the show's climatic moment was despised by audiences in its opening night, *André* struggled to find its footing. Even after Dunlap immediately rewrote the script for the second performance, the show only ran for two more nights following Dunlap's edits. Despite its early closing, Dunlap recalled that the money was a "temporary relief" for the struggling theatre.[124] According to Nathans, "Although Dunlap did his best with the New Park Theatre, circumstances were against him at every turn. The return of the yellow fever in the fall of 1798 meant a truncated theater season that could not begin until December (three months after its planned opening)."[125] Although *André* opened before this unfortunate epidemic, Nathans' research reveals that the quick flow of cash was pivotal for the Old American Company and the New Park Theatre which had been struggling (and would continue to).

In the opening moments of *André,* the prologue immediately addressed the fictionalized nature of the play's real-life inspiration:

> Our Poet builds upon a fact to-night;
> Yet claims, in building, every Poet's right;
> To choose, embellish, lop, or add, or blend,
> Fiction with truth, as best may suit his end;
> Which, he avows, is pleasure to impart,

[124] Dunlap, *History of the American Theatre,* 161. According to the U.S. Inflation Calculator, $817 in 1798 equaled the buying power of approximately $16,679 in 2018.

[125] Nathans, 161.

And move the passions but mend the heart.[126]

Spoken by Mr. Martin, the actor playing Washington's right-hand man, the prologue touched on Dunlap's position to the events surrounding the life, trial, and execution of Major John André in 1780 at the tail end of the American Revolution.[127] Dunlap made no claim to portray the truth as it was known to have played out, but rather sought to bring pleasure to his audiences nearly twenty years after the real-life execution. The issue here, however, is how Dunlap conceptualizes "pleasure" within in the theatre. He seems to construct pleasure as an empathetic experience that "mends the heart." Dunlap fails to recognize that his fictionalized recounting of these events was working in direct antagonism against the lived experiences of his audience, many of whom remembered the events of Major John André's actual execution and had personal opinions about his betrayal, manner of death, and how it relates to the new nation.

Dunlap's *André* sought to directly represent the complex emotions felt towards the real-life Major John André. The complexity of emotions was not complicated along the lines of American vs. British sentiment, but rather because the dishonorable execution could not be reconciled with his honorable life. The play indicted those who justified the dishonorable hanging through the simple rationalization that André was a spy, placing the play directly in conversation with Foucault. Dunlap humanizes André the same way the real-life André sought to humanize himself in his final moments, giving the character compassion, depth, humility, and fear. The deepest critique of the state and its performance of power despite such humanity comes through Dunlap's portrayal of Washington. Although the play portrays Washington as a torn

[126] William Dunlap, *André: A Tragedy, in Five Acts,* 2 vols (New York: The Dunlap Society, 1887), xxxv.

[127] Ibid., xxxvi.

General, upset about André's death, Dunlap ultimately argued that Major Andre's execution was the blot on Washington's career, reminding audiences that Washington alone was the determining factor in the unfortunate death of Major John André. In Washington's final scene, a soliloquy reveals his ultimate internal struggle:

> GENERAL.
>
> O, what keen struggles must I undergo!
>
> Unbless'd estate; to have the power to pardon;
>
> The court's stern sentence to remit;—give life;—
>
> Feel the strong wish to use such blessed power;
>
> Yet know that circumstances strong as fate
>
> Forbid to obey the impulse.[128]

This fictional Washington believes that forces larger than him are at play in the decision to hang André for his treasonous actions as a spy. The state thus must perform power in such a way, despite it being at odds with the public's view of executions. Officer Bland's inner turmoil ultimately reveals these deep-seated tensions between shifting public sentiment and state power. As the play begins, American officer Bland discusses rumors that a British officer has been captured for spying on American forces:

> BLAND.
>
> But as a pass'd along, many strange tales
>
> And monstrous rumors have my ears assail'd:
>
> That Arnold had prov'd false; but he was ta'en
>
> And hung, or to be hung—I know not what.

[128] Ibid., 66.

Another told that all out army, with their

Much-lov'd chief, sold and betray'd, were captur'd.

But as I nearer drew, at younder cot

'T was said that Arnold, traitor like, had fled;

And that a Briton, tried and prov'd a spy,

Was, on this day, as such, to suffer death.[129]

This speech both reveals the British spy's connections to the infamous Benedict Arnold, already sentenced to hang, and that the mysterious British spy is too destined for such a fate. After conformation by Melville of the rumors, Melville confirms:

MELVILLE.

The brave young man, who this day dies, was seiz'd

Within our bounds, in rustic garb disguis'd.

He offer'd bribes to tempt the benad that seiz'd.[130]

Although these statements are seemingly harmless, they reflect the real-life element on which the case hinged: if André was captured in plainclothes attempting to infiltrate American forces, he was a spy to be hanged. Within the following lines, Bland and Melville establish that "All those who seek to bring this land to woe/All those, who, or by open force, or dark/And secret machinations, seek to shake/The Tree of Liberty, or stop its growth..."[131] must fall. There is a confirmation in this moment between Bland and Melville that those who betray American-ness must fall. In a turn of dramatic irony, however, Bland does not know who has betrayed the

[129] Ibid., 4.

[130] Ibid., 5.

[131] Ibid.

American people. This allows his character to offer rather binaristic morals: those with and those against American ideals.

When it is revealed, however, that the man is Major André—beloved by both the community and by Bland specifically—a wrench is thrown into the black and white conception of morals. Americanness no longer comes first, but rather Bland is now concentrated on André's execution by hanging, which is revealed to be a dishonorable form of execution:

> BLAND.
>
> I liv'd by him,
>
> And in my heart he liv'd, till, when exchang'd
>
> Duty and honor call'd me from my friend.
>
> Judge how my heart is tortur'd.—Gracious Heaven,
>
> Thus, thus to meet him on the brink of death—
>
> A death so infamous.[132]

Bland's emotions work two-fold. First, they reveal the conflict felt by many in the era regarding André. André's honorable life stood in direct contrast with the lowly death—hanging—he was about to face. These conversations reveal the classifications of executions that existed during this time between firing squad, an execution of military honor, and hanging, one of lowly dishonor. Secondly, Bland's confliction reveals deeper tensions between state power and personal reasoning. Bland had previously confirmed that spies must suffer death, specifically the death of hanging. When that spy becomes a loved one, however, returning a humanity to the typically dehumanized, condemned body, such black and white thinking is abandoned. Tensions are

[132] Ibid. Rest of the line: BLAND: Heav'n grant my prayer./[*Kneels.*]/That I may say him, O, inspire my heart/With thoughts, my tongue with words that move to pity. [*Rises.*]/Quick, Melville, show me where my André lies./MELVILLE./Good wishes go with you./BLAND./I'll save my friend. [*Exeunt.*]

revealed between the state's need to perform its power over a condemned traitor and the public's need to honorably mourn a beloved friend.

When the fictitious Bland threw down the union cockade in protest of André's execution, his actions were clearly not well-received. Dunlap's distaste for Mr. Cooper's "overacting," however, suggests that this action was not originally written in the script. The original, opening night script does not exist, nor does an account from Mr. Cooper explaining his side of the story. Regardless, audiences placed blamed on Dunlap, not Mr. Cooper. Many believed that Dunlap had overt British sympathies in the newly-formed United States, a perception that failed to encapsulate the deeply fractured state of affairs after André's capture. Dunlap conjectures that Bland's actions "perhaps could not be, [sic] understood by a mixed assembly; they thought the country and its defenders insulted, and a hiss ensued—it was soon quieted,/and the play ended with applause."[133] According to Dunlap, Bland's irreverence for patriot ideals and their material counterparts—such as the union cockade—was inferred by audiences as disrespect for the newly formed United States of America.

As discussed above, Dunlap rewrote the ending of the play after receiving complaints from audience members and friends of Mr. Cooper who feared for his popularity with a speech more favorable to the American spirit:

BLAND

Farewell, farewell, brave spirit! O! let my countrymen,
Henceforward when the cruelties of war
Arise in their remembrance; when their ready
Speech would pour forth torrents in their foe's dis-praise,

[133] Dunlap, *History of the American Theatre,* 20-21.

Think on this act accurst, and lock complaint in silence.

[BLAND *throws himself on the earth.*][134]

Although the new speech was met with resounding approval, the play only ran for two more nights, a seeming failure.[135] In this rewrite, Dunlap clearly revises what Bland throws to the ground. Instead of the cockade, Dunlap plans for Bland to instead hurl himself to the ground in seeming emotional protest of the execution that just occurred. Speaking in third person, Dunlap recalls how well the revision went over. He writes, "However, the author made an alteration in the incident, and subsequently all went on to the end with applause. The applause of a theatre!"[136] The changes from the first to the second version of *André* can be justified as rather minor. For Dunlap, this change rationalizes why "mixed assembly" could now fully accept the show and its message. Bland no longer rejects a symbol of the American Revolution and thus America itself, but rather crumples in sadness at the loss solely of a dear friend that he considered a brother.

Dunlap's attempt to fully account for the audience's acceptance of the play through this seemingly minor revision is a rather feeble attempt at understanding the nuanced debate surrounding patriot and loyalist sentiments in 1798 and its entanglement with the execution of André. Dunlap himself seems unsure of his own reasoning as he continues to explain away Mr. Cooper's bad acting and how it might have alienated the audience:

> Our friend Cooper was at this time rather in the habit of neglecting such *parts* as were not *first*, or exactly to his mind. Young Bland was not the hero of the piece,

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[134] Dunlap, *André,* 74-75.

[135] Dunlap, *History of the American Theatre,* xxxii.

[136] Ibid., 20-21.

> and very little of the author's blank verse came *un-amended* from the mouth of the tragedian. In what was intended as the most pathetic scene of the play, between Cooper and Hodgkinson, the first, as Bland, after repeating, 'Oh André—oh André,' as often as 'Jemmy Thomson' wrote 'Oh, Sophonisba' approached the unfortunate André, who in vain waited for *his* cue, and, falling in a burst of sorrow on his neck, cried, loud enough to be heard at the side scene. 'Oh André—damn the prompter!—Oh, André! What's next, Hodgkinson?' and sunk in unutterable sorrow on the breast of his overwhelmed friend, upon whose more practiced stage cleverness he relied for support in the trying scene—*trying* to the author as well as actor and audience.[137]

Dunlap holds clear contempt for Mr. Cooper and his performance of Bland. His rant within his own treatise on American theatre history devotes an entire paragraph, in fact, to attacking Mr. Cooper's acting choices and his unprofessional attitude. The inclusion of the diatribe, however, is not that simple. While explanation comes long after Dunlap seemingly settles the issues surrounding Mr. Cooper/Bland's opening night performance by rewriting the text, he still carves out time to dissuade any remaining skeptics of Dunlap's personal wrongdoing. This paragraph can thus attest to both Dunlap's distaste for Mr. Cooper and also, Dunlap's uneasiness for the opening night failure of *André.* This paragraph can easily be ready as Dunlap's attempt to rationalize the audience's mixed reactions of *André*'s first performance and place blame elsewhere.

With this clearly subjective explanation surrounding the blunders of the opening night of *André,* the failures must be investigated further. With his rewrites, Dunlap clearly sought to

[137] Ibid., 21-22.

restore order within the theatre through the clarification of the play's/his American alignment. The reading of Mr. Cooper as Bland throwing down the cockade as disrespectful to American Revolutionary sentiment is only a piece of why audiences reacted in such a negative way. Digging deeper, the reference to "mixed assembly" that Dunlap references in the *History of American Theatre* helps to break open the simultaneous readings of the play that would be occurring within the New Park Theatre, readings aligning with both patriot and loyalist sentiments. Despites opening over fifteen years past the end of the American Revolution, split sentiment was a commonplace within society and American theatrical life and a deeper exploration of these concurrently operating sentiments in necessary in understanding the hiccup that was *André.*

In a 1799 review of the play by London's *The Analytical Review; or, History of Literature,* the reviewer shredded Dunlap for *André.* The review began by lamenting the tragic death of Major John André, remembering his death as a time when even "the Americans shed tears of sorrow on his grave…"[138] The reviewer continued, arguing that Dunlap's work is a disgrace to the life of Major John André and those that experienced his death:

> We are sorry that it is not in our power to speak favorably concerning the execution of this play as it would have given us pleasure to do; many of the circumstances which attended the death of Major André are well calculated for dramatic effect; but our author appears evidently unequal to the task he has undertaken. In vain do we look for the "fine frenzy" of the poet—in vain do we look for "thoughts that breathe, and words that word;" the dialogue is

[138] Christie Thomas, ed., "ART. XXXIX. *André: A Tragedy, in Five Acts:* As now performing at the Theatre in New York," in *The Analytical Review; or History of Literature* 1 (May, 1799): 532.

> unimpassioned, the sentiments often insignificant, and the language, though occasionally labored, seldom harmonious.[139]

Although this reviewer does not explicitly discuss any aspects of the performances of *André* or disclose if or when they themselves attended, there is a presumption of attendance. The review's title tells readers that the show is actively running at the Theatre in New York[140] Their review can thus stand as an indictment of *André* not as published work but as a performance and helps contemporary eyes access the space between Dunlap's fiction and the mixed audiences' lived experiences. This presumed-British author had a clear distaste for Dunlap's retelling, as it came into direct conflict with their own opinions of Major John André and the reverence for his life and execution of which they believe he was deserving. In an explanation of his death, they wrote "At this long interval of time, it will be allowed, perhaps, even on this side the Atlantic, that the policy of war demanded his sacrifice."[141] This writer recognized why the United States executed André—policy of wartime—however, they simultaneously demanded that Dunlap's artistic treatment of his death reflect the witty, creative, and passionate life for which André was beloved.

This review helps access a unique perspective that would have been operating during the opening of *André,* one that is clearly not encapsulated in Dunlap's rational that Mr. Cooper's actions were disrespectful of the American Revolution. Rather, the review reveals the failures by way of the play's lack of reverence for Major John André's life. Bland's emotions and actions thus stand in for those who deeply mourned the death André. Through this lens, the revision can

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[139] Ibid., 533.

[140] Ibid., 535.

[141] Ibid., 532.

be seen as more helpful in revealing the complex sadness surrounding the execution of André. To throw down a cockade but eventually pick it back up can be read as holding not simply enough reverence for the life Major John André led and distaste for the method of execution he was given. Bland should instead crumple in utter defeat. He instead should wallow in sadness while thinking about the death of the man he—and much of colonial America—considered a brother. Under the auspices of this reviewer, however, Bland's character does not go far enough. The play as a whole failed to reveal the breadth to which Major John André was revered, and Dunlap's explanation for the booing thus clearly fails to encapsulate the extent of the issue.

### *THE GLORY OF COLUMBIA*

Following the controversial and commercial failure that was his historical tragedy, The Old American Company removed *André* from its repertoire and Dunlap, as recounted in *The History of the American Theatre,* struggled to grapple with the failure of the play. Dunlap, however, was not only a playwright. He also had to think about his life in the theatre from a financial aspect, as he was the co-owner and manager of the New Park Theatre, which was struggling from numerous financial issues. Dunlap thus sought to re-envision the Major John André story into a more digestible narrative to relieve the pocketbooks of the New Park Theatre. Dunlap's *The Glory of Columbia, Her Yeomanry: A Play in Five Acts* premiered at the New Park Theatre on July 4, 1803. Unlike its predecessor, *The Glory of Columbia* was well received, as it delivered a "glorious spectacle and their love and devotion for Washington as a cultural icon"—a new version of André's story, complete with song and dance.[142] The play earned $1,287 on

[142] Anita Vickers, *The New Nation,* 212.

opening night alone, the near equivalent to *André*'s entire three-day run.[143] The play was revived for years to come and was a much needed commercial success for the theatre. Dunlap, however, was less than thrilled about the sacrifices he made in the new version of André's story. In his *History of the American Theatre,* he recalled, "A portion of [*André*] was incorporated with a holiday drama, which the author afterward put together, and called *The Glory of Columbia—her Yeomanry,* which was likewise published, and is occasionally murdered for the amusement of holiday fools."[144] According to Peter P. Reed in *Rogue Performances: Staging the Underclasses in Early American Theatre Culture,* the new play was a drastic change from the older work:

> *The Glory of Columbia* offered audiences a play that not appealed to their patriotic sentiments, but also incorporated informal paratheatricals from other contexts. Dunlap cut many of *André* dramatic subtleties and added new scenes, characters, and subplots wholesale. The revision elides the tragedy's internal conflicts, replacing decorous sentiments with a brawling, noisy patriotic display. Patriotic songs replace thoughtful soliloquies, scenic spectacle push aside dialogue, and new characters draw from the lower sorts replace Revolutionary political and military authorities.[145]

Dunlap despised his new play's simplistic narrative, which placated general audiences' ideas of American-ness and forged one-dimensional heroes independent from the complex historical narrative that intrigued Dunlap years earlier. This version of Major John André's story does not

[143] Peter P. Reed, *Rogue Performances: Staging the Underclasses in Early American Theatre Culture* (New York: Palgrave Macmillan, 2009), 79.

[144] Dunlap, *History of the American Theatre,* 21.

[145] Reed, *Rogue Performances,* 80-81.

allow for such an in-depth reading of executions via Foucault, as Dunlap has stripped the narrative of a complex dialogue surrounding André's death in exchange for celebrations of the America and George Washington.

Upon closer inspection, *The Glory of Columbia* retains many fragmented pieces of the original *André.* Melville and Bland's conversations surrounding the rumors of a spy's arrest, for example, appear and Bland is, once again, struck by the news that the beloved Major John André was the man involved. The changes in *The Glory of Columbia* extend beyond the songs, however, revealing a fundamental re-remembering of André's death that ultimately reshapes the ways in which execution is positioned within this early nineteenth-century society. The first moment audiences meet André in *The Glory of Columbia*, in Act III, he is "discover'd in a pensive position sitting at a table—a book by him and candles—his dress neglected, his hair disheveled…."[146] This staging is a stark difference from how André himself drew his final moments and how many remember him while he was imprisoned. The fictional André of *The Glory of Columbia* has been dehumanized—made into a prisoner—, which is a clear and purposeful re-remembering of the historical reality.

The most starling refashioning of *The Glory of Columbia,* however, is how the fictitious André accepts his crime and the means of execution it entails from the beginning of the play:

> ANDRÉ.
>
> Still dost thou call me, friend? I, who dared act
>
> Against my reason—my declared opinion;
>
> Oft in the generous heat of glowing youth,

[146] William Dunlap, *The Glory of Columbia, Her Yeomanry: A Play in Five Acts* (New York: Shakespeare Gallery, 1817), 26.

Oft have I said how fully I despised

All bribery base—all treacherous tricks in war;

Rather my blood should bathe these hostile shores,

And have it said "he died a soldier,"

Than with my country's gold encourage treason,

And thereby purchase gratitude and fame.[147]

This fictitious version of André all out accepts his punishment, internalizing the very rationales set forth by Foucault that the crime itself can rationalize the use of a public, lesser execution. Even when the always-emotional Bland attempts to persuade André that he was tricked by Arnold into aided him. Once again, this version of Major John André openly accepts guilt and labels himself a traitor:

ANDRÉ.

So did ambition lead me, step by step,

To treat with traitors, and encourage treason.

And then bewilder'd in the guilty scene,

To quit my martial designating badges,

Deny my name and sink into the spy.[148]

To name himself as spy, this fictionalized version of André accepts his fate of death by hanging and strips himself of the honorable death of a solider. This acceptance moves to alleviate the fictionalized Washington—by 1803 a widely recognized hero—from bearing the cross of executing André. Instead, *The Glory of Columbia* staged an André that recognized his

[147] Ibid., 27.

[148] Ibid., 27.

wrongdoings and the outcome of his actions and positions Washington as the protector of American values.

The commercial success of the second version of this story reveals shifting sentiments towards both the memory of André and methods of execution. Whereas the first time around the audiences were playing a balancing act between their American allegiance and their love for André's memory, time had healed wounds by 1803. The new play prioritized Americanness through its songs and dances, premiering on the celebratory day of July 4th. With André final line of the play, "I am ready," guards lead him to his execution at the end of Act IV. The curtain falls on a grieving Mrs. Bland and Honora, André's lover.[149] When the curtain rises for Act V, however, Washington enters surrounded by officers and soldiers. Time has clearly passed and the Revolutionary War, separate from the spy escapades, has continued, leading Washington to command his troops into the next battle. The play concludes with a celebratory song cheering on the wins of America:

> CHORUS.
>
> The fight is done!
>
> The battle won!
>
> Our praise is due to him alone,
>
> Who from his bright eternal throne,
>
> The fates of battles and men decides!
>
> To him all praise be given,
>
> And under heaven,
>
> To great Columbia's son,

[149] Ibid., 50.

Blest Washington!

Who o'er the fight like fate presides!

All hail Columbia's on!

Immortal Washington!

By fame renown'd

By victory crown'd

Hail Washington![150]

This song's attitudes toward Washington stand in stark contrast to those espoused in *André* just five years earlier. *The Glory of Columbia* ends on a resounding note of celebration towards Washington and all things American. The play remembers the revolution and its sacrifices—including the unfortunate death of Major John André—as mere steeping stones in establishing the great country that is the United States of America. The new play is thus sanitized of the complicated moral date of *André*, allowing audiences to celebrate their America free from impediment.

With his two plays—*André* and *The Glory of Columbia*— Dunlap set out to accomplish completely different tasks. At first, he attempted to engage in a complex conversation and critique of execution not long after the real-life events that inspired it. By the second play, however, he fell prey to the commercial influences that also influenced *André* on opening night. Complex conversations and critiques were subsumed by the needs of a new nation on a quest not only to become a liberal entity but establish an unwavering sense of "Americanness." But what did it mean to be an American, a citizen of the newly formed United States of America? This is a

[150] Ibid., 58.

question with which the theatre would purposefully spend the next century grappling with and one Foucault is the key to unlock.

# Chapter 3. The Suffering Liberal Subject: The Double-Edged Sword of Death and Dying in Nineteenth-Century American Melodrama

> But secondly you say "society must exact vengeance, and society must punish." Wrong on both counts. Vengeance comes from the individual and punishment from God.
>
> — Victor Hugo[151]

> But HERE I should imagine the most terrible part of the whole punishment is, not the bodily pain at all—but the certain knowledge that in an hour,—then in ten minutes, then in half a minute, then now—this very INSTANT—your soul must quit your body and that you will no longer be a man— and that this is certain, CERTAIN!
>
> — Fyodor Dostoevsky[152]

In the final scenes of Dion Boucicault's *The Octoroon* (1859), the titular octoroon, Zoe, lies dying from poison she drank the night before. She has made the decision to kill herself, recognizing that she will never be free and capable of marrying her white love interest, George. As the poison slowly removes the life from her body, however, news comes that Zoe has been freed. With her dying breaths, Zoe insists George marry Dora, the white, damsel-in-distress

[151] Victor Hugo, *The Last Day of the Condemned Man: And Other Prison Writings* (London: Oxford Univerrsity Press, 1992).

[152] Fyodor Dostoevsky, *The Idiot,* trans. Ignat Avsey (Surrey: Alma Classics, 2010), 30.

figure for whom Zoe always felt George was intended. As the play comes to a close, Zoe fulfills her place as a "tragic mulatta" figure, dying in the arms of her beloved, George, cognizant that living and marrying him would be a blasphemous choice.[153]

The term "tragic mulatto*"* defines mixed-raced characters who are destined for a catastrophic ending within their given circumstances, both in literary texts and plays. The term "tragic mulatta"—denoting a mixed-race, female character—has come to define enslaved, female characters wrought with sexual vulnerability and capable of fully assimilating into their white surroundings. The term mulatto is undeniably a racially charged slur in contemporary English. In the word's most sanitary form, mulatto is defined, according to the Oxford English Dictionary, as "a person having one white and one black parent."[154] This definition, however, fails to encapsulate the deeply racist and violent history of the term. In 1843, U.S. physician and surgeon Josiah Nott published a 32-page essay titled "The Mulatto a Hybrid: Probable Extermination of the Two Races if the Whites and Blacks are Allowed to Intermarry." Nott's essay sought to position the mulatto as a figure against white racial purity who "is a degenerate, unnatural offspring, doomed by nature to work out its own destruction."[155]

As destructive as Nott's words may sound, his ideas were unfortunately fully in line with the legal discourse of the time. Anti-miscegenation laws—also called miscegenation laws—outlawed marriages, cohabitating, and reproduction between races. These laws were in full swing

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[153] Dion Boucicault, "The Octoroon," in *Selected Plays of Dion Boucicault* (Washington D.C.: The Catholic University of America Press, 1987), 182-183.

[154] "Mulatto," *Oxford English Dictionary* (Oxford: Oxford University Press, 1989).

[155] Josiah Nott, "The Mulatto a Hybrid: Probable Extermination of the Two Races if the Whites and Blacks are Allowed to Intermarry," *Boston Medical & Surgical Journal* XXIX (1843), 31. (29-47)

throughout the nineteenth century and not ruled unconstitutional until 1967.[156] According to Elise Virginia Lemire in *"Miscegenation": Making Race in America,* "after the egg and sperm were discovered in the seventeenth century, it came to be assumed widely that reproduction was the means by which race was made. […] Race and reproduction become linked… and blood was the means by which they were joined."[157] Through this construction, sexual reproduction reproduced race. Daphane Brooks, in *Bodies in Dissent: Spectacular Performances of Race and Freedom, 1850-1910,* writes that Zoe "is the manifestation of the crisis that miscegenation laws sought to police. […] Zoe corporeally allegorizes the nation's simmering state of disunion as it gradually prepared to go to war with itself over social, economic, and political issues related to slavery and state sovereignty."[158] Zoe is thus a theatrical manifestation of a mulatta's complex play in the mid-nineteenth century economy. Tragic mulatta figures are doomed for death, according to Brooks, due to their "surplus of difference," or rather their ambiguous, excessive position in a world of binaries.[159] Zoe is a confusing-to-place hybrid in a world of black and white.

M'Closky, the villain of *The Octoroon,* seeks to recover old debts from the Peyton estate after the death of Zoe's father and the former Terrebonne plantation owner, Master Peyton. Recovering the debts, however, does not simply include retrieving money. M'Closky wants a

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[156] "Loving v. Virginia, 388 U.S. 1 (1967)," *Justia,* accessed March 17, 2019, https://supreme.justia.com/cases/federal/us/388/1/. In *Loving v. Virginia,* the court unanimously agreed that anti-miscegenation laws violated the Due Process and Equal Protection Clause of the Fourteenth Amendment.

[157] Josiah Nott, "The Mulatto a Hybrid," 38.

[158] Daphne Brooks, *Bodies in Dissent: Spectacular Performances of Race and Freedom, 1850-1910* (Durham, North Carolina: Duke University Press, 2006), 30

[159] Brooks, *Bodies in Dissent*, 40.

full, financial recovery, which would include collecting any and all property of the plantation, including its slaves. This dramatic conflict is the crux upon which Zoe's existence as ambiguous becomes contentious. The first exchange between Zoe and M'Closky reveals their tension and M'Closky's reasoning behind securing Zoe in his life:

> M'CLOSKY. Stop, Zoe; come here! How would you like to rule the house of the richest planter on Atchafalaya—eh? or say the word, and I'll buy this old barrack, and you shall be mistress of Terrebonne.
>
> ZOE. O, sir, do not speak so to me!
>
> M'CLOSKY. Why not! […] I'll set you up grand, and we'll give these first families here our dust, until you'll see their white skins shrivel up with hate and rage; what d'ye say?
>
> ZOE. Let me pass! O, pray, let me go!
>
> M'CLOSKY. What, you won't, won't ye? If young George […] was to make you the same offer, you'd jump at it, pretty darned quick, I guess. Come, Zoe, don't be a fool; I'd marry you if I could, but you know I can't [... ] We'll hire out our slaves, and live on their wages.[160]

In this exchange, M'Closky clearly desires Zoe as a sexual companion and site of reproduction both financially and sexually. Zoe, however, refuses his advances, as she is in love with George and refuses to transgress the racial boundaries that M'Closky desires.

Zoe's refusal to exist solely as a site of reproduction and to desire love first and foremost reinforces her status as a good and moral person. Moreover, this conversation solidifies M'Closky's position as evil, as he wants to force Zoe to go against her heart. These tensions

[160] Dion Boucicault, "The Octoroon," 146.

compound until Act III, when M'Closky proves that Zoe was not successfully freed before the death of Master Peyton, leaving her to be auctioned with all of the other slaves (Figure 6).[161] M'Closky says to the heavens/Master Peyton: "Zoe is your child by a quadroon slave, and you didn't free her; blood! if this is so, she's mine!" In this moment, M'Closky seeks to claim Zoe as property and as she stands on the auction block, he attempts to purchase her with the rest of Terrebonne for the continual reproduction of slaves and labor. Although faithful servants from Master Peyton's plantation successfully free Zoe in the play's final spectacle, she decides to poison herself. Zoe, a pillar of morality, realizes that she will never transcend her ambiguous state and must sacrifice herself for the betterment of society. For Brooks, Zoe's death scene "aims to reorder the antebellum grammar of racial liminality by 'cleansing' the nation as well as the melodramatic form of its troubling 'disunification.'"[162] Her status as octoroon makes her womb an un-enviable place for the creation of new commodity, despite the rule of "a drop of Black blood."[163]

[161] Joseph R. Roach, "Slave Spectacles and Tragic Octoroons: A Cultural Genealogy of Antebellum Performance," in *Exceptional Spaces: Essays in Performance and History,* ed. Della Pollock (Chapel Hill: UNC Press Books, 1998), 49-76.

[162] Brooks, *Bodies in Dissent*, 41.

[163] Boucicault, "The Octoroon," 184-190. For British audiences, Zoe's death and suffering were unnecessary as theatremakers and audiences did not need to cultivate sentimentalism for the purposes of abolition. Daphne Brooks talks about the changes made to the British performances in *Bodies in Dissent* and which are noted in the pages cited above. The changes cut off Act V and after M'Closky's death, see George entering happily with Zoe in his arms, alive and well. They seemingly live happily ever after as the curtain falls.


**FIGURE 6**
"Scene from Mr. Boucicault's New Drama at the Adelphi: The Slave Market—Sale of the Octoroon," *The Illustrated London News,* Nov. 30, 1861.[164]

[164] "Scene from Mr. Boucicault's New Drama," *Illustrated London News*, November 30, 1861: 562.

Two key American melodramas of the era, Boucicault's *The Octoroon* and George Aiken's *Uncle Tom's Cabin* (1852), reveal how death as a staging device played a complex role in the development of the middle-class liberal subject. As the virtuous, main protagonists—characters such as Zoe—spectacularly suffered for melodramatic audiences, sentimentalism sought to reinforce the qualities demanded of a liberal subject. These stagings, however, were a double-edged sword. This chapter explores the ways in which these plays sought to maintain "goodness" via punishment of the evil villain and how the simultaneous constructions highlight the contradictions fundamental to liberalism. As these same middle-class liberal subjects learned how to empathize, so too were they taught evil and that evil should be punished, providing inroads by which liberalism could intervene. Such ideas, however, were only feasible pre-Civil War. With the end of war and slavery came changes to how the theatre could treat the good, the bad, and the liberal subject. Such changes can be seen through American melodramas such as Boucicault's *Belle Lamar* (1874). For society, the stakes had changed, but this chapter questions whether theatre and its plays had shifted to keep up.

## THE HISTORY OF MELODRAMA

Guilbert de Pixérécourt (1773-1844), seen as the inventor of melodrama, wrote a report to the police in 1795 explaining why audiences needed morality in the theatre.[165] Pixérécourt sought to move away from the tragic works of Racine and Corneille, which had been idolized by William Dunlap:

[165] His full name is Rene-Charles Guilbert de Pixérécourt; however, he is most often referred to as Guilbert de Pixérécourt.

> Morality needs rallying points, where men are drawn to come and hear its lessons. The theatres are there, so to speak, to present the distillation, the essence of the virtues, either political or personal, which every citizen must profess […]. I prefer melodrama to tragedy; I find it more truthful, more appealing, more theatrically skillful, and above all more natural. It touches me, stirs me, moves me; what it enacts for me becomes part of my behavior in everyday life, whereas the great misfortunes true or otherwise of those heroes up on their stilts and speaking a bombastic language leave me at best indifferent.[166]

For Pixérécourt, melodrama was the future of the middle class. The theatrical form offered theatre-makers the chance to instruct audiences how to act as citizens of the newly formed liberal state. Through staging the common man, liberal morals could be discussed and debated in a fruitful and productive way for the betterment of society.

French melodrama, as a theatrical form, emerged from France in the nineteenth century in the face of a shifting relationship between the arts and the socio-political scene.[167] Invented in the wake of the Reign of Terror, melodrama offered theatremakers a way to instruct the newly formed liberal subject, one of the middle class, towards notions of liberal, civil morality and construct tropes of misbehavior. When read through this lens, writers, makers, and viewers of melodrama—either knowingly or not—self-regulate as they entrust in the images and morals of

[166] Gabriele Hyslop, "Pixerecourt and the French Melodrama Debate: Instructing Boulevard Audiences," in *Melodrama*, ed. James Redmond (Cambridge: Cambridge University Press, 1992), 61-65.

[167] Melodrama is a generic term, as it used colloquially in contemporary Englishes and can be discussed as a genre in drama and/or literature. Moreover, melodrama as a genre of theatre has global histories, including in Europe, the Americas, and in the United States. For the purposes of this chapter, I will more distinctly label the sub-genres of the term in an effort to clarify each sub-genre's history, form, and content.

the genre. They are sub-consciously conceiving ways in which the government must intervene on the behalf of preserving civil society. David Grimstead, in "Vigilante Chronicle: The Politics of Melodrama Brought to Life," concisely argues that there is a relationship between melodrama and liberal morality:

> Melodramatic plays politically provided a theatrical home for the new world order associated with the coming of democratic and bourgeois life. Ordinary people were the centre [sic] of dignity in this life, where the threats and uncertainties they faced were presented in a framework that insisted on a universe of moral meaning if one adhered to a code of kindness, honesty, decency, and generosity….[168]

The genre restored morality and justice via content and form, albeit sanitized of the politics due to the stakes of the revolution. Tragedy, as Pixérécourt pointed out, could no longer be the relevant form post-Reign of Terror as it engaged with the sovereignty that the revolutionaries sought to eliminate and the principles kept at the core of the institution. He thus developed a cheap art form aimed at discussing good versus evil, not window shopping on the lives and experiences of the sovereign and their politics, which the period no longer needed. Grimstead's quote, however, raises the question: what if one did *not* adhere to a code of kindness, honesty, decency, and generosity? As melodrama formed notions of good and evil, it quite easily suggested that breaking such codes would deem one evil or at least in need of intervention.

[168] David Grimstead, "Vigilante Chronicle: The Politics of Melodrama Brought to Life," in *Melodrama: Stage Picture Screen,* eds. Jacky Bratton, Jim Cook, and Christine Gledhill (London: British Film Institute, 1994), 206-207. This chapter is about "vigilante melodrama," where extrajudicial killings are staged. I intend to broach this topic in a future iteration of this work.ca

Pixérécourt's melodramas became a mainstay of French culture in the early part of the nineteenth century.[169] In 1832, just six years before his retirement and a decade after his last major hit, Pixérécourt reflected on the genre:

> [Melodrama] offers to that segment of society most in need of good models, acts of heroism, bravery and fidelity. Thus, we show [them] how to become better [people] by demonstrating the noble aspects of the public record
>
> […] Melodrama will always be a means of instruction for the people because it is an accessible genre.[170]

As French melodrama made its way to the United States, the demands of the melodramatic conventions dictated that writers include heavy doses of moral instruction for middle class audiences. Writers of the emergent American melodramatic genre thus turned to a preexisting structure to accomplish this task: sentimentalism.

The core tenets of Zoe as a tragic mulatta are fully in line with American melodrama pre-American Civil War. By 1859, many writers of American melodrama heavily relied upon sentimentalism to promote the abolition efforts in the North. Sentimentalism, while often discussed as a literary sub-genre of fiction novels, sought to form a sense of community through shared feelings or empathies amongst the emergent middle class. In her chapter, "Sentimental Communities," Margaret Cohen traces the development of the national imagined community formed by sentimental fiction in the U.S. She argues that sentimental novels "are engaged in

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[169] His most popular melodramas of the era include *Cœlina ou l'Enfant du mystère*, *Le Pèlerin blanc ou les Enfants du hameau*, *L'Homme à trois visages*, *La Femme à deux maris*, *La Forteresse du Danube*, and *Robinson Crusoé*.

[170] Guilbert de Pixérécourt, *Théatre Choisi* (Nancy, France: Chez L'Auteur, 1843).

creating free subjects of liberal democracy."[171] Cohen notes, however, that the creation of free subjects is burdened with complications, as "liberal freedom is in fact fraught with contradictions and tensions from its Enlightenment inception."[172] This duality held within the sentimental novel proves fundamental to the action within and reaction to the story. In her analysis of the sentimental novel, Cohen calls into attention the spectacle of suffering necessary to elicit readers' sympathies. "The protagonist painfully plays out the practical ramifications of these contradictions" she argues. "Sympathy with this suffering is the beginning of spectators' interpellation into sentimentality's cultural work." Spectacular suffering became a dominant structural trait of melodrama, within both the novel and American melodrama, as the theatre simultaneously sought to develop community and the middle-class citizen. The incorporation of sentimentalism into American melodrama, specifically, provided the form with a means to it end: as the protagonist suffers, so too does the audience, who then morally identifies with the suffering and its causation and rallies behind a given topic or issue.[173]

Sentimental melodrama took on the characteristics of a robust tradition of sentimental drama—comedies and tragedies—that emerged in England in the early eighteenth century.[174] Sentimental drama came about because of a few factors: the rise of a conservative merchant class in England who thought English Restoration plays were too dirty and burlesques too political,

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[171] Margaret Cohen, "Sentimental Communities," in *The Literary Channel,* ed. Margaret Cohen and Carolyn Dever (Princeton: Princeton University Press, 2009), 108.

[172] Cohen, "Sentimental Communities," 108.

[173] Faye Halpem, *Sentimental Readers: The Rise, Fall, and Revival of a Disparaged Rhetoric* (Iowa City: University of Iowa Press, 2013), 54-56. Sentimentalism was a natural turn for American theatrical melodrama, the sentimentalist novel was often read aloud as a form of oratory. This practice deployed the sentimentalist novel to form both imagined and literal communities.

[174] George Lillo's tragedy *The London Merchant*, Richard Steele's *The Conscious Lovers,* and Richard Cumberland's *The West Indian* are good examples.

and the emergence of the philosophy of Locke in "On Civil Government," which argued that humans were basically good and moral and thought audiences could be led astray by bad examples. Straight sentimental comedies were displaced by laughing comedies later in the century, but then later reemerged as melodrama. Both the moral philosophy and literary structure of sentimentalism offered writers of the genre a method by which they could construct the moral, middle-class citizen and promote activist agendas, specifically abolition in the U.S. Audiences would still be moved to morality by watching the struggles of the protagonists via the spectacular suffering.

Zoe's suffering in *The Octoroon* thus works two-fold. As audiences witnessed her tragic sacrifice, they were instructed as to what it means to be a pillar of goodness in the eyes of society. More importantly, however, audiences were pushed to empathize with Zoe and the cruelty of her situation, which could prompt them to change the rules and/or laws that caused her pain. According to Gay Gibson Cima, "Full citizens sympathized with and governed willing but *partial* citizens. These partial citizens tried to perform their humanity and their right to inclusion in body politic by sympathizing with those enduring greater suffering. Becoming a civilized citizen, then, meant embracing sympathetic desire instead of exercising a direct and aggressive power over others."[175] Cima argues that full citizens, those whose rights were reinforced by the power structures, had to choose civility by sympathizing with *partial* citizens, or rather citizens who were dispossessed or oppressed by society and/or the government. As middle-class melodramatic audiences—presumably full citizens—were herded towards certain pillars of

[175] Gay Gibson Cima, *Performing Anti-Slavery: Activist Women on Antebellum Stage* (Cambridge: Cambridge University Press, 2014), 46.

morality, so too were they instructed that feelings sympathy for those in lesser situations cause by an unfair society meant that one would become civilized.

## *THE OCTOROON* & THE ZOE CONTROVERSY

To be clear, to the 1859 audience attending the run of *The Octoroon*, Zoe was clearly and legibly black. When Dion Boucicault's play premiered at the Winter Garden Theatre in New York City on December 5, 1859, Boucicault cast his wife, Agnes Kelly Robertson, in the role of Zoe, even those Agnes was a white, Scottish-born woman—the adopted daughter of British actor-manager, Charles Kean (Figure 7).[176] This casting was clearly in line with the theatrical conventions of the era, which instead used staging conventions to demarcate Zoe's character as black to audiences despite Agnes' race. First, the title itself, *The Octoroon,* immediately marked the lead female character as other. "Octoroon" means one-eighth black, a word which was actively circulating in the vernacular during the time of the production. Words such as mulatta, as well as mulatto, reasserted the "One-Drop Rule," where blackness was determined through the process of one-drop of Black blood, meaning the ability to identify in the individual in question any African/Black ancestry.

[176] Arthur Hobson Quinn, "Introduction to *The Octoroon*," *Representative American Plays*, ed. Arthur Hobson Quinn (New York: The Century Co., 1921), 431.

**FIGURE 7**
Dion Boucicault (left) with his wife, Agnes Robertson (right) in 1860.[177]

[177] "Photo Dion Boucicault and Agnes Robertson together c 1860," *Hofstra University,* accessed May 2, 2020, https://digitalexhibits.hofstra.edu/s/octoroon/item/523.

Zoe, as a theatrical character, was additionally demarcated as Black on stage through her costume. Despite being traditionally played by a white actress, Mrs. Boucicault wore a brunette wig to mark her race. No matter how many "white" characteristics Zoe had—her education within the plantation home that gave her "white" vernacular, her skin color, her upper-class clothing, etc.—the brunette hair stood in as her marker of the character's "drop of Black blood" and thus consistently reasserted Zoe's place as a slave within the household. The only other legible markers, like the slightly blue bases of her fingernails, need to be described out loud by other characters, because they would have been otherwise imperceptible to the audience. The brunette hair color also distinguished Zoe from Dora, the white damsel-in-distress and intended love interest, whose whiteness was marked with a blonde wig. All characters within the play recognized Zoe's blackness and its implications except for her love interest George, in an effort to create dramatic irony when it is revealed to him in Act II.[178].

Agnes Robertson's performance in *The Octoroon* only lasted a few weeks, however. She, along with her husband, left the production on January 21, 1860. This decision has been simplistically attributed to disputes between the Boucicaults and the management, but the reasoning behind their departure proves much more severe and yet another way in which theatre and real-life executions are intricately tied to theatre.[179] A few days before the opening of *The Octoroon,* famed abolitionist John Brown had been hanged. John Brown, who led the raid on Harpers Ferry, Virginia, wanted to start movement throughout the South that freed all slaves, but was publicly hanged for his actions in Virginia. Tensions between the North and the South as they related to abolition were at all-time high, as the raid on Harpers Ferry is thought to have

[178] Dion Boucicault, "The Octoroon," 152-153.

[179] Quinn, "Introduction to *The Octoroon*," 431.

been the attack that truly set the Civil War into motion due to both sides believe Brown acted only due to the other side's beliefs. Boucicault, along with the Winter Garden's management, had agreed to intensify the abolitionist themes in the play in the days leading up to the opening of the production.[180] Not only did Boucicault feel this to be a marketable choice, as abolitionist melodramas were a hot commodity in the late-1850s, but he felt that the abolitionist themes were topical considering the recent hanging of John Brown.[181]

The day before the show opened, Agnes Robertson received an anonymously written letter detailing that she would be shot during *The Octoroon*'s auction scene if she, a white actress, took the stage. When reflecting on this time in her memoir, Agnes wrote, "I was solemnly warned that if I attempted to play this scene I should be shot as I stood on the table to be sold. I confess I did feel rather nervous, for I was clad in a long white gown, and so, of course, a mark for every eye."[182] Rumors flew. Some conjectured that John Brown had written the letter before he had died as a means to warn the theatre about improper representation, but that was at odds with his rather peaceful public persona. More commonly, people believed that Dion Boucicault himself wrote the letter to his wife as a publicity stunt to stir up interest in his play.[183]

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[180] Elizabeth Reitz Mullenix, "Dion Boucicault's *The Octoroon* and the Work of Republicanism," in *Working in the Wings,* eds. Elizabeth A. Osborne and Christine Woodworth (Carbondale: Southern Illinois University Press, 2015), 142.

[181] W.E.B. Du Bois, *John Brown* (Philadelphia: George W. Jacobs & Company, 1909), 365. John Brown was executed on December 2, 1859 in front of over 2000 soldiers, many of whom would come to serve for the South's Confederate Army. The morning before his execution, he wrote, "I, John Brown, am now quite certain that the crimes of this guilty land will never be purged away but with blood. I had, as I now think, vainly flattered myself that without very much bloodshed it might be done."

[182] Agnes Robertson as quoted in by Daphne Brooks, *Bodies in Dissent,* 42.

[183] Mullinex, "Dion Boucicault's *The Octoroon* and the Work of Republicanism," 142-143. Contemporary scholars believe this account because Boucicault incorrectly stated when the letter was delivered and dramatized its delivery in accordance with the hanging of John Brown.

If that is truly the case, it worked. Audiences flocked to the show to see why someone would threaten the lead actress.

There was an unpredictable fall-out from this push for abolitionist themes, however. Southerners and pro-Democracy Northerners felts that the play was inciting dangerous and/or subversive actions. James Gordon Bennet, a reviewer for the New York Herald, wrote a scathing review of the "negro-worshipping" production, published the day the show opened:

> The play will carry with it the abolition aroma and must be classed with the sermons of Beecher and Cheever and the novels of Mrs. Stowe. It will tend still further to excite the feeling which now threatens to destroy the Union of the States and ruin the republic. The theatre has had no more earnest defender from the attacks of bigots and narrow-minded fanatics than the HERALD; but when the stage is prostituted to the work of disunion and treason, it will find in us a bitter and determined enemy.[184]

Bennet's distaste for the show had little do with any specific theatrical choice—such as the casting of Agnes as Zoe—but rather the show promoting intense abolitionist themes. According to Bennett, the play actually promoted disunion of the Union, which was a dangerous premise for the theatre to participate in.

By mid-January, life for Agnes as the star of New York's hottest ticket had gotten a little too intense. She had received numerous real threats on her life that had extended well beyond a bad review in the paper. In January, Agnes wrote a letter to the editor of clarifying her choice to leave:

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[184] James Gordon Bennett, "Abolition on and off stage," *The New York Herald,* December 5, 1859, 6.

> *To the Editor of the Herald—Sir*—I have withdrawn from the Winter Garden; but my reasons for doing so have been incorrectly stated in your journal of this morning. Yesterday I wrote the management as follow:—
>
> *To W. Stuart Esq.:—Sir*—I decline to appear any more in the "Octoroon." I regret to find that the piece has given offence to a portion of the public, and my part in it especially. I receive continually letters threatening me with violence and when I go on stage I do so in fear some outrage to myself or to my husband. Therefore, I beg to withdraw the play.
>
> Yours truly, Agnes Robertson Boucicault
>
> The press had pointed out the political tendency of the "Octoroon," and your journal especially had blamed its production at this unhappy crisis. Oppressed by the sense that many of this public regarded the play as yours did: that I was the object of censure, having received letters from many families in this city urging the withdrawal or alteration of the play; intimidating by letters threatening us with violence, as a women, I could not hold the position which the management desired to compel me to endure.[185]

In this letter to editor, Agnes reveals the complexity of her reasoning behind leaving. Not only did she not feel safe on stage, she disagreed with the management on how to push through the intense atmosphere surrounding the show. In the letter, she goes on to reveal that not only will she be leaving the show, but also will her husband, the playwright and actor.

[185] Agnes Robertson, "Things Theatrical," *The New York Herald.*

***UNCLE TOM'S CABIN***

Harriet Beecher Stowe's 1851 novel, *Uncle Tom's Cabin,* referenced above by *The Herald,* played a key role in abolition through her use of sentimentalism.[186] Stowe was a staunch abolitionist who wrote numerous works focused on ending slavery in the U.S., but *Uncle Tom's Cabin* found an unparalleled level of fame and shed light on the plight of Southern slaves in a way that many found highly empathetic. The book inspired decades of "Tom Shows," theatrical reenvisionings of the novel that toured throughout the United States. The abolitionist novel, the best-selling book of the nineteenth century follows a Christian slave, Uncle Tom, through a tumultuous life in the South, as he is sold and resold.[187] The theatrical restagings widely varied in their faithfulness to the original text, the use of theatricality, their interest in abolition, and in their popularity.

The most popular theatrical staging, however, was the version written by George Aiken. Aiken wrote his version of *Uncle Tom's Cabin* after being commissioned by George C. Howard of the Howard Company. Howard chose Aiken due to a familial connection, as Aiken was the

[186] Stowe was born on June 14, 1911 in Connecticut to a minister father and mother who then passed away when she was only five years old, and she went on to become one of twelve children. After attending school, she taught at the Western Female Institute in Cincinnati, a school founded by her older sister, Catherine, a suffragette. While there, Stowe found her love of writing and married Calvin Ellis Stowe, a seminary professor and biblical scholar. The location of the school near the slave state of Kentucky meant that Stowe met many fugitive slaves attempting to escape from their harsh conditions, and she often took the time to talk to them about their experiences and help them as she could. These experiences were known to highly influence her, her beliefs, and her writing. She wrote *Uncle Tom's Cabin*, specifically, in the wake of The Fugitive Slave Act, which allowed slave owners to hunt for and/or forced people to return slaves their owners if found and after the passing of her toddler son. Stowe's heartbreaking loss catapulted her into a level of understanding that she had previously been unaware of.

[187] Harriet Beecher Stowe, *Uncle Tom's Cabin; or, Life Among the Lowly* (Philadelphia: Henry Altermus Company, 1900).

cousin of Howard's wife of eight years, Caroline Emily Fox.[188] For the commission, Howard specifically wanted a role for his daughter, Cordelia, so that she could perform alongside her parents. Upon the completion of the work in 1852, little Cordelia took the role of Eva St. Clare, with Howard and Caroline taking the roles of George Harris and Topsy, respectively.[189] The Howard Company's production of Aiken's *Uncle Tom's Cabin* deployed Blackface, a popular performance technique of the era. [190] Blackface was the era's primary means by which blackness could be represented on stage, since black actors were unable to perform alongside white actors during the era. Using blackface was the only way to distinguish "fully Black" characters on stage from those were more racially ambiguous, such as Zoe. More often associate with Blackface minstrelsy, Blackface was also used in melodrama to highlight racial undertones of particular plays. Despite the sometimes-good intentions, stereotypes regarding Blackness still came up throughout melodrama and continually oppressed the Black body through onstage representations, especially when Black characters were used for comedic relief. The Howard Company fell prey to these tendencies, using it for both serious and comedic purposes. The Howard Company chose to use Blackface for the enslaved character of Topsy, played by Caroline Fox. Topsy, unfortunately is a character that is charming and hopeful, yet wholly racist in her depiction (Figure 8).

[188] "Biographical Sketch," *George C. (George Cunnibell) Howard and Family: An Inventory of Their Collection at the Harry Ransom Center,* Harry Ransom Center, Austin, Texas, United States.

[189] Ibid.

[190] Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (New York: New York University, 2011), 49. Blackface used in straight play, while wholly racist, should be delineated from blackface minstrelsy, which was variety entertainment mixing skits and songs and comic routines and relied heavily upon the performance of black stereotyping.


**FIGURE 8**
Sheet music from George Aiken's *Uncle Tom's Cabin,*
Caroline Fox Howard in Blackface as Enslaved Character Topsy[191]

[191] George Aiken, *Uncle Tom's Cabin* (London: Samuel French & Son, 1858).

The show originally opened in Troy, New York at Troy Museum in September of 1852 with a run time of three hours and fifteen minutes.[192] The show was then edited to include portions from Stowe's novel originally excluded and re-opened in New York in July of 1853. [193] This version of the text ran continuously for eight years, with the Howard Company performing in it until 1857.[194] Aiken's changes to the story of Uncle Tom are, in actuality, highly characteristic of the American melodrama of the mid-nineteenth century. While such choices may seem arbitrary or, if anything, to simply bring spectacular action to the stage, such changes have deep histories and implications.

In both the novel and in Aiken's staging, Eva St. Clare is the model Christian. At only five years old, she embraces Uncle Tom after he saves her from drowning and asks her father to buy him to work in their house. She reads the Bible throughout the play, helps the enslaved character Topsy, and her words and compassion for others extend well beyond her years. Eva falls severely ill, however, in Act III of Aiken's play. Throughout Act III, Eva and Tom engage in conversations about heaven, Jerusalem, and virtue. By Scene IV, Eva unfortunately dies:

> MARIE. St. Clare! Cousin! Oh! What is the matter now?
>
> ST. CLARE. [Hoarsely] Hush! She is dying!
>
> MARIE. [Sinking to her knees, beside *Tom*] Dying!

[192] Ibid.

[193] There are multiple rewrites of George Aiken's text. For the purposes of this project, I will be working with the 1858 edition. This version of the text includes the full two-part, six-act play.

[194] "Biographical Sketch," Harry Ransom Center.

ST. CLARE.. Oh! If she would only wake and speak once more. [Bending over *Eva*] Eva, darling! [*Eva* uncloses her eyes, smiles, raises her head and tries to speak] Do you know me, Eva?

EVA.. [Throwing her arms feebly about his neck] Dear papa. [Her arms drop and she sinks back]

ST. CLARE. Oh heaven! This is dreadful! Oh! Tom, my boy, it is killing me!

TOM. Look at her, mas'r. [Points to *Eva*]

ST. CLARE. [A pause] She does not hear. Oh Eva! Tell us what you see. What is it?

EVA. [Feebly smiling] Oh! Love! Joy! Peace! [Dies]

TOM. Oh! Bless the Lord! It's over, dear mas'r, it's over.

ST. CLARE. [Sinking on his knees] Farewell, beloved child! The bright eternal doors have closed after thee. We shall see thy sweet face no more. Oh! Woe for them who watched thy entrance into heaven when they shall wake and find only the cold, gray sky of daily life and thou gone forever. [Solemn music, slow curtain][195]

Eva's death scene proves heartbreaking even to a contemporary spectator, as the suffering of Eva's family is clearly legible. The guiding hope throughout this distressing scene proves to be Eva's assured place in heaven, as she, in her final words, see nothing but visions of love and hope. Her arrival in heaven is corroborated with the spectacular tableau in the end, riding a white dove with Tom below, praying up to her. For mid-nineteenth century audiences, Eva's virtue, her

[195] George Aiken, *Uncle Tom's Cabin; or, Life Among the Lowly: A Domestic Drama in Six Acts* (New York: Samuel French, 1865), 84.

relationships with Uncle Tom and Topsy, and her rightful descent to heaven solidified her as the ideal abolitionist.

How, then, could adult, middle-class audience members see themselves in Eva? According to Ellen J. Goldner in "Arguing With Pictures: Race, Class, and the Formations of Popular Abolitionism through *Uncle Tom's Cabin*," "[Eva] was the idealized image of the abolitionist self, pure and whole."[196] "For white women of the middle-class," Goldner continues, "the icon of the idealized white child could stimulate a closer identification, as it produced the complementary role: the idealized white mother who, through the image of the child, takes possession of her own identity."[197] Golder argues that the mother-child relationship helped drive abolition efforts via Eva's spectacular suffering, while also recognizing that men struggled more the see themselves through Eva's eyes. As Stefka Mihaylova and Tracy Davis explain in their introduction to *Uncle Tom's Cabins: The Transnational History of America's Most Mutable Book,* "the scene suggests the possibility that literate white and black people can belong to the same community of sentimental readers (and writers), which, in the understanding of the time, was equivalent to a community of liberal subjects."[198] Considering the preceding discussion of sentimentalism, *Uncle Tom's Cabin* thus offers white, middle-class audience members the chance to envision themselves the Black, liberal subject, which would prove fundamental in abolition efforts.

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[196] Ellen J. Goldner, "Arguing With Pictures: Race, Class, and the Formation of Popular Abolitionism through *Uncle Tom's Cabin*" in *Journal of American & Comparative Cultures* 24:1-2 (2009), 75.

[197] Goldner, "Arguing With Pictures," 77

[198] Stefka Mihaylova and Tracy Davis, ed., *Uncle Tom's Cabins: The Transnational History of America's Most Mutable Book* (Ann Arbor: University of Michigan Press, 2018), 12.

## THE DOUBLE-EDGED SWORD OF POETIC JUSTICE

The demands for poetic justice within melodrama yielded changes to the script, as well. Poetic justice—one of the core tenets of the French Neoclassical genre that original French melodrama sought to reject—was eventually incorporated into American melodrama and functions similarly to the neoclassical form. Poetic justice, according to William Flint Thrall and Addison Hibbard in *A Handbook to Literature,* is a literary device in which "rewards virtue and punishes vice among the characters of a narrative."[199] English sentimental drama, too, favored appeals to the audience's compassion. If an antagonist had to be punished in the end, it was because of earthly laws; their soul was still worth saving, with few exceptions. Thrall and Hibbard argue, however, that poetic justice extends beyond this common simplification. In its later nineteenth-century iterations, instead, "poetic justice may be considered fulfilled when the outcome, however fatal to virtue, however it may reward vice, is the logical and necessary result of the action and principles of the major characters as they have been presented by the dramatist."[200]

Poetic justice thus sought logical conclusions that were a result of the actions of the characters. Characters who were moral (and white) were thus logically rewarded with a good life; Villainous characters were logically reprimanded and/or punished by themselves, the law, or extrajudicial means. Megan Sanborn Jones, in *Performing American Identity in Anti-Mormon Melodrama,* identifies how poetic justice functions within the good vs. evil binary of melodrama.

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[199] William Flint Thrall and Addison Hibbard, *A Handbook to Literature,* ed. C. Hugh Holman (New York: The Odyssey Press, 1960), 362.

[200] Thrall and Hibbard, *A Handbook to Literature,* 363. The author caveats their thinking, writing, "It should be noted that such an outcome as they described here presupposes a universe in which the author sees order and organizing principles."

"In melodrama," she writes, "moral polarity is the function of neatly dividing characters into virtuous or wicked types. The character type then has a material repercussion in the world of the play through poetic justice, the system of fixed rewards or punishments."[201] Separate from the legal, judicial world of crime and punishment, American melodrama followed the rules of poetic justice, wherein the good are rewarded and the evil punished.

For both *The Octoroon* and *Uncle Tom's Cabin,* poetic justice plays a pivotal role in the ways in which M'Closky and Legree are punished, respectively. In Stowe's original novel, Uncle Tom lay dying for two days after his awful slave-owner, Legree, ordered his overseers to kill him. Tom dies in the arms of George, a previous master who came to buy back him. George takes Tom's body with him and threatens Legree with charges of murder, but Legree's fate is too drink himself to a stupor for the rest of his life.[202] Aiken's play, on the other hand, stages this scene in true American melodramatic fashion, changing Stowe's story with major implications.

In Act VI, Scene 5—the penultimate scene of the play—the audience hears that Legree himself has struck down Tom with a whip, George enters the scene with Marks[203]:

> LEGREE. What the devil brought you here?
>
> MARKS. This little bit of paper. I arrest you for the murder of Mr. St. Clare. What do you say to that?
>
> LEGREE. This is my answer! [*Makes a blow at* Marks*, who dodges, and* Cute *receives the blow—he cries out and runs off,* Marks *fires at* Legree*, and*

[201] Megan Sanborn Jones, *Performing American Identity in Anti-Mormon Melodrama* (New York: Routledge, 2009), 37.

[202] Stowe, *Uncle Tom's Cabin,* 285-294.

[203] Linda Williams, "Melodrama Revised," in *Refiguring American Film Genres: Theory and History*, Nick Browne, editor (Los Angeles: University of California Press, 1998), 79.

*follows* Cute.] I am hit!—the game's up! [*Falls dead.* Quimbo *and* Sambo *return and carry him off laughing*.][204]

Marks charges Legree with the murder of Mr. St. Clare, who had died in a random bar stabbing. Legree immediately fires on Marks, who fires back and kills Legree. Only after this exchange does George enter carrying Tom. The final moments of the scene revolve around a heartfelt exchange about God and forgiveness as Tom dies. Although George and Marks attempt to arrest Legree, seemingly to be executed for the murder of Mr. St. Clare, the judicial methods of the virtuous characters are met with a spectacular shootout.

M'Closky, too, escapes legal recourse via a spectacular death. In Act II of *The Octoroon,* M'Closky murdered a slave, Paul, after the young slave boy brings evidence that Mrs. Peyton would not have to sell the Terrebonne Plantation. Unbeknownst to M'Closky, the murder was captured on a photo, which is brought to the attention of the Terrebonne men. Despite calls for his lynching, M'Closky pushes for his accusers to send him to jail and have a fair trial. M'Closky escapes, however, immediately after this debate and Wahnotee runs after him. Wahnotee is a caricature of a native American, originally played by Dion Boucicault himself in full red-face. The character, while innately good by melodrama standards, is highly problematic in its representations of race, culture, and indigenous masculinity. Screams are heard offstage coming from M'Closky's character, then silence, and the ending of the scene.[205] This stage action suggests the Wahnotee kills M'Closky, meaning that he will not receive the fair trial he asked for as a direct result of attempting to escape.[206]

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[204] Aiken, *Uncle Tom's Cabin,* 60.

[205] Dion Boucicault, "The Octoroon," 180.

[206] In the British versions of the text, M'Closky is killed onstage is a fiery death.

While the moralistic and virtuous characters attempt to bring the judicial system to the villainous brutes, their attempts are futile. The evil characters are dealt with through extrajudicial means, where crimes are settled and their punishments are inadvertently enacted outside the recourse of the judicial system.[207] In both plays, poetic justice trumps legal procedure when it comes to killing the antagonists. Staging legitimate, state-sanctioned execution was of no benefit to the newly formed liberal government of the North, as it simply revealed how it could already intervene rather than scaring its subjects into providing another route of subtle, totalizing governance. These plays, both set on Southern plantations and yet performed in New York state—*The Octoroon* in 1859 and *Uncle Tom's Cabin* in 1858—staged the utter lawlessness of Southern evil.[208] To the Northern, middle-class liberal subject, it showed that the means to which the South attempted to handle their quarrels and crimes by casually delivering warrants was simply not enough. One could easily infer that there was a necessity for new and/or more laws in order to ensure that such crimes were death with legally and logically, not spectacularly and extrajudicially, no matter how enjoyable it was to audiences. Such suggestions provided inroads to which liberal U.S. governments, which previously had to ask whether it was "too much" or "excessive," could intervene on the behalf of civil, Northern society.

[207] Extrajudicial killings, discussed in the introduction, are different than what I am discussing here. "Extrajudicial means" simply implies that a legally rendered crime and/or its punishment are determined outside of the judicial system for whichever reasons the author/playwright chooses.

[208] Aiken's play premiered in 1852 in Troy, NY, with a subsequent restagings throughout the remainder of the decade throughout the state and across the U.S. As discussed before, I am working with a version of the script from 1858, where Aiken rewrote the text for a New York City production.

**THE U.S. CIVIL WAR**

The U.S. Civil War (1861-1865) began after decades of tension between North and South. In the early half of the nineteenth century, the economy in the Northern states—California, Connecticut, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Nevada, Ohio, Oregon, Rhode Island, Pennsylvania, Vermont, Wisconsin—relied heavily on free labor.[209] Throughout the nineteenth century, industrial and financial economies found strongholds in major cities of the North, where cities had invested funds in intra- and intercity transportation to aid in commercial production and sales of goods. This transportation enabled the circulation of print media, including books and newspapers, across wide geographical areas in the North in less time than ever before.

In contrast, the South relied heavily upon slave labor to grow crops, particularly cotton. Crops, as well as the buying and selling of slaves, yielded capital, providing Southern households with wealth and stability. As the century wore on, however, sentiments towards slave labor in the North grew negative. Those opposed to slave labor often positioned it against free labor, whether for moral, ethical, or financial reasons. Southern plantation owners, on the other hand, feared that the outlaw of slavery would be the detriment of their wealth and lifestyle. When Abraham Lincoln ran for President in 1860 on a strong anti-slavery platform, Southern states threatened to secede from the U.S. should he be elected. When he won, seven states immediate left the U.S. Union, forming the Confederate States of America (Confederacy).

The official start of the U.S. Civil War came on April 12, 1861, when Abraham Lincoln resupplied Fort Sumter, a federal military fort in Charleston, South Carolina. Confederacy soldiers fired upon Fort Sumter, marking the first official battle of the war. After April 12th, four

[209] "Free labor" is any labor in which the worker is waged but not unionized.

more states seceded from the Union, totaling eleven: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, Texas, South Carolina, Virginia. More than 5,000 battles and/or skirmishes took place over the next three years, ten of which saw more than 20,000 casualties each. The end of the war came when Union General Ulysses S. Grant surrounded the Confederate General Robert E. Lee and the last Confederate Army as they sought to gather supplies on April 9, 1865. Grant convinced Lee to surrender and restore the Confederate States to the Union. Although small battles were fought after that until May, 1865, Lee's surrender marked the official end to the Confederate secession.[210] No other U.S. war can parallel the destruction and devastation when it comes to its own citizens. The Civil War went on to claim an estimated 800,000 lives, roughly two percent of the U.S. population at the time or one in fifty people. This death total included public executions. The Civil War was the deadliest U.S. war to date for citizens, claiming more U.S. civilian lives than WWI, WWII, the Korean War, and the Vietnam War combined.

As the Civil War ended in 1865, state-sanctioned executions slowed for the following ten years in all parts of the newly reunited country.[211] It seemed as though that in the wake of the death and destruction, both the middle and upper classes of the U.S. reassessed their relationship to public execution in part due to the devastation caused by the war. Masur notes, "Following the war, the question of capital punishment recaptured a national audience, but in a manner that left opponents of the gallows on the defensive. The hanging of the Lincoln conspirators, attended by

[210] "Texas v. White, 74 U.S. 700 (1868)," *Justia,* accessed January 15, 2020, https://supreme.justia.com/cases/federal/us/74/700/. In *Texas v. White* (1869), the Supreme Court ruled that secession is illegal, meaning all states that had joined the Confederacy had, in fact, remained part of the United States throughout the Civil War.

[211] Howard W. Allen and Jerome M. Clubb, *Race, Class, and the Death Penalty: Capital Punishment in American History* (Albany: State University of New York, 2008), 67.

scores of men and women, drew little criticism."[212] The critiques leveled at capital punishment, instead, often revolved around the safety and effectiveness of the technologies of punishment, an argument that preceded the war but was lost among other noteworthy causes, such as abolition.

Discussions surrounding safety are maintained for the remainder of the nineteenth century—and through today. The first two Supreme Court cases that tested the Cruel and Unusual Clause came in 1879 and 1890, more than a century after its writing, as discussed in the introduction. In *Wilkerson v. Utah* and *In re Kemmler,* the Supreme Court affirmed the constitutionality of the firing squad and electrocution, respectively. Both cases were lost by their plaintiffs by a 9-0 vote. Although these two technologies of killing are maintained in these rulings, these cases also marked the first-time liberal subjects of the United States actually challenged the constitutionality of the death and suffering at the hands of their liberal, federal government in front of the highest court in the U.S.

The execution of presidential assassin Charles J. Guiteau, amidst challenges to capital punishment, reveal just how much the tides had shifted in the wake of the Civil War. During the election of 1880, Guiteau saw President James Garfield as the future of the political party, campaigning for him day after day. After the President won the election, however, Guiteau stopped dead in his tracks, as he convinced himself that Garfield's plan to do away with the spoils system in government would destroy the Republicans' stronghold in the country. For Guiteau, the only way to secure the future of the Republican Party was to end the President's life. On July 2, 1881, Guiteau shot President Garfield twice from behind as the President attempted to board a train. Although he initially survived the attack, President Garfield died

[212] Masur, *Rites of Execution,* 160.

seventy-nine days later due to an infection brought about by poor medical care he received in an attempt to treat his wounds.

Guiteau's trial was a national sensation with journalists and spectators eating up the unusually public nature of the execution. Since the execution of Lincoln's assassins/conspirators, the majority of trials and executions had been private. Guiteau refused to accept his actions as criminal, believing he killed Garfield for the betterment of his party, and was belligerent throughout the trial and sentencing:

> Guiteau interrupted witnesses, berated his own counsel, and even signed autographs and appealed for financial support. His antics alone hinted he was "off his nut," but the prosecution argued his only affliction was that of "moral depravity." Finding Guiteau capable of discerning right and wrong, the jury rejected the "insanity dodge" and convicted him as indicted.[213]

Guiteau was sentenced to death by hanging, a punishment carried out on June 30, 1882 in Washington D.C. In his final moments, he read a poem aloud, which included the line "I saved my party and my land, glory hallelujah."[214]

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[213] George Hodak, "Precedents: July 2, 1881. Charles Guiteau Shoots James Garfield," in *ABA Journal* 98, 7 (July 2012), 72. Although this journal is cited as a contemporary source, the article is contemporaneous to Guiteau's era. It was included in the "Precedents" series of the *ABA Journal,* which seeks to highlight older source material relevant to its articles and themes.

[214] The following is the most complete record of Charles J. Guiteau's final words as he stood on the scaffold awaiting execution: "I am now going to read some verses which are intended to indicate my feelings at the moment of leaving this world. If set to music they may be rendered very effective. The idea is that of a child babbling to his mamma and his papa. I wrote it this morning about ten o'clock: I am going to the Lordy, I am so glad, / I am going to the Lordy, I am so glad, / I am going to the Lordy, / Glory hallelujah! Glory hallelujah! / I am going to the Lordy. / I love the Lordy with all my soul, / Glory hallelujah! / And that is the reason I am going to the Lord, / Glory hallelujah! Glory hallelujah! / I am going to the Lord. / I saved my party and my land, / Glory hallelujah! / But they have murdered me for it, / And that is the reason I am going to the Lordy, / Glory hallelujah! Glory hallelujah! / I am going to the Lordy! / I wonder what I will do when I get to the Lordy, / I guess that I will weep no more / When I get to the Lordy! / Glory hallelujah! / I wonder what I will see when I get to the Lordy, / I expect to see most glorious things, / Beyond all earthly conception / When I am with the Lordy! / Glory hallelujah!

Following the execution, spectators far and wide had numerous purchasable souvenirs beyond the extreme media coverage of the case. Spectators could buy photography postcards of the trial or the jail in which Guiteau was held or buy renderings of the shooting, trial, or hanging or visit his body in the Army Medical Museum (Figure 9). This commodification of punishment exists as part of a larger discourse of justice and punishment. According to Harvey Young in "The Black Body as Souvenir in American Lynching," crowd participation and the afterlife the participation, played a vital role in the experience of witnessing executions:

> The crowds' participation as witnesses, in the execution of those campaigns—were significant events in the participants' lives. They motivated discussion and prompted audiences to share their experiences with one another…. Beyond merely projecting a sense of wholeness upon an incomplete souvenir, these accompanying narratives appealed to a community of listeners. This displaying and sharing—a form of showing and telling—rendered the object and the event from which it was taken meaningful within a given community.[215]

Although Young speaks of the souvenirs physically taken from the body of Black lynching victims, the relationship of object and event exist within the spectacle of state-sanctioned hangings in the late nineteenth century, as well.

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Glory hallelujah! / I am with the Lord." I am still working on finding a reliable, primary source for this material.

[215] Harvey Young, "The Black Body as Souvenir in American Lynching," in *Theatre Journal* 57, 4 (December 2015), 645.


**FIGURE 9**
Engraving of Guiteau's Hanging Circulated in Newspapers[216]

[216] "Guiteau hangs June 30, 1882. His skeleton went to the army medical museum," Universal History Archive.

The case also demarcates a clear end to the use of physical pain for execution. In the days before Guiteau's execution, the trap door on the scaffold to which his body would hang was replaced.[217] The prison chose to replace the door since it had been improperly installed in the opposite-than-intended direction. At first glance, this seems to reflect the end of the transition from public spectacle to punishment removed from the body. Foucault recalls, "For a method to work perfectly, it must necessarily depend on invariable mechanical means whose force and effect may also be determined… It is an easy enough matter to have such an unfailing machine built."[218] With punishment moving away from the body, machinery must be reliable. As Foucault points out, the scaffold trap doors were installed in such a way to ensure a quick and easy breaking of the neck.

The state was no longer interested in watching its condemned suffer, but rather sought to punish his soul for his crimes. By ensuring the effectiveness of the machinery, the spectacle of punishment was mitigated and the punishment on the gallows can be more easily transitioned to the other components of the process. According to Michel Foucault, "great spectacle of physical punishment disappeared; the tortured body was avoided; [and] the theatrical representation of pain was excluded from punishment"[219] Instead of hangings on publics scaffolds, the publicity of punishment shifted to the courtroom, with the trial and sentencing. The actual execution was now imposed through a sanitized bureaucratic process with masked executioners, where the goal of punishment is ultimately to punish the soul. As Foucault points out, "Physical pain, the pain of

[217] Unknown. "Nearing the Gallows."

[218] Foucault, *Discipline and Punish,* 13.

[219] Foucault, *Discipline and Punish,* 14.

the body itself, is no longer the constituent element of the penalty."[220] This transition from the public spectacle of execution to the private punishment of the soul was thus complete by the time Guiteau was executed in 1882. As the media placed an immense amount of national focus upon his trial and sentencing due to his victim—the President of the United States—the public nature of the physical execution lost the meaning of the previous centuries and instead placed immense focus on Guiteau as an inherently horrible man in need of divine retribution.

No longer would Guiteau's death symbolize the power of the sovereign; instead, it would symbolize a cleansing of an evil man, what Dwight Conquergood calls a "scapegoat." "Scapegoats," such as Guiteau, argues Conquergood, are politically positioned to legitimate and revitalize the death penalty despite "its shaky premises."[221] State-sanctioned public executions were thus, by this time, reserved for the worst of the worst, such as presidential assassins. The public gallows carried over to his execution, reinscribing the habits of executions past with momentary glimpses of the changes to come. In the days leading up to the execution, there was long debate in newspapers across the country about whether people would or would not watch the execution when they attended. Some seem disgusted by the act, saying they would show up as a matter of civil duty but would turn away, while others seem to be excitedly anticipating the hanging.[222] These debates, however, reveal that Guiteau's execution was open to the public in a

[220] Foucault, *Discipline and Punish,* 11.

[221] Conquergood, 342. Conquergood investigates the scapegoat via news coverage of the Oklahoma City Bomber, Timothy McVeigh, where newspapers show images of mourning the Oklahoma City Bombing under headlines of his execution.

[222] Unknown. "Nearing the Gallows. How Guiteau is Spending His Last Days on Earth," *Washington Post*, June 27, 1882.

way that contemporary executions—reserved for journalists and the victim(s)'s family members—are not.

## THE NEW PURPOSE OF MELODRAMA

As with the shifting tides of execution post-Civil War, the theatre also grappled with how to stage death. No longer could sentimentalism for abolitionist purposes or poetic justice provide logical conclusions to who would die, who would suffer, and who would thrive. James Fisher, in *Historical Dictionary of American Theatre: Beginnings,* writes, "After the Civil War, melodrama continued unabated even though occasionally addressing social problems, as a few before the war had done. Leading playwrights took on increasingly important subject matter, sometimes political, but more often in regard to the general terrain of human behavior; however, it was usually treated in a sentimentalized and melodramatic manner."[223] Although some playwrights attempted to continue the socio-political agenda of pre-Civil War melodrama, many began to write towards a shell of the genre, where tropes, staging, and choices had lost the stakes of the previous decades.

Dion Boucicault, even though he had been hailed as a successful playwright before the war, got caught in this tempest. Dion Boucicault's 1874 melodrama, *Belle Lamar: An Episode of the Civil War*, not only sought to comment on the war fewer than ten years after, but also attempted to rework some of the stale components of the genre that no longer worked in a new era of the United States. *Belle Lamar* follows Isabel, a confederate woman living in Virginia in 1862 during the height of the Civil War who goes by Belle. A true Southern belle, she loves the

[223] James Fisher, *Historical Dictionary of American Theatre: Beginnings* (Boulder: Rowman & Littlefield, 2015), 19.

South and all that it stands for, so much so that she has divorced her Union army husband, Philip Bligh, in order to remain loyal to her heritage. In an effort to help the Confederacy during the war, she flirts with/courts Union officer, Marston Pike, to get information on an upcoming battle for Confederate General, Thomas J. (Stonewall) Jackson.[224] Belle, however, is captured with Stuart, a Confederate Major, while Philip and Marston are discussing the need to execute traitors and prisoners of war. In biting dramatic irony, the major attempts to plead for Belle's life before her true identity is revealed, that she is Phillip's ex-wife and Marston's lover:

> PHILIP. You know then—Major Stuart, you have six hours to live.
>
> STUART. Six hours! You are liberal! When we take one of your spies he is tried, condemned, and executed within thirty minutes.
>
> PHILIP. Our justice proceeds with more deliberation and in this case we employ more ceremony, for you will have a companion; and that she may share your fate requires approval from headquarters.
>
> STUART. You will not dare to—execute—a woman!
>
> PHILIP. [rising] Spies and assassins have no sex, sir. By the blood of my comrades shed by these vipers on our hearths, you shall share her fate—and she yours.
>
> STUART. I shall recall that oath to your memory, Phillip Bligh.[225]

This conversation recalls those of Dunlap's *Andre*, where the honor of killing in wartime is debated. Unlike *Andre,* however, the debate revolves solely around gender and not an

[224] Dion Boucicault, "Belle Lamar," in *Plays for College Theatre* (London: Samuel French, 1934), 5-8.

[225] Boucicault, "Belle Lamar," 16-17.

individual's actions or personality. The final moment of the scene is Philip's realization that the captured woman is his ex-wife.

All of the action above takes place before Act II, proving Boucicault's expositions to be packed with dense drama. The following act sees the beginnings of a prisoner exchange, in which Philip desperately seeks to save his ex-wife and bargains with Stonewall Jackson for her life. Belle's redemption for her treacherous and promiscuous actions comes in Act III when she stays by Philip's side in the face of looming battle with Jackson in the Shenandoah Mountains:

> PHILIP. You must be gone before daylight.
>
> BELLE. [rising] Why should I go?
>
> PHILIP. You ask me why you should go: because within a few days, at furthest, the Northern armies will be here.
>
> BELLE. Well, what then?
>
> PHILIP. You will be brought to trial before those who will show you no favor.
>
> BELLE. I shall not ask it.
>
> PHILIP. You misunderstand your position. Yesterday our cause had suffered but little by your act: we had defeated an attempt, the spy was captured, and a traitor discovered and convicted. Their deaths would have satisfied military justice and lightened your penalty. But to-day, your position is changed. These prisoners escaped by your connivance—escaped to the enemy, to bring his whole force down upon us. Driven before him, my command is cornered here, cut off from help, supplies, and communication. The plans by which three armies are operating are disconcerted. The fortune of the campaign is imperiled [sic], and the lives of eighty thousand men are compromised.

BELLE. What you order, I shall do.[226]

Belle's acceptance of her fate rings similar to that of *André* a century earlier, as she recognizes her actions and its punishments. Unlike *André,* however, the characters of Philip, Marston, and Stuart seek to logically explain why Belle should never be killed, whether because of their love for her, her gender, or her innocence. In the final scene of the play, Belle refuses, in front of Stonewall Jackson, to rejoin the Confederate Army, stating that she wants to die alongside her husband, her "home." In the final moments, the staging implies that Philip's army—and Belle—will all by certainly die. In a *deus ex machina* ending, however, Marston also redeems his character's sins and rides directly into the battle with reinforcements for the North. The play ends mid-battle, suggesting the North will win, with the aid of history helping audiences' imaginations.

The play was far from successful, unfortunately, only running for four weeks. *Belle Lamar* opened at Booth's Theatre on August 10, 1874. Following the New York run, the show reopened in Boston in 1887 under a different name, *Fan Mac Cool,* which was a revised, five-act version of the original text.[227] According to a contemporaneous review from *Appleton's Journal,* the original production and the text itself were critically engaging.

> It is needless to say that the construction of the play is skillful and effective, and that Boucicault's great command over mechanical effects is fully exhibited. The dialogue is crisp, bright, and pat to the dramatic intension, and the general interest of the story very well sustained. In all the greater elements of a drama, 'Belle

[226] Dion Boucicault, "Belle Lamar," 46-47.

[227] Sarah Meer, "Foreign Constellations in a National Drama: Becoming American in Boucicault's *Belle Lamar,*" in *Nineteenth Century Theatre and Film,* 39, no. 2 (2012), 22.

> Lamar' [sic] is wanting; in mere excellences of form and manufacture there is present every thing [sic] to be desired. These later, indeed, are such as to prompt the remark that a poor play of Boucicault is better than the best of most of the playwrights that cater for the American stage.[228]

Written fifteen years after *The Octoroon,* Boucicault clearly continued to hone his writing skills, at least according to this critic. Why, then, did the play close in less than a month? Arthur Hobson Quinn, in *A History of the American Drama: From the Beginning to the Civil War,* conjectured, "Perhaps it was too soon." He continued, "[t]he play is too heroic and there are some very curious occurrences in a military camp, but it is difficult to see in view of the success of other war plays why this one did not succeed. The sympathy of the audience is kept for both the North and the South, and Boucicault rightly shows that in a conflict in a woman's heart between love of country and love of man, the latter wins."[229] However dated parts of this quote are, Quinn touches on potential failures of Boucicault. Perhaps audiences did not want to watch a play that could be easily read as sympathizing with both sides so soon after the war. Perhaps in this split sympathy, Boucicault over-sanitized the plot and its drama.

Such questions reveal that Boucicault's post-Civil War play sits at a unique crux in U.S. theatre history. *Belle Lamar* still contains plenty of drama; the play refuses to establish guidelines for the liberal subject in the ways in which pre-Civil War melodramas did nor suggests inroads for the liberal government to intervene. For pre-Civil War audience, the play would have been all bark and no bite like they were used to. All of the characters—good and

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[228] "Music and the Drama: Boucicault's Latest," *Appleton's Journal,* August 29, 1874, 286.

[229] Arthur Hobson Quinn, *A History of the American Drama: From the Beginning to the Civil War* (New York: Harper & Brothers, 1923), 383.

bad, Northern and Southern—are faulty and redeemed in illogical steps, which refuses the rules of poetic justice. *Belle Lamar* lacks the satisfactory payoff found through M'Closky or Legree getting their comeuppance as a result of their clearly evil acts. It lacks the catharsis of tragic mulattas or morally good people dying because of the tragic flaw of the makeup of their blood vis-à-vis miscegenation laws or institutionalized slavery. Perhaps Boucicault's inability to pick sides expands beyond his desire to pick political sides. Perhaps the melodramatic form no longer truly worked alongside the shifting and ever-expanding landscape of liberalism in the United States. Boucicault was thus attempting to fit a discussion of country and politics in a form that could no longer contain it.

Taking a closer look at nineteenth-century melodramas is key to understanding the theatre's relationship to the development of capital punishment in the U.S. Sentimentalism and melodrama played a large role in shoring up a kind of civil society that was complicit in its own governance through the imposition of a self-policing of morality, as showcased in popular entertainment forms like novels and theatrical entertainments. In the cases of *The Octoroon* and *Uncle Tom's Cabin,* however, as civility was cultivated so too were inroads of government intervention via the punishment of antagonists. With the Civil War, however, such clear mechanisms fell flat, as seen in *Belle Lamar.*

The next logical step for theatre would be the growth of new forms beyond melodrama, where conversations surrounding liberalism, civil society, and all that it entailed could even begin to be managed. Simply put, American theatre did not have the necessary vocabulary. Theatre needed to expand and grow its genres in order to keep up with a drastically changing society. The 1880s and 1890s saw the advancement of technology at an unprecedented rate, thanks to the Industrial Revolution decades earlier. While some states began to outlaw the death

penalty, capital punishment rates were at an all-time high and technologies of death continued to develop, including the invention and first use of the electric chair in the United States. As the nineteenth century neared its end, the U.S. and theatre (both domestically and abroad) sought to redefine itself and expand its capabilities. The end of the century brought about the birth of Realism, a genre with a 1:1 ratio of representation, a genre that could directly address and critique capital punishment but would fail to truly challenge it. If theatre truly wanted to stop providing inroads to liberal intervention—and truly reform the death penalty—it had to get inventive. Theatre had to advance and be *avant-garde*.

# Chapter 4. Shocking Audiences and the Condemned: The Crises of Liberalism, the Theatre, and Capital Punishment

> I have reached the conviction that the abolition of the death penalty is desirable. Reasons: 1) Irreparability in the event of an error of justice, 2) Detrimental moral influence of the execution procedure on those who, whether directly or indirectly, have to do with the procedure.
>
> — Albert Einstein[230]

> As regards capital cases, the trouble is that emotional men and women always see only the individual whose fate is up at the moment, and neither his victim nor the many millions of unknown individuals who would in the long run be harmed by what they ask.
>
> — Theodore Roosevelt[231]

When the curtain opened on Elliott Lester's Broadway play, *Two Seconds,* in 1931, the audience saw a man onstage about to be executed. The main character, John Allen, was tightly strapped into an electric chair with little to no context. Before audiences could even begin to fully digest this harsh scene, the electric chair turned on, clearly electrocuting Allen before their

[230] Albert Einstein, *Albert Einstein, The Human Side: Glimpses from His Archives,* eds. Helen Dukas, Banesh Hoffman (Princeton: Princeton University Press, 2013), 83.

[231] Theodore Roosevelt, *Theodore Roosevelt—An Autobiography* (New York: The MacMillan Company, 1916), 314.

eyes. In the final two seconds before his brain paralyzed, however, the action onstage froze and the stage began to rotate. In the nineteen scenes of the play that followed, audiences learned about the condemned man's life before he ended up in the electric chair. This memory play, seemingly from the mind of the condemned man, sought to reveal what has led him to the electric chair.This production pushed audiences to contemplate Allen's life and the bad influences and choices that led to the corrosion of his soul. In the final scene—the epilogue—audiences were thrust back to the present moment in the electric chair only to find out that the man has been successfully executed.[232] Audiences were left no longer questioning why Allen sat strapped to the chair, but rather were handed a melodramatic moralization of what leads any man to be condemned to death. The play pushed them to interrogate how their own lives and choices differed from that of John Allen and to hopefully make better ones that would lead them away from the electric chair.

*Two Seconds* ran at the Ritz Theatre for 59 performances from October to November, 1931, a rather short Broadway run by the era's standards.[233] Based upon the Maxwell Bodenheim novel, *Sixty Seconds* (1929), *Two Seconds* was marketed as a melodrama and fit well within the genre's structure. The play clearly lays out the rules of civil society, much like those of the nineteenth century, firmly establishing the guidelines for being a good citizen and overtly reveals the ways in which breaking rules will result in government intervention. *Two Seconds* is clearly a holdover of the previous era of execution dramas, the era that predates even the invention of the

[232] "The Theatre: New Plays in Manhattan: Oct. 19, 1931," *TIME*, Monday, Oct. 19, 1931, http://content.time.com/time/magazine/article/0,9171,742477,00.html

[233] Gerald Bordman, *American Theatre: A Chronicle of Comedy and Drama, 1930-1969* (New York: Oxford University Press, 1996), 34-35. *Two Seconds* was Lester's last work on Broadway. The play was turned into a movie in 1932, however, called *Two Seconds,* directed by Mervyn LeRoy. It was based upon the original play by Elliott Lester and adapted into a film script by Harvey Thew.

electric chair. As seen in *The Octoroon, Uncle Tom's Cabin,* and *Belle Lamar,* representations of the condemned were merely simplistic black and white moralizations of criminalization and punishment, where the evil character must be punished and no examination of the mechanism of punishment can or should be critiqued.

Lester's most famous work undoubtedly has a story to tell about the relationships between execution, the United States' death penalty, the media, and theatre. The play, however, is in no way the complete story of the electric chair's relationship to the U.S. stage, and certainly not the entirety of U.S. theatre's relationship with death penalty politics and execution, as we have witnessed. *The Last Mile* is just one of many plays that attempted to theatricalize the electric chair after its invention and implementation at the turn of the twentieth century. By the mid-1930s, in fact, a slew of electric chair dramas hit the commercial theatre, even with the Great Depression looming overhead. Wexley's *The Last Mile* (1929), Sophie Treadwell's *Machinal* (1928), and Elliott Lester's *Two Seconds* (1931)—among others—all premiered within a few years of each other. Regardless of their shared subject matter, and presumably their competition with one another for audiences, all were separately hailed as successful. Plays such as *Machinal* and *The Last Mile* reveal counternarratives fighting against such moralizations of the death penalty and the U.S. government's insistence on civil society as a tool of intervention. In many ways, the multiplicity of narratives on the U.S. stage in the 1930s would suggest a turning point within the nation's rationale behind and justification for the use of the electric chair. This, however, could not be more wrong.

Despite their overlapping focus on the electric chair, the plays discussed in this chapter could not be more disparate in their attitudes towards execution and death penalty writ large. This chapter therefore explores a localized moment within American theatre in hopes of

interrogating how theatre artists in the early twentieth century conceptualized their place alongside capital punishment and politics in the early twentieth century. This chapter will additionally examine how formations of liberalism, security, and danger can be traced within each work and how such ideals were commented on through each play's writing and artistic choices. This investigation will, then, offer new ways to conjecture whether such works ultimately upheaved or (re)produced the conditions to which capital punishment in this era thrived.

## THE HISTORY OF THE ELECTRIC CHAIR

Despite belief that it "fries the brain," the electric chair actually delivers high voltages of electricity to the heart, causing the heart muscles to stop beating. Subjects must first be shaved of the hair from their head and from one leg's calf—the places in which the electrodes are attached—which allows the electricity to be more effectively delivered and circulated through the body. Subjects are then strapped into the chair at their waist, their wrists, and their ankles, in anticipation of their body's natural writhing reaction, a process theatricalized in Sophie Treadwell's *Machinal*. The actual electrocution takes several minutes, with the first voltages being delivered at the highest current and then lowered in subsequent rounds. In contemporary electrocutions, subjects' eyes are often taped shut and they are made to wear diapers, in further anticipation of the body's uncomfortable reaction to the stimulus which includes eyes bulging out of out the head and people defecating. These tactics are not used to make the condemned more comfortable but rather to make watching the execution more tolerable. Those who have witnessed executions via the electric chair since its invention have reported screams as people are electrocuted, one of the clearest signs of the pain it causes.

The forms of execution discussed on the U.S. stage in previous chapters—hanging and firing squad—were imports from Europe, both with histories centuries old. The electric chair, however, was distinctly American, born out of a competition for a market monopoly on electric currents. When Dr. Alfred Southwick witnessed a speech from the New York State governor David B. Hill in 1885, calling for a less cruel means of execution than hanging, Southwick saw an opportunity. He had witnessed a man accidentally die from electrocution after touching an electric generator and saw how effective the accident was at killing the man.[234] Working with Thomas Edison, he drew up plans for the electric chair and tested out his ideas on stray dogs purchased from the local animal shelter by electrocuting them using a modified dental chair. Although Edison himself wanted to abolish the death penalty, he joined Southwick's project to demonstrate how dangerous alternating currents (AC) were in an effort to keep his own invention, direct current, more marketable.[235]

In spite of Edison's own position on the death penalty, the government of New York State, upon witnessing Southwick's public execution of animals for demonstration, ultimately concluded that the electric chair was a more effective and less painful method of execution than hanging. On August 6, 1890, the U.S. became the first country in the world to use the electric chair when the German American William Kemmler was executed in New York for murdering his wife with a hatchet.[236] Illustrations of Kemmler's execution were distributed in newspapers

[234] Jill Jonnes, *Empires of Light: Edison, Tesla, Westinghouse, and the Race to Electrify the World* (New York: Random House Trade Paperbacks, 2003), 148-88.

[235] Ibid., 201-202. This period is often referred to as the "War of the Currents," in which Thomas Edison, Nicola Tesla, and George Westinghouse all competed for the monopoly of currents production and sales.

[236] Ibid., 191-192.

around the world, as the technology was so terrifying and intriguing (Figure 10). In the artist's renderings of the live execution, witnesses can be seen gathered around Kemmler. They stand closely around Kemmler, watching both him and the executioner standing at the wall to see the efficacy of the execution. Death penalty advocates hailed his execution as a technological feat for the U.S., while those opposed grieved for the cruel and usual pain Kemmler must have suffered.

## THE CRISIS OF LIBERALISM

To be clear: the increased attention on this highly specific subject matter on the Broadway stage was far from a fluke. Since the electric chair had been invented decades earlier, the production of plays on the subject was only mildly related to the development of the technology itself. With an estimated twenty million dead around the world during World War I (WWI, 1914-1918) with another 20 million wounded—both military and civilian—a generation of young men were killed, missing, or wounded. Major countries from around the world were involved in an unprecedented conflict, including Austria-Hungary, Bulgaria, France, Germany, Great Britain, Italy, Japan, Romania, Russia, and the United States. A whole (western) world had witnessed a catastrophic use of technology—including tanks, poison gas, grenades, machine guns, flame throwers, and more. It was thus WWI that brought about a larger reassessment regarding the capability and brutality of technology and the lengths humans will go to achieve power, not the invention of the electric chair itself.

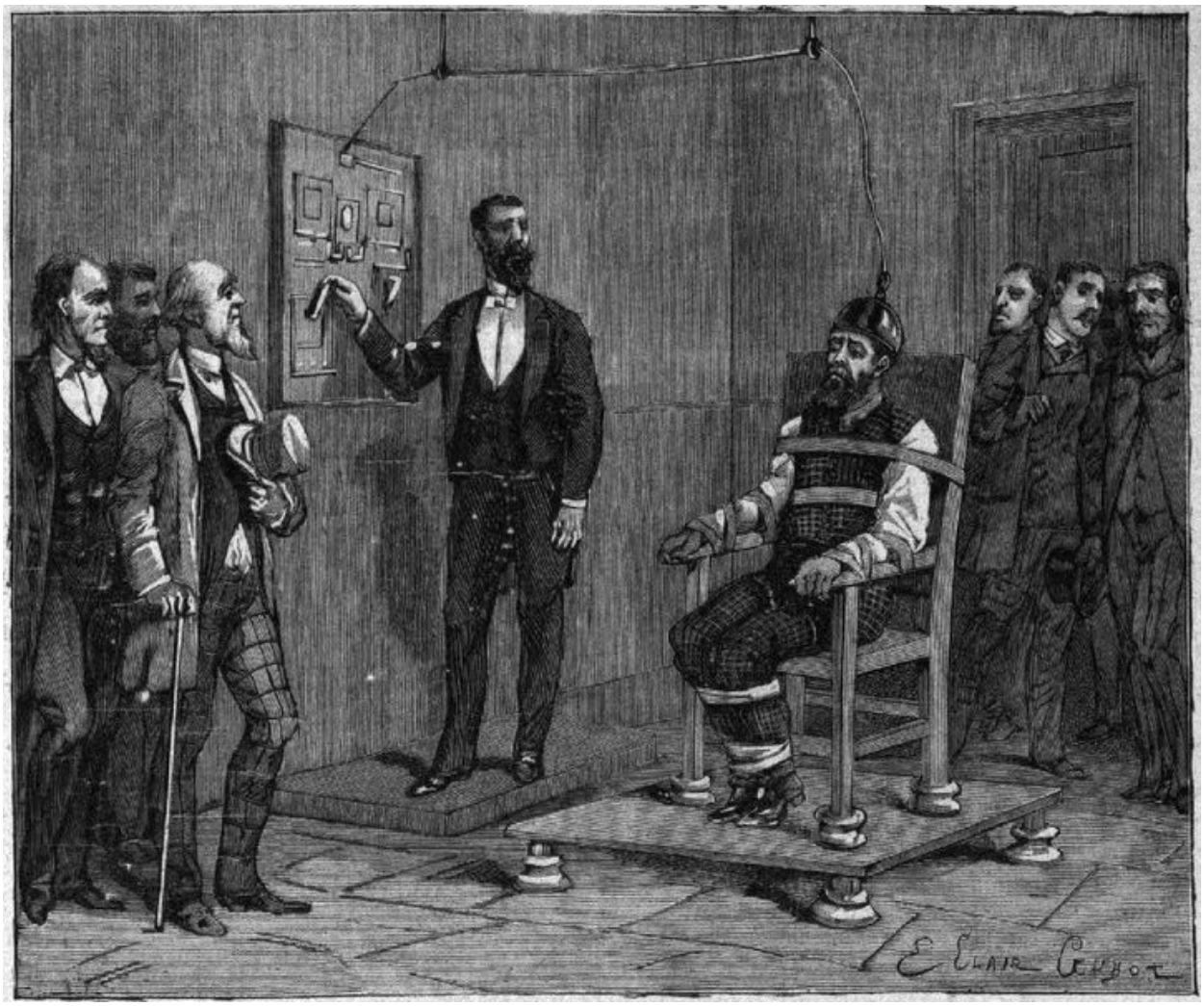

**FIGURE 10**
"Une execution par l'électricité à New-York,"
*Le Petit Parisien,* August 17, 1890[237]

[237] "Une exécution par l'électricité à New-York," *Le Petit Parisien - Supplément littéraire illustré*, August 17, 1890.

As this global reassessment was occurring, so too did it bleed into the theatre, where U.S. artists deployed newly imported avant-garde tactics directed specifically at critiquing the world around them, including technology. On a deeper level, however, society also sought to reorganize ideas surrounding security and liberalism after WWI. Much like in previous wars, this reorganization included how the death penalty functioned within a civilized, liberal society. Unlike in previous theatrical eras, however, artists now had a wealth of tools with which to comment on, critique, and even subvert their systems of government both directly and more subtly, leading to an era of Broadway drama containing numerous, yet distinctly different electric chair plays.

All three of the electric chair dramas I examine in this chapter, which were performed between 1928 and 1931, were written and performed during the beginning of what Foucault terms "the crisis of liberalism."[238] As briefly discussed in the introduction, Foucault also often calls this era the "crisis of capitalism," where the seemingly successful capitalist market of the late nineteenth century began failing a large majority of the world's population post-WWI.[239] The crisis for Foucault, however, is not about the failure of the economy, but rather the ways in which numerous governments attempted to manufacture notions of security in the place of such failures.

In an effort to maintain "freedom" in the face of the catastrophes caused by the war—most easily marked in the United States with the Wall Street Crash of 1929, a collapse often attributed to a global inability to find economic stability after the Great War—governments

[238] Foucault, *The Birth of Biopolitics,* 66.

[239] Ibid.

introduced numerous economic interventions.[240] In the U.S., President Franklin D. Roosevelt introduced the New Deal Legislation between 1933 and 1936, a series of reforms and programs responding to the immediate and sweeping needs of a country where one in four were unemployed. To aid the economy, the New Deal established Social Security benefits, welfare benefits, unemployment insurance, and numerous tax laws to alleviate financial stress on the workers of the country.

A number of consequences arose out of the crisis of liberalism, argues Foucault, all of which give way to a re-formation of liberalism in which "liberalism turns into a mechanism continually having to arbitrate between the freedom and security of individuals by reference to this notion of danger."[241] Essentially, liberal governments must ensure that its subjects feel free, but must also leverage danger to intervene whenever they feel necessary, which they do in the name of security. Although these tenets have always been within concepts of liberalism, the interplay between freedom, security, and danger become so coercive during this period, according to Foucault, that liberalism loses its integrity and becomes an engine necessitating critique.

First, the concept of danger becomes fundamental to the preservation of the façade of liberalism. As always, liberal governments can only intervene in the name of security to protect "the collective interest against the individual interest."[242] Danger rationalizes liberal government intervention, and, in the nineteenth century, the culture of danger shifts from that of crime to "the fear of degeneration: degeneration of the individual, the family, the race, and the human species.

[240] Ibid., 69.

[241] Ibid., 66.

[242] Ibid., 65.

In short, everywhere you see this stimulation of the fear of danger which is, as it were, the condition, the internal psychological and cultural correlative of liberalism. There is no liberalism without a culture of danger."[243] For Foucault, notions of danger become paramount in the maintenance of liberalism as it creates rhetoric to which liberal governments can intervene. This can be seen in the marketing of the New Deal, which attempted to preserve the worker and the nuclear family unit, in the announcements about the invasions of Iraq in 2003 under the flimsy premise that it held weapons of mass destruction, a threat to the world's population, or more recently the announcements about the danger of illegal immigrants trying to cross our borders to steal our steals jobs and drain our resources.

The second consequence is the rise of the panopticonism, a system by which government control functions on surveillance. Discussed most famously in *Discipline in Punish* in the context of prisons, panopticonism is more generally a "political formula that characterizes a type of government."[244] Modeled after philosopher Jeremy Bentham's concept of the panopticon, a physical structure of surveillance, panopticonism transfers such ideas into "the basic functioning of a society penetrated through and through with disciplinary mechanisms."[245] The panopticon is no longer placed in a physical building, but rather transferred into the social body of society, where everyone surveils themselves and everyone else. This disciplinary technique is an act of coercion, according to Foucault, that limits freedom through internal methods of constraint unbeknownst to the given subject. One of the most visible, contemporary forms of panopticonism in U.S. culture is the Department of Homeland Security's phrase "if you see

[243] Ibid., 66-67.

[244] Ibid., 67.

[245] Foucault, *Discipline and Punish,* 209.

something, say something."[246] This campaign attempts to teach liberal subjects the "signs" of suspicious behavior in an effort to curtail terrorist activity. The website states, "It's then up to law enforcement to determine whether the behavior warrants investigation. We can all help keep our communities safe by paying attention to our surroundings and reporting suspicious activity to local law enforcement or a person of authority."[247] Liberal subjects are asked to become the watchman and call upon the relevant methods of governance to intervene when necessary.

The final consequence of the crisis of liberalism, according to Foucault, is the paradox of freedom introduced by the interventions discussed above. Foucault argues that such interferences "surreptitiously introduce types of interventions and modes of action which are as harmful to freedom as the visible and manifest political forms one wants to avoid."[248] Despite the U.S.'s reliance on liberalism throughout the nineteenth century, the country's actions at the beginning of the twentieth century contradict the fundamentals of liberalism, where "necessity and usefulness can and must always be questioned." These interventions, instead, created inroads for a totalizing government, one where the government no longer needs danger to intervene, but rather has formalized pathways to do so. The final step in this crisis is profound. For those interrogating the implications of the collapse of capitalism and its subsequent interventions in the late 1920s and early 1930s, the reality of the future is bleak. The very interventions which set out

[246] "If you see something, say something," *U.S. Department of Homeland Security,* accessed February 10, 2020, https://www.dhs.gov/see-something-say-something.

[247] Ibid.,

[248] Foucault, *The Birth of Biopolitics,* 69.

to secure freedom have instead paved the way for totalizing methods of governance, such a neo-liberalism.[249]

To be clear, the consequences of the "crisis of liberalism" listed above are compounding. As rhetorics of danger are introduced, liberal governments seek to not only spread such ideals but also get their subjects to embody them in an effort to secure inroads to governance. Danger gives way to panopticonism, where said subjects surveille each other in effort to preserve their selves, families, country, etc. The final step, paradox of freedom, is thus secured only via the first two. As a liberal government continues to create methods of control—via rhetoric and embodiment—such interventions become formalized, no longer needing to rely on the previous processes to intervene. The liberal government, birthed from an idea of a limited, less-involved form of governance, is now a totalizing power.

These crises can be seen throughout *Two Seconds.* The play, however, makes no effort to critique the "crisis of liberalism." *Two Seconds,* instead, has internalized all three components, blissfully unaware of the consequences. As John Allen's story to execution is told in the nineteen main scenes of the play, justifications for government intervention are made. Allen, once a kind

[249] Once such interventions are set in place during the "crisis of liberalism," neo-liberalism is right around the corner. By 1960's, "the crisis manifests itself in a number of re-evaluations, re-appraisals, and new projects in the art of government which were formulated immediately before and after the war in Germany, and which are presently being formulated in America." The emergent governmentality that wins out is neo-liberalism. Unlike liberalism, neo-liberalism "should not be identified as laissez-faire, but rather with permanent vigilance, activity, and intervention."[249] Foucault, writing from the late 1970s, demarcates numerous formations of neo-liberalism, including that of Germany and France. Most helpful to my own research, however, is how he delves into American neo-liberalism, which Foucault marks as a return to *homo economicus*, a man wholly defined by his ability to exist in the economic system, both producer and consumer. Biopolitics in the American neo-liberal society are thus concerned with processes that creating populations of producers and consumers. Prisons become focused on reforming the worker. Medical advancements focus on prolonging the life and stamina of the worker. Much of *The Birth of Biopolitics* concerns itself with this topic. This is not, however, the topic of this chapter. In future expansions of this work and in the conclusion, I will be delving into this.

and gentle man, has murdered his lover, Shirley, in a jealous rage after she cheated on him. In the final moments of Shirley's life, Allen yells, "You were born to lie to man an' trick 'em like you did me—like you're doing to him. It'll be the best thing for your soul an' mine if I stop it right now."[250] Allen's believes that he has the ability to make the call on life or death for another individual, deemed by the play as an utterly dangerous prospect to society. As Allen flees, the detectives arrest him. Audiences are not shown the trial and the prosecutors' arguments that it is necessary to sentence him to death. The play, instead, immediately flashed forward and audiences are shown that Allen instead has been pronounced dead. All inferences as to his guilt and the need for him to be executed are left to the audience, who must rely on the strong assertion of the flashback narrative that Allen is an out-of-control danger to society in need of being stopped. The play justifies and reifies the kind of fearmongering surrounding danger fundamental to the "crisis of liberalism" forming in the early part of the twentieth century, making the work complicit in maintaining the emergent hegemonic modes of governance.

Although *Two Seconds*'s short run has been credited to the overwhelming expenses of the large cast and revolving stage, the play's old-fashioned relationship to death penalty politics could have also attributed to its premature closure.[251] Were audiences fed up with the old ways of conceptualizing the death penalty on stage? While audience accounts of the production are scant, one contemporaneous *New York Times* review of the production called out the play:

> In the closing scenes, however, it is murky and confused, as Mr. Lester, who up to then has written from no particular point of view or with no especial [sic] attempt

[250] Elliott Lester, "Two Seconds," in *American Theatre: A Chronicle of Comedy and Drama, 1930-1969,* ed. Gerald Bordman (New York: Oxford University Press, 1996), 35.

[251] Bordman, *American Theatre,* 34-35.

> to plumb the implications of his story, suddenly gropes to find a meaning for it all and to invest with an inner significance a tale that, for the most part, has been content to slide slickly along the surface provided by some fairly competent playmaking. […] As in the case of Strindberg's play a block further uptown, a woman to blame for it all."[252]

This reviewer questions the reasoning behind Lester's choices. Although the reviewer believes Lester to be a quality playwright, they suggest that the work falls prey to boring, aged tropes about women and groups the play in the same category as the misogynistic plays penned by Strindberg thirty years earlier. Moreover, the reviewer believes that *Two Seconds* fails to truly question crime, the death penalty, or myriad other issues that are brought up tangentially throughout the work. Unlike *The Last Mile* and *Machinal,* two other works of the era that discussed execution and the electric chair, *Two Seconds* made no attempt to critique the act of execution, its technology, or the larger system in which death penalty politics resided post-WWI.

**JOHN WEXLEY'S *THE LAST MILE***

Lewis E. Lawes, warden of Sing Sing Prison from 1920 to 1941, wrote the preface to Wexley's *The Last Mile.* During Lawes' time as warden at Sing Sing, he oversaw 303 executions ordered by the governors of the State of New York.[253] Lawes, however, actively advocated for prison reform and the abolishment of capital punishment. Throughout his lifetime, he often published articles and editorials speaking out against the U.S. prison system, using his first-hand

[252] Unknown, "The Play," *The New York Times,* October 13, 1931, 23.

[253] John Jay Rouse, *Firm But Fair: The Life of Sing Sing Warden Lewis Lawes* (Bloomington: Xlibris Corporation, 2000), 64.

experience in hopes of inciting change. One such article accompanied the 1930 publication of John Wexley's *The Last Mile* (1929) as the play's preface. In addition to commending Wexley's play, Lawes spoke candidly about his own experiences witnessing death:

> I have seen one hundred and thirty men pay the penalty of death imposed by law. In groups of twelve for each execution, a total of fifteen hundred and fifty-nine men and one woman witnessed the executions to attest the legality of procedure. Ninety to ninety-five percent of these witnesses left the execution chamber convinced of the utter futility of capital punishment. Some of them are to-day among the most convinced abolitionists.[254]

Although Lawes gives no specificity as to the manner of executions he witnessed, records reveal that all executions in Sing Sing during his tenure as warden from 1920 to 1941 were via the electric chair. All inmates were specifically executed with "Old Sparky," the chair used in New York from 1914 to 1963 to execute 695 men and women and which has prompted horror stories well into the twenty-first century.

In his preface, Lawes commends Wexley's play for its stark portrayal of the death penalty. Although many of the play's aspects are gripping, according to Lawes, the critique holds the play's true beauty:

> Not the death march, or the drowning motor—the instrument of death; not ravings of the maniac, or the blusters and foul mouthings of the condemned awaiting their destiny, or even the riot scene with all its gun play and vengeful fury—gripping as

[254] Lewis E. Lawes, preface to *The Last Mile: A Play in Three Acts* (Los Angeles: Samuel French, 1930): vii.

> they are—are the really telling parts of the play. More important is the sub-conscious urge to know why such things should be.[255]

Lawes's words touch on the core question of *The Last Mile:* does murder solve murder? *The Last Mile* ran for 289 performances at the Sam H. Harris Theatre in New York, opening February 13, 1930 and closing in October of that year.[256] The role of John "Killer" Mears was originated by Spencer Tracy, an unknown actor at the time. *The Last Mile* is often credited with making Tracy famous. Clark Gable took over the role when the play toured the following year. The play, which takes place in three acts, is set in the death-house of the Keystone State Penitentiary in Keystone, Oklahoma (Figure 11, Figure 12). Act I is set in early May, Act II six weeks later in June, and Act III only six hours after Act II. The character descriptions given by Wexley are listed in order of cell number, an ode to the dehumanization of the prison system. In the first act, we follow the lead-up to the execution of an inmate in cell 7, Richard Walters. Although the other inmates offer encouragement and suggest that he will receive clemency, he is eventually led away to the electric chair. The following two acts look at the ritual of execution of Fred Mayor. As guards lead Mayor on the last mile walk of his life, however, everything goes awry. The prisoners escape, holding the guards hostage, but ultimately die at their own hand rather than that of the state.

[255] Ibid., viii.

[256] The play was adapted into a movie in 1932 and 1959 starring Preston Foster and Mickey Rooney, respectively. Wexley was credited with writing the original play for both films, but additional screenwriters were added to both projects.

**FIGURE 11**
Ernest Whitman as Vincent Jackson (Cell 13)
*The Last Mile,* February 13, 1930, Sam H. Harris Theatre

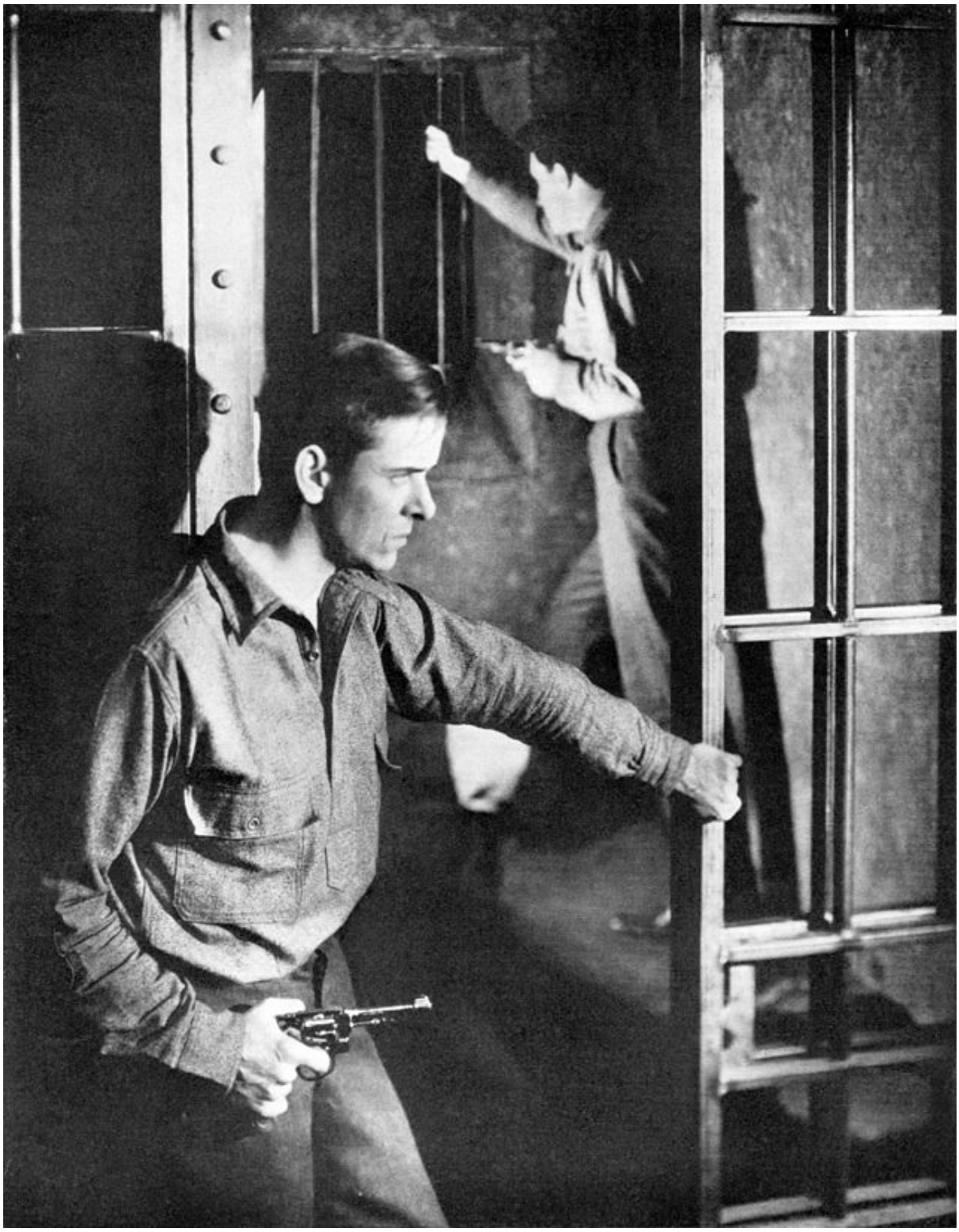

**FIGURE 12**
Howard Phillips and Spencer Tracy as Fred Mayor (Cell 3) and John Mears (Cell 5)
*The Last Mile,* February 13, 1930, Sam H. Harris Theatre

Wexley actively pulled upon real-life inspiration for his play, including *The Last Mile.* His inspiration for *The Last Mile* came from an article in *American Mercury* magazine in which an inmate, Robert Baker, recounted an overheard conversation between two men awaiting execution via the electric chair.[257] The article was so formative for Wexley's writing that he thanked Baker for the inspiration in the introduction to the published text: "'*The Last Mile'* was suggested by a short published sketch by Robert Black, to whom the author acknowledges indebtedness."[258] Baker's testimony appears throughout the play, even taken verbatim in the first act. Wexley's reverence for Baker, his experiences, and the condemned writ large clearly established him as an anti-capital punishment advocate. His characters are fully drawn with grit and remorse; they are complex and broken. *The Last Mile* is a testament to not only Wexley's talent but the complexity of the electric chair crisis in the early twentieth century.

By staging the very moments before execution, moments from which society usually shies away, *The Last Mile* pushes audiences to question why capital punishment is society's natural response to the question of how to punish murderers. While Wexley skirts around direct discussions of justice for victims, he directly attempts to shine a light on cyclical patterns of poverty, violence, and destruction and how that relates to the prison industrial complex. Inmate John Mears, in one of the first highly personal moments of the play, explains the environmental reasons that led him to crime and why he lives in fear on death row:

> MEARS. Say—I've been through too much. Maybe I never went to school. Maybe I never had no education, but I've thought a lot in my time. I had to, and I know this: I got to see it on black and white, I got to have two and two make four.

[257] John Wexley, *The Last Mile: A Play in Three Acts* (Los Angeles: Samuel French, 1930), xv.

[258] Wexley, *The Last Mile,* xv.

> I ain't talkin' myself into nothing. Say, don't you think I'd like to believe and so not be afraid of that in there—not to have to wait and worry and wait—and go nice and peaceful, and smiling and have faith?[259]

The hardened inmates are desperate to relate to each other and to explain their situations and emotions. One can most easily spot this commentary through the repetitive structure of the play, where inmates rehearse the same encouragements and hopes before each execution. When the inmates revolt from this ritual, however, Wexley attempts to challenge the liberal notion that the interests of the many outweigh the interests of the one. Audiences are instead thrust into the emotional center point of those who would be considered dangerous and asked to sympathize with the most condemned individuals.

How do audiences come to moralize with the dangerous, condemned inmates? The journey to compassion throughout *The Last Mile* is slow and methodical. The inmates are crass and often mean to each other throughout the work. Audiences are slowly taught, however, why each person has been convicted and how they are each processing their experiences, often through painful, emotional conversations, where even the most hardened inmates open up. Walters, for example, cannot send his mother one final telegram before he is executed, as he has given his money to another inmate.[260] In another one of the more intimate moments, a priest supports Walters before he is taken away for his execution:

> WALTER. O Lord Jesus, God of my heart, and Life of my soul, (He breaks down and sobs) O Jesus Christ, get me out of here, don't let me go, don't let me die. I'll

[259] Ibid., 29-30.

[260] Ibid., 47.

do anything you say, only don't let me go, please Jesus, I'll cut my arm off, I'll cut my leg off, Jesus, don't let me—

O'CONNORS. (Interrupting) Calm yourself, boy, calm yourself. There, there. (Pause) Now repeat after me, O God, who has saved me and forgiven me.

WALTERS. (Brokenly) O God, who has saved me and forgiven me—

O'CONNORS. Hear my supplications—

WALTERS. Hear my supplications.

O'CONNORS. And take me unto thy eternal keeping—

WALTERS. And take me unto thy eternal keeping.

O'CONNORS. Amen.[261]

The play, in essence, humanizes the dehumanized. It stages scenes of capital punishment with which society would rather not engage. Walters, in this moment, is not a danger needed to be surveilled, but rather a human fearing for his life and turning to God to do so. "The execution, as currently practiced," writes Linda Ross Meyes, in *Who Deserves to Die: Constructing the Executable Subject,* "is the ultimate triumph of dehumanization and institutional control: inmates […] are gradually stripped of identity, submitted to the totalizing prison institution."[262] The completion of ritualized execution necessitates dehumanization, i.e., the "[deprivation] of human character or attributes."[263] By staging executable subject in a compassionate lens, Wexley rejects the totalizing prison system and critiques its abilities.

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[261] Ibid.,50-51.

[262] Karl Shoemaker and Austin Sarat, eds., *Who Deserves to Die: Constructing the Executable Subject* (Boston: University of Massachusetts Press, 2011), 178.

[263] *Oxford English Dictionary, s.v.* "dehumanize," accessed April 19, 2015, http://www.oed.com/view/Entry/49153?redirectedFrom=dehumanize#eid

Wexley himself was born in New York City on September 14, 1907. He grew up the nephew of famed Jewish-American actor Maurice Schwartz, founder of the Yiddish Art Theatre. Raised around the theatre, Wexley began his life on the stage as an actor but found his love in playwriting, writing a slew of one-act plays throughout the late 1920s and 1930s.[264] Wexley often took up themes of incarceration and unfair governmental policies. He wrote two other full-length dramas: *Steel* (1931) and *They Shall Not Die* (1934).[265] When Wexley moved to Hollywood in the late 1930s, he easily translated his playwriting skills into screenwriting. He became a commercial success, writing seven screenplays before 1943. That year, he was hired to work with Bertolt Brecht on *Hangmen Also Die!.* Fritz Lang, the director, hired Wexley to serve as an English-speaking counterpart with Brecht, as Wexley also spoke German.[266] Wexley's career as a screenwriter, however, came to an abrupt halt in 1951. Numerous members of Hollywood testified in front of the House Un-American Activities Committee (HUAC) that Wexley was an active member of the Communist Party, which led to his immediate blacklisting in Hollywood.[267] In the records of the proceedings, *The Last Mile* was listed, seemingly to remind listeners of Wexley's relevance in an effort to demonstrate how far reaching Wexley's influence was as a communist. Wexley, now unable to work as a screenwriter in Hollywood, continued to write through different methods and mediums. In 1955, he published the novel *The*

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[264] Gerald Bordman, and Thomas S. Hischak, *The Oxford Companion to American Theatre* (New York: Oxford University Press, 2004), 375.

[265] *They Shall Not Die* (1934) is a dramatization of the Scottsboro Boys case, where Wexley took on the race relations that led to their arrest and convictions.

[266] Bertolt Brecht, *Bertolt Brecht Journals, 1934-1955* (New York: Bloomsbury, 2016), 39n27

[267] United States. Congress. Senate. Committee on the Judiciary, "Strategy and Tactics of World Communism: The significance of the Matusow case, Part 12" (Washington D.C.: U.S. Government Printer Press, 1955), 1173. Those that testified against John Wexley include Edward Dmytryk, Leo Townsend, Martin Berkeley, and George Beck.

*Judgment of Julius and Ethel Rosenburg.* While some of his Hollywood work went uncredited after his blacklisting—a way to get around the harsh realities of HUAC's public demonization of communism—Wexley found mild success writing for television in Germany, where the Hollywood rules did not apply. Wexley unfortunately died of a heart attack in Doylestown, Pennsylvania at the age of 77 on February 4, 1985.

Edward Dmytryk, one of the men who named Wexley as a communist in front of HUAC, recalled his time working with Wexley on the film noir, *Cornered* (1945):

> Wexley was the author of *The Last Mile,* and a man of extreme leftist leanings. […] The trouble was that Wexley engaged in agitprop. At every opportunity, he wrote long speeches loaded with thinly disguised communist propaganda. Expressed in classical antifascist rhetoric, there were manifestos by the dozen, or so it seemed.[268]

Dmytryk personally found fault in Wexley's inability to separate his art from his politics and believed his writing resembled agitprop. Clearly at odds with the opinion of Lawes, Dmytryk felt that Wexley could not blend in with the commercial writers needed in Hollywood. *The Last Mile,* however, was far from his typical agitprop work. *The Last Mile* did not contain the long speeches typical of the agitprop genre and found in Wexley's previous works. His characters are, at most, given minute-long monologues, with a majority of the play relying on Realism-driven dialogue. Dmytryk, noting this shift in Wexley's writing, applauded the play in his memoirs as a

[268] Edward Dmytryk, *Odd Man Out: A Memoir of the Hollywood Ten* (Carbondale, Southern Illinois University Press, 1996), 19.

success despite his previously noted critiques. He simply wrote, "*The Last Mile* was good theatre."[269]

The commercial success of the play, however, also had to do with the design by Henry Dreyfuss. Dreyfuss has recently designed two hit Broadway shows and had been hired in 1930 to design nine due to his popularity. Heavily influenced by the Expressionism movement in the U.S., Dreyfuss designed the sets in his brand of utility. Although many would argue that Dreyfuss should be categorized as a part of the "streamlined decade" in the 1930s, Dreyfuss' designs, which in sharp lines, stark contrasts, and minimalism were near to the heart of the burgeoning Expressionism movement in the States.[270] German Expressionism, which began before WWI and found footing in Berlin during the 1920s, was originally an artistic movement that emphasized the artist's subjective experience over lived reality. The movement of the 1920s is most often associated with films such as *The Cabinet of Dr. Caligari* (1920) and *Metropolis* (1927), among others. Expressionist drama became wrought with the brutal images of wartime fractured through a subjective worldview. No longer did German expressionists in the theatre care to represent "truth" a la the realists of the nineteenth century, but rather sought to comment of the denigration of their culture through their own lived experiences of the war and the destruction that technology caused.

Such films and other works of arts allowed circulation of the movement of ideas to theatre practitioners in the U.S., such as the Provincetown Players, which Sophie Treadwell founded with her husband. Fostering a form of American Expressionism was particularly

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[269] Dmytryk, *Odd Man Out,* 19.

[270] Jerry Dickey and Barbara Ozieblo, *Susan Glaspell and Sophie Treadwell* (New York: Routledge, 2008), 146.

attractive to those who had a distaste for realism, as the avant-garde movement freed playwrights, directors, and designers of realism's 1:1 ratio of representation and allowed them to explore how distortion and symbolism offered audience members the ability to explore their own subjective relationship to a given object or event. American Expressionism too became entrenched with concerns about the totality of technology and its dehumanizing abilities.

These themes are most clearly seen in the play's set. The set, a stark stage with the odd-numbered cells in a row, establishes the audience as the panoptic viewer into their cells. (Figure 13) Audiences become the watchful observants—the spies—on the inmates throughout their pleasantries, their concerns, and their riots. Much like panopticonism described in Foucault's *Discipline and Punish,* the stage seeks:

> …to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if its discontinuous in its action, that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers.

As with the theory of panopticonism, the body of security is placed within the social body; regardless of who is watching, everyone is watching. In turn, the audience is induced into this power relation as well, forced to spy in a place where civilian eyes are not meant to be, forced to watch the pain and suffering of the condemned long after they have been removed from society. By forcing audiences to uncomfortably participate in this power relationship, Wexley seems to

push audiences to question the role the audience—and the audience as citizens of the state—plays in the perpetuation of this ritual of execution and the preservation of their own security. Through these questions, such as the panopticon and liberal interests, Wexley addressed the very crisis of his own times, bringing to light the cyclical violence that may be tumbling out of control in front of our eyes.

Wexley's play was undoubtedly in conversation with other executions and trials leading up to the production of his play, including that of Ruth Snyder (1895-1928) who was convicted in New York of the murder of her husband, Albert Snyder, in 1927. She and her lover, Judd Gray, plotted to kill Albert to receive a life insurance payout of $48,000 under a clause, which stipulated the payout could be received if "unexpected violence resulted in death."[271] Although media claimed there were multiple previous attempts on Albert's life by Snyder and Gray, the successful attempt to take Mr. Snyder's life involved chloroform soaked rags stuffed up his nose and a poorly staged robbery. Officers were tipped off that the crime was an inside job after finding the reportedly missing items stashed elsewhere in the home. Snyder and Gray eventually turned on each other during interrogations, confessing to an illicit affair but each blaming the murder itself on the other person. Snyder and Gray were eventually both found guilty of murder and sentenced to death by electrocution. Throughout the trial and sentencing, however, and while awaiting the death penalty, Snyder consistently maintained her innocence.[272]

[271] John Kobler, *The Trial of Ruth Snyder and Judd Gray: Edited with a History of the Case* (New York: Double day, Doran & Company, Inc., 1938), 28-32.

[272] Ibid.

**FIGURE 13**
"The Last Mile," Design by Henry Dreyfuss, 1930
Heckman Digital Archive[273]

[273] "The Last Mile," Heckman Digital Archive, 1930, https://library.calvin.edu/hda/node/1475. The color of the photograph has been edited by a red-scale to a gray-scale in order to better illuminate the photo, distinguishing between the actors onstage and the cell bars.

**SOPHIE TREADWELL'S *MACHINAL***

Snyder's journey from sentencing to Sing Sing's Old Sparky was fraught with news coverage every step of the way. When Snyder was electrocuted, she became the seventh woman executed in the twentieth century in the United States, the third by electric chair.[274] The *New York Times*, the *Washington Post* and famous journalists, including D.W. Griffith, James M. Cain, and Nora Bayes, covered her trial. Throughout the trial and the appeals processes, multiple arguments emerged in court and in the public media regarding issues within her case, including that Snyder had not received a fair trial due to contradictory confessions by her and by Gray which were unfairly made admissible in court, as well as an unfair use of co-defendants in court. Despite the attempts of her lawyers, Snyder was never able to win an appeal of her verdict or sentence.

In a 1927 *Washington Post* article, Margaret M. Lukes wrote, "Their only hope for life rests on new trials. Judd Gray, through all his confinement, has been passive, ready to accept his fate. But Ruth Snyder, repentant now for her sinful life but avowing she did not kill her husband, is eager to live."[275] Separate from arguments of guilt or innocence, Lukes here calls attention to the need for a fair trial in face of a clearly dysfunctional judicial process, and she protests the death penalty's finality. The article was printed, however, with an Editor's Note: "Since this story was written the seven judges of the Court of Appeals of New York State has handed down

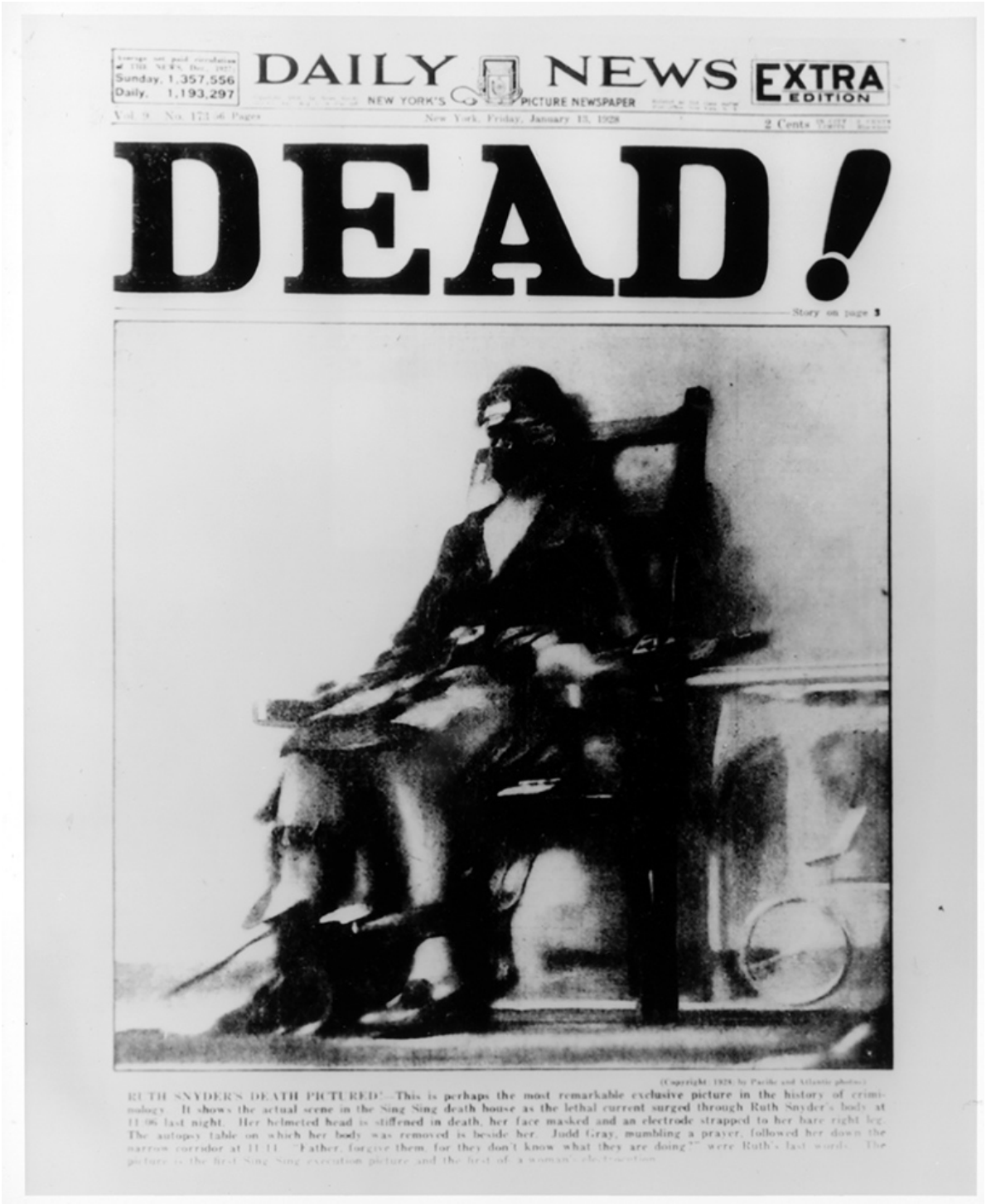
[274] Capital Punishment UK, "American Female Executions, 1900-2015, http://www.capitalpunishmentuk.org/amfem.html. The first woman electrocuted by the electric chair was Martha M. Place. She was executed in 1899 at Sing Sing Prison at the age of 49 for the murder of her stepdaughter. The crime was the then-governor of New York, Theodore Roosevelt who refused to commute her sentence.

[275] Margaret M. Lukes, "Ruth Snyder Hopes to Escape Electric Chair," *Washington Post,* December 4, 1927, SM7.

a unanimous verdict that Ruth Snyder and Henry Judd Gray must die, setting the time of execution for the week of January 9."[276] If one did not attend the trial, then people consumed news about the trial via newspapers and radio spots, which were loud and often. Called "the trial of the century," audiences were waiting for the climax of their story: would she die or not?

On January 12, 1928, within less than a less of a year of the murder of Albert Snyder, Ruth Snyder was executed at Sing Sing Prison in Ossining, New York. The coverage in the days leading up to and following her execution was immense and sensationalized. Newspapers were reporting on "Ruthless Ruth's" final visitors, her funeral plans, her last-minute stays of execution, the grief felt by the executioner, and more; hundreds of articles across the country all within the span of four days. The biggest—and perhaps most problematic—headline, however, came after a *Chicago Tribune* photographer snuck a camera into the execution chamber. With the camera sneakily strapped to his ankle, he took a photo of Snyder in the moment her body writhed with electric current. The photograph became the front-page story of the Tribune-owned *Daily News* the following day, boldly printed with the declaration "DEAD!" across the top (Figure 14). That "Extra Edition" of the *Daily News* sold out, as spectators of the trial far and wide were enthralled with not only the ending of a year-long escapade, but with the ability to observe her body in the moment of extreme suffering, thanks to the technology of the ankle camera. Her final words after reportedly walking "unfaltering" to the chair were "Forgive me."

[276] Ibid., SM7. The Editor's Note addresses the fact that Mrs. Snyder's remaining hope is to seek clemency from the Governor; however, that attempt failed as well.



DAILY NEWS EXTRA EDITION

Sunday, 1,357,556
Daily, 1,193,297

NEW YORK'S PICTURE NEWSPAPER

New York, Friday, January 13, 1928 — 2 Cents

# DEAD!

Story on page 3

RUTH SNYDER'S DEATH PICTURED!—This is perhaps the most remarkable exclusive picture in the history of criminology. It shows the actual scene in the Sing Sing death house as the lethal current surged through Ruth Snyder's body at 11:06 last night. Her helmeted head is stiffened in death, her face masked and an electrode strapped to her bare right leg. The autopsy table on which her body was removed is beside her. Judd Gray, mumbling a prayer, followed her down the narrow corridor at 11:11. "Father, forgive them, for they don't know what they are doing," were Ruth's last words. The

**FIGURE 14**
*Daily News.* January 13, 1928. "DEAD!"
The coverage of Ruth Snyder's execution.[277]

[277] Tom Howard, "DEAD!," *Daily News,* January 13, 1928, 1.

One such spectator to these events was famed feminist playwright Sophie Treadwell, who sat and listened day in and day out to the court proceedings. Sophie Anita Treadwell was born in Stockton, California on October 3, 1885. At some point between 1890-1891, Treadwell's father, Alfred, abandoned Sophie and her mother, Nessie Fairchild, which prompted the mother and daughter to move to San Francisco in 1902.[278] While she continued to see her father on occasion throughout her life, she spent the majority of her adolescent years with her mother, although she did not have a good relationship with either of them. Just four years later, Sophie Treadwell graduated from the University of California at Berkeley with a degree in journalism and drama, where she worked odd-jobs at local newspapers to pay for school.[279]

Over the next decade, Treadwell made a name for herself in the journalism industry, covering several high-profile murder cases in the San Francisco area, and had her first plays produced. Her career in the Bay Area proves highly promising until moving to New York with her husband in 1914. In New York, Treadwell joins the suffragist, Lucy Stone League, only to leave a year later to cover World War I in France for a majority of the year.[280] For the next ten years, Treadwell's career in New York consists of covering trials, as well as fully launching her career in theatre. This includes having her first play produced on Broadway in 1922, *Gringo*, based on her work with the Mexican revolution and studying acting with Richard Boleslavsky.[281] In 1927, after a long and accomplished career at the intersection of journalism and theatre, with a

[278] Jerry Dickey and Miriam López-Rodríguez, eds., *Broadway's Bravest Woman: Selected Writings of Sophie Treadwell* (Carbondale: Southern Illinois University Press, 2006), xiii.

[279] Ibid., 69.

[280] Ibid., xiv.

[281] Ibid.

particular interest in feminism and social justice, Treadwell lands in the benches of the Snyder trial.

The relationship between Snyder and Treadwell, albeit nonverbal and born in the space between personal spectating and sensation, gave way to *Machinal* (1928), a play that examines the very nuances and problems of Snyder's trial. *Machinal,* which means "mechanical" in French, sought to critique the media's sensationalized demonization of women, specifically the kinds of representations found in newspapers and broadcast across radios about Snyder in her trial, sentencing, and subsequent execution via the electric chair. *Machinal* is perhaps the most-often canonized United States death penalty play and often invites conversations surrounding death penalty and capital punishment when brought up in conversation. Treadwell's iconic work tells the story of a Young Woman, meant to represent potentially any young woman trapped by the demands placed on her by society. Structured in nine "episodes," we follow the Young Woman from her work life, to her home life with her mother, through her marriage, and the birth of her baby. Throughout these fractured episodes of her life, those around her dominate the Young Woman's decisions: her boss, her mother, her husband, etc. After her wedding, however, she meets a man and engages in an affair, becoming—if only for a fleeting moment—Woman and revealing her actual identity: Helen Jones. She then murders her husband in an attempt to free herself from the restraints of being the Young Woman after tasting freedom, only to be confined further, first in prison and then by the electric chair. In the final moments of the play, the Young Woman in executed on stage.

The critical work surrounding *Machinal* is by far the largest of any play US death penalty play in existence. There are copies of the text published in the National Theatre's *Machinal* (1993), Judith E. Barlow's *Plays by American Women, 1900-1930* (2001), *The Norton Anthology*

*of Drama* (2009), and more. Each publication contains a critical introduction to the play and many contain footnotes providing historical context. Critical companions to Treadwell are also commonplace. There is *The Cambridge Companion to American Women Playwrights* (1999), which takes time to look at Treadwell and her best-known play, *Machinal.* Jerry Dickey and Barbara Ozieblo's *Susan Glaspell and Sophie Treadwell* (2008) explores three historical productions of the play, each in their own chapter. Dickey and Ozieblo, writing about *Machinal* as a whole, say that Treadwell "avoids delving into the sensational aspects of the story in favor of exploring the social conditions and gender inequities that might have led to this woman's act of violence."[282] Their book explores the execution in the play, but limits itself to the means by which Treadwell deployed expressionism to comment on her own time period's treatment of Ruth Snyder.

Many journal articles have also worked through the play. In "Sophie Treadwell's 'Machinal': Electrifying the Female Body" (2006), Katherine Weiss does a deep historical dive into the play's original production to look at the ways in which Treadwell sought to comment on the executions of females within her own time period.[283] Weiss's piece, while thorough with well thought out analysis, does not place the work in context beyond its relationship to expressionism. These trends are unfortunately similar throughout many of the other works I have uncovered; they discuss the play in relation to the Ruth Snyder trial and/or its expressionism aesthetic, but

[282] Dickey and Ozieblo, *Susan Glaspell and Sophie Treadwell,* 148.

[283] Katherine Weiss, "Sophie Treadwell's 'Machinal': Electrifying the Female Body," *South Atlantic Review* 71, no. 3 (Summer, 2006), 4-14.

do not go further into larger political considerations of capital punishment nor explore Treadwell's work in the greater context of a pre-exiting U.S. theatrical tradition.[284]

Concerns and critiques about this juxtaposition of technology found with the American Expressionism movement can easily be found within the pages and production remnants of *Machinal,* which opened on September 7, 1928 at the Plymouth Theatre in New York City. After running for ninety-one performances, the play closed on November 24, 1928. The production, produced and directed by Arthur Hopkins, employed designer Robert Edmond Jones to bring the show to life.[285] Jones, highly interested in Expressionism, sought to bring subjectivity and commentary on technology to the American stage. Unlike its German predecessors, however, American Expressionism was wholly invested in the development of modern technology of everyday life. According to Julia A. Walker in *Expressionism and Modernism in the American Theatre*, the American movement "is not simply a minor derivation of the better-known German movement, but a complicated artistic response to the forces of modernization. For Walker, giving shape to these experimental plays was the vague but intensely felt anxiety that new communication technologies would displace the human artist from the act of making mean, mechanically reproducing bodies (e.g., in film), voices (e.g., in phonograph recordings), and words (e.g., the typewriter)."[286] Mardi Valgemae, in *Accelerated Grimace: Expressionism in the American Drama of the 1920s,* continues in this vein:

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[284] Other such works include Jennifer Jones' "In Defense of the Woman: Sophie Treadwell's *Machinal*" (1994), Jean Marie Lutes' "Tears on Trial in the 1920s: Female Emotion and Style in 'Chicago' and 'Machinal'" (2011).

[285] Dickey and Ozieblo, *Susan Glaspell and Sophie Treadwell,* 150.

[286] Walker, *Expressionism and Modernism in the American Theatre*, 2.

> The [American] expressionists' concern with subjective states forces them to fashion dramaturgical techniques that distorted reality and created a nightmarish world of dream images. Actions and objects were no longer viewed photographically but were seen symbolically. Characters ceased to be individuals and became abstractions or types. Dialogue was frequently stripped of all but the essential words or replaced by appropriate sound effects, including music…. These distortions for the sake of objectifying inner truths freed the drama from the rigid conventions of realism and encouraged playwrights to a more imaginative handling of their subject matter.[287]

For the American Expressionists, bodies and voices also stood as technological metaphors. Walker's and Valgemae's analyses are ever apparent in Treadwell's *Machinal,* as characters are identified solely by their occupation, speaking as disembodied voices to complete their one and only task: technology-based work. These voices swell into a cacophony of overwhelming vocalizations, suggesting the totalizing power of technology and the technologically consumed worker.

This distorted sense of reality could be found within the production as well, which used a stationary background, flying in flats and mobile set pieces in the foreground of the stage as needed. The colors used and the lighting chosen were high contrast, resisting any sense of warmth and further symbolizing the Young Women's confinement (Figure 15). The Young Woman's world was filled with harsh lines: a metal bed frame, vertical wallpaper, and squared edges found on every window and desk. The only softness found on the stage was in the

[287] Mardi Valgemae, *Accelerated Grimace: Expressionism in the American Drama of the 1920s* (Carbondale, Illinois: Southern Illinois University Press, 1972), 12.

somewhat feminine curtains, whose lace was seemingly out of place in this world. Additionally, the Young Women revealed a dainty nightdress—only when she is Woman—suggesting that femininity at the will of the Young Woman was a dangerous and subversive act attacking the hegemonic, structured view of womanhood. Throughout all of the commentary on dehumanization and technology, Treadwell simultaneously attempted to humanize the Young Woman due to her interest in suffrage and feminism. The use of expressionism, I argue, attempted to restore humanity to Snyder via the Young Woman. Treadwell and the production team could have easily chosen to deploy melodrama, realism, or myriad other aesthetic genres to discuss the case, and yet used expressionism as their vehicle as it offered them the ability to critique the technology of execution and the media's dehumanization of the Young Woman and Snyder.

Upon first glance, the Young Women's most subversive act against the state comes in the final moments of her life. In accordance with protocol, the Barber, accompanied by prison guards, comes in to shave the Young Woman's hair. She wholly rejects their dehumanization:

> YOUNG WOMAN: No! No! Don't touch me—touch me! [*They take her and put her down in the chair, cut a patch from her hair.*] I will not be submitted—this indignity! No! I will not be submitted!—Leave me alone! Oh my God am I never to be let alone! Always to have to submit—to submit! No more—not now—I'm going to die—I won't submit! Not now![288]

[288] Sophie Treadwell, *Machinal*, in *Plays By American Women 1900-1930,* ed. Judith E. Barlow, 171-255 (New York: Applause Theater Book Publishers, 1985), 251.

**FIGURE 15**
*Machinal.* Plymouth Theatre. 1928.[289]

[289]Vandamm Studio, "George Stillwell (center), Zita Johann as secretary (extreme left), and other cast members in the stage production *Machinal*," Billy Rose Theatre Division, 1928, T-Vim 1961-001, New York Public Library.

In this moment, the Young Woman simultaneously calls out the submission she has been forced into her entire life and the act of dehumanization occurring in final moments of the death penalty as the state prepares to execute. Although the execution seems to continue as planned, the 1st Reporter, watching the Young Women take her final breaths, states, "Did you see that? She fixed her hair under the cap—pulled her hair out under the cap."[290] Within five lines, the Young Women's voice has been cut off by society for the final time with the flip of the electric chair switch and blackout. By pulling her hair out of the electric chair cap, Helen Jones rejects submitting to society and the state even in its most totalizing moment.

Treadwell's staging of the electric chair scene was undoubtedly disruptive to the ways in which subjects of the state were programmed in the late 1920s to engage with state-sanctioned executions. The production team's deployment of American expressionism in the staging of the Young Women's death, specifically, was the hinge on which this disruption lay. As an avant-garde movement in the United States, American Expressionism offered Treadwell and the rest of the production team a means by which to contest the bourgeois order.[291] According to Matei Calinescu in *Five Faces of Modernity,* the death of the historical avant-garde is seen when it is incorporated into the very class it sought to reject; thus, the avant-garde must reject the norms of the bourgeois sensibility. [292] In regard to execution, the Ruth Snyder trial stands as a testament to the accepted ways in which one is expected to digest electrocution. The electric chair was the

[290] Treadwell, *Machinal*, 255.

[291] "The term avant-garde, while still preserving its broad political meaning, came to designate the small group of advanced writers and artists who transferred the spirit of radical critique of social forms to the domain of *artistic forms.*"

[292] Matei Calinesu, *Five Faces of Modernity: Modernism, Avant-Garde, Decadence, Kitsch, Postmodernism* (Durham, North Carolina: Duke University Press, 1987), 120.

climax to a series of Aristotelian rising actions incited by the arrest of a given criminal. The increasing tensions of the courtroom—compounded by an ever-intruding media, acting as a gateway for spectators (i.e., subjects of the state)—force the spectator to desire a payoff, a climactic moment and cathartic reward for their attention. This is revealed in the case of Ruth Snyder through the overwhelming attention paid not only to her execution but the photograph of her in the midst of being electrocuted.

For *Machinal*, this reward is never given, nor the urge for rising action played into. Spectators and media alike are drawn as machines, technologies controlled by society. Audiences are kept at a distance from the world around the Young Woman, which helps resists the audiences' need for a climactic payoff. In the final moments of the Young Women's existence, she is defiant: no remorseful last words or submission to the dehumanizing world around her. The Young Woman, instead, calls out any such gaze, affirming that her freedom has been found despite the control of society. Treadwell's staging of the electric chair thus reveals a deeper commentary than a pro- or anti-death penalty critique.

Treadwell's deepest critique of the state, however, comes before the staging of the Young Women's electrocution. In "Episode 9"—the final episode of the play—the Young Women meets with a Priest, who seeks to redeem her soul in her final moments of her life in hopes of giving her a heavenly, free afterlife. The Young Women's responds defiantly. Rather than allowing the priest to calm her and ready her for giving up her soul, as happens in *The Last Mile*, the Priest becomes another node in the state's complicity with the death penalty and panopticonism/policing of behavior. She says, "When I did what I did I was free! Free and not afraid! How is that, Father? How can that be? A great sin—a mortal sin—for which I must die and go to Hell—but it made me free! One moment I was free! How is that, Father? Tell me

that?"[293] The Priest essentially ignores her outburst, relieving her of her "sins," and refusing to admit the contradiction in freedom and sin in the mortal world that society has burden upon her. In this moment, however, the Young Woman's outburst call into question the audiences' complicity in panopticonism. Through her acts of defiance, Helen actually resists the panoptic gaze fundamental to the preservation of early twentieth-century liberalism. This resistance forces those in the audience to question the very foundations of liberalism itself: freedom.

The Young Woman's incitement of freedom, however, reveals a deeper antagonism between personal freedom and the state's supplied freedom in the shifting liberalism of the late 1920s. While she personally feels a sense of freedom due to her "sin", expressed through Treadwell supplying her with a name and clothing unlike in the rest of the play, her personal freedom exists in opposition to economic, safe freedom the liberal state needs to secure. Her personal freedom, however, is an act of danger—an act against the nuclear family and an attack on her husband's money—and thus is punishable by death in order to maintain the collective interests of liberal society. By playing these freedoms in conflict with each other, Treadwell calls into question the meaning of freedom and its limits.

By delving into the oppressive life the Young Woman lived, audiences came to see her execution as problematic. Treadwell fought to give humanity back to women such as the Young Woman and Snyder, dehumanized by an ever-increasingly desensitized world ready for entertainment at whatever cost. In her final moments, the Young Woman hugs her mother through the bars and mourns for her child. "Wait! Mother, my child; my little strange child!" she laments, "I never knew her! She'll never know me! Let her live, Mother. Let he live! Live! Tell

[293] Treadwell, *Machinal*, 252.

her—"[294] Before she can finish, the priest whisks her away to her execution. This moment of sentimentalism, however, forces the audience to feel for her and the impact her death will cause. Treadwell works to suggest that any woman can become a demonized figure, a women such as Ruth Snyder, and that audiences should think before easily condemning someone as evil. Audiences, instead, come to sympathize with the woman's subjugation as they connect with her as a mother, a daughter, and a woman, a nameless woman who could be anyone they know or even themselves.

The electric chair remained the gold standard for execution in the U.S. throughout the rest of the twentieth century. Even when Texas adopted the then newly-invented method of lethal injection in 1977—the first state to do so—electrocution was still the primary means used. Lethal injection did not become the gold standard itself until the mid-1990s, which then downgraded electrocution to an obsolete technology only to be invoked at the behest of the condemned or when lethal injection was unavailable. By the end of the 1990s, execution by electrocution became newsworthy in and of itself whether due to its rarity of use or its seeming grotesque quality in the face of newer or "better" technology.

As it currently stands in the United States, nine states allow subjects to choose electrocution instead of legal injection and/or allow the state to use the electric chair in the event of lethal injection drugs becoming unavailable. Those states include Alabama, Arkansas, Florida, Kentucky, Mississippi, Oklahoma, South Carolina, Tennessee, and Virginia. Behind lethal injection, electrocution is currently the most widely available means of execution in the United States despite multiple State Supreme Court cases determining the method to be "Cruel and Unusual." The most recent state to ban electrocution was Nebraska, on February 8, 2008, in the

[294] Ibid.

case *State v. Mata.* [295] "Besides presenting a substantial risk of unnecessary pain," the court ruled in the majority opinion, "we conclude that electrocution is unnecessarily cruel in its purposeless infliction of physical violence and mutilation of the prisoner's body. Electrocution's proven history of burning and charring bodies is inconsistent with both the concepts of evolving standards of decency and the dignity of man. Other states have recognized that early assumptions about an instantaneous and painless death were simply incorrect and that there are more humane methods of carrying out the death penalty."[296] The court relied heavily upon scientific testimony regarding what electrocution does to the body, as well as witness testimony regarding the pain seen on those who are being/have been electrocuted.

The electric chair, unlike lethal injection, however, is seemingly more effective from a technology standpoint. While "botched executions" have long been a historical phenomenon, lethal injection's reputation for being ineffective is widely known. Out of the 1054 lethal injection executions in the U.S. since its adoption in 1982, 75 have been botched.[297] The failure rate of 7.2% doubles that of any other method of execution.[298] As lethal injection has gained increasing media attention for its cruel, unusual, and ineffective methods, U.S. companies have refused to manufacture lethal injection drugs. Hospira, Inc., the last known U.S. manufacturer of the lethal injection drug Pentothal, refused to supply states with the drug in 2011 after gaining

[295] "State v. Mata*," Justia U.S. Law*, February 3, 2020, https://law.justia.com/cases/nebraska/supreme-court/2008/1268-0.html.

[296] Ibid.

[297] "Botched Executions," *Death Penalty Information Center,* Updated February 22, 2018, https://deathpenaltyinfo.org/some-examples-post-furman-botched-executions

[298] Ibid.

increasing pressure from media, politicians, and more.[299] The lack of access to the necessary drugs has pushed governments to stockpile expired medications, create off-market cocktails, and procure medications from private, undisclosed companies, and has led to a radical return to older technologies of execution—such as the electric chair—which has a botched execution rate of 1.92%.[300] These issues with lethal injection have led to a resurgence in use of the electric chair across the U.S. despite a lack of knowledge surrounding the pain experienced by the condemned during execution.

According to Christopher S. Kudlac in the *Public Executions: The Death Penalty and the Media,* however, the public overwhelmingly recognizes the faults of the U.S. capital punishment system:

> Another national poll showed that, when reminded about cases in which death row inmates had been released on the basis of DNA evidence, 64 percent of Americans favored a temporary halt to executions while steps are taken to ensure that the system works fairly. A large part of the public's changing feeling regarding capital punishment was due in part to accounts of DNA testing results establishing that ordinary, innocent people were sometimes convicted of murder, among other offenses, perhaps not regularly but not rarely either.[301]

If Kudlac's statistical research proves accurate, and an overwhelming portion of the population recognizes that the contemporary U.S. death penalty system is a faulty one, why would people's

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[299] "STATEMENT FROM HOSPIRA: Regarding its halt of production of Pentothal (sodium thiopental)," *Hospira, Inc.,* January 21, 2011, https://deathpenaltyinfo.org/documents/HospiraJan2011.pdf.

[300] "Botched Executions," *Death Penalty Information Center.*

[301] Kudlac, *Public Executions,* 4-5.

interest in execution remain? Kudlac argues that since the abolishment of the public execution in the twentieth century, "the media has been the primary source through which the public learns about executions."[302] Thus, to explain the public's return to executions, let alone their fascination, we must interrogate the ways in which the media has chosen select cases as "newsworthy" and how this plays into another recent shift in discursive understandings of justice.

The most recent person in the United States to be executed by the electric chair was Stephen Michael West in Tennessee on August 15, 2019. West was convicted of murdering a woman and her fifteen-year-old daughter in 1986.[303] His last words, which the warden had to ask him to repeat due to his low volume, were "In the beginning, God created man… And Jesus wept. That's all." In the articles and reports that covered his execution, reporters moralized about West's life and the choices that led him to the execution chamber, reminding readers and viewers of the severity of crimes. For contrast, such sentiments in these reports were balanced with a remembering of West's victims and discussions of how the family was processing West's death.

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[302] Ibid., 3.

[303] On April 23, 1983, Zagorski shot and killed John Dotson and Jimmy Porter before slitting their throats and robbing them in Tennessee. He lured the two men to the woods under the guise of selling them a large amount a marijuana for $25,000. Zagorski was arrested on May 26th after a shootout with police, where he injured numerous officers. He agreed to give a confession to the crimes only if execution was guaranteed instead of life in prison. In 1984, he was sentenced to execution via electric chair per the defendant's request, despite the adoption of lethal injection in Texas just two years earlier. In 1994, Zagorski's lawyers appealed the sentence, arguing that Zagorski's original lawyers were incompetent because they followed the defendant's instruction to present evidence that could have mitigated his sentencing. The Tennessee Supreme Court upheld the sentencing, however, arguing that Zagorski was highly competent and was informed of the effects of his choices.[303] In the days leading up to his 2018 execution, Zagorski filed suit against Tennessee, alleging that the electric chair was a cruel and unusual punishment. Federal Courts denied his requests for clemency, however, citing that Zagorski chose the electric chair despite the availability of other options; regardless of how cruel and unusual the electric chair may be, Zagorski chose the method, in the eyes of the court, which removed his right to complain. Edmund Zagorksi was executed on November 1, 2018 at 7:26pm in Nashville, Tennessee in front of reporters and family members of his victims.

Even articles meant to discuss the protests against the death penalty sought to represent the affective justice fulfilled by West's execution through mentions of the "brutality" of his crimes and how his victims' families had achieved resolve.[304]

These articles bear a stark resemblance to the discussions of Snyder's own trial a century earlier, as themes of danger regarding the condemned are deployed to promote messages of security for the collective interest. With the overwhelming acknowledgement of cruelty regarding the death penalty and of the electric chair specifically, however, a new vein of rationale emerges: affective justice. This form of justice is most often deployed in opposition to effective justice, or justice that focuses on rational approaches. According to Arie Freiberg in "Affective versus effective justice: Instrumentalism and emotionalism in criminal justice," "'rational' crime policy—that is, one directed at finding and implementing effective crime prevention or crime control policies—plays an important role in government policy"[305] Freiberg defines affective justice as justice that "[takes] account of the emotions people feel in the face of wrongdoing."[306] Freiberg's thinking is in line within other scholars who seek to explain the funding of restorative justice movements such as South Africa's Truth and Reconciliation Commission. Affective justice can be conceptualized on a more nuanced, victim-based level, which will allow investigations into the ways in which media uses affect to discuss means to justice in and amongst execution. Affective justice helps to explain the ability to rationalize the

[304] Paula Wade, "Court upholds Zagorski Death Penalty," *The Commercial Appeal Nashville Bureau,* December 8, 1998. [304] Nicole Young, "In the dark: I watched a man die in Tennessee's electric chair," *Nashville Tennessean,* November 4, 2018. Holly Meyer and Mariah Timms, "Edmund Zagorski execution: Protestors gather both for and against the death penalty," *Nashville Tennessean,* November 1, 2018.

[305] Arie Freiberg, "Affective versus effective justice: Instrumentalism and emotionalism in criminal justice," *SAGE Journals* (2001), 266.

[306] Ibid., 275.

continuation of the electric chair through the feelings of justice felt by victim's family in the wake of executions like West's, despite the overwhelming acknowledgement that the death penalty is a faulty and, perhaps unethical, institution.

To look at West's execution and the *Payne v. Tennessee* case reveals that plays like *Two Seconds* are far from obsolete, even if they feel outdated. Sentiments of danger and security à la Foucault remain ever-present. Although Lester's play saw little success on Broadway compared its peers, moralistic tellings of electric chair executions thrive in other ways. In the media coverage of West's execution, for example, affective justice for the victims' families plays a pivotal role in rationalizing the chair's continuation in the U.S. As Conquergood writes, "The persistence of the death penalty defies logic and exceeds rational explanation. […] Why then does it persist? When logic cannot uphold it, when it does not work, and when it is not cost-effective? It is adhered to for emotional and expressive purposes that can be exploited for political gain. Like other rituals of sacrifice, executions tap the generative power of violence and harness the volatile energies surrounding death for political purposes."[307] The electric chair has a peculiar place in the United States. Even as the centuries has changed, this barbaric technology has endured both on and off stage.

In the past one hundred years, so too has theatre relationship with capital punishment politics shifted and changed. The mid-twentieth and twenty-first centuries brought forth previously inconceivable issues regarding the entanglement of politics, governments, and citizens. Theatremakers—troubled by a would under perpetual attack—could now turn to artists such as Wexley and Treadwell. There were now great examples as to how to employ subtle and not-so-subtle aesthetic and rhetorical tools in an effort to critique the government's interventions

[307] Conquergood, 359-360.

and effect change in their audiences. No longer did theatre need to be a part of the problem—although it still easily can and could be—but rather could hope for a future different than the lived reality.

# CHAPTER 5. CONCLUSION

> Say to them, "As surely as I live, declares the Sovereign Lord, I take no pleasure in the death of the wicked, but rather that they turn from their ways and live. Turn! Turn from your evil ways!"
>
> — Ezekiel 33:11[308]

> Do not repay anyone evil for evil. Be careful to do what is right in the eyes of everyone. If it is possible, as far as it depends on you, live at peace with everyone. Do not take revenge, my dear friends, but leave room for God's wrath, for it is written: "It is mine to avenge; I will repay," says the Lord. On the contrary, "If your enemy is hungry, feed him; if he is thirsty, give him something to drink. In doing this, you will heap burning coals on his head." Do not be overcome by evil, but overcome evil with good.
>
> — Romans 12:17-21[309]

David Thompson, John Kander, and Fred Ebb's Broadway musical, *The Scottsboro Boys* (2010), recounts the story of Scottsboro Nine, a group of black boys in Alabama in the 1930s wrongly accused of rape by two white women who then spent their lives in jail.[310] The musical

[308] Ezek 33:11 NIV

[309] Rom 12:17-21 NIV

[310] The Scottsboro Nine, as they are referenced in the media, are Ozie Powell, Charlie Weems, Clarence Norris, Andrew and Leroy Wright, Olen Montgomery, Willie Roberson, Haywood Patterson and Eugene Williams. They ranged in age from 13 to 19 were accused of the crime and only four of them knew each other. The Scottsboro Nine case resulted in numerous Supreme Court cases. Some of the men

uses the minstrelsy form to critique the ways in which black male bodies have been subject to stereotyping throughout the nineteenth and twentieth centuries in theatre and attempts to disrupt such narratives by juxtaposing stark contrasts of the minstrelsy form with compassionate narratives and ballads by the black men themselves.[311]

In one of the show's more pointed political critiques, the character Eugene has a nightmare in which he dreams of two guards—Guard Bones and Guard Tambo—antagonizing him about the power of the electric chair all during an upbeat tap dance number. During the song, "Electric Chair," the guards place electrocution hats on the Scottsboro boys while they require them to perform outwardly for the audience (Figure 16). The hats, while clearly historically inaccurate, allow the actors the dance at the whims of the guards while under the physical threat of the technology of the electric chair. Through the seemingly terrifying song, the guards sing to the boys a hauntingly cheery melody celebrating the power of their state's technology and thus the power of the state:

*Guard Bones:* Hey little boy

Look over there

That's what they call

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died in prison and some were pardoned much later in life. The Scottsboro Nine case was inspiration for Harper Lee's *To Kill a Mockingbirrd.* As discussed earlier, John Wexley also wrote a play about the Scottsboro Nine case, which I will explore the connections to in a later version of this work.

[311] The musical originally opened for previews Off-Broadway in New York City on March 10, 2010 at the Vineyard Theatre, running as a limited engagement until April 18, 2010. From there, it ran at Guthrie Theatre in Minneapolis, opening for previews on July 31, 2010 and closing on September 25, 2010. The musical finally transferred to Broadway, opening for previews on October 7, 2010, only to close on December 12, 2010. All three productions had the same director, Susan Stroman. The production was seen as a failure in the United States as it actively critiqued not only the U.S. justice system, but also the theatre forms that it actively popularized. The musical went on to have a successful run on London's West End in 2013 with the same production team, where it ran a sold-out show from October 18, 2013 until February 21, 2015.

An e-lec-tur-ic chair

*Guard Tambo:* If on that chair

You put your rear

Your hair frizzes out

And your eyes disappear

*Guard Bones/Guard Tambo:* It's a natural fact, I hear

*Guard Bones:* Not every state's

Got one of those

*Guard Tambo:* It can deep fry your skin

It can curl up your toes[312]

As the Scottsboro boys are forced to tap dance during jokes about their nightmarish treatment at the hands of U.S. criminal justice system—while one boy gets physically strapped into the electric chair—the true intentions behind Thompson, Kander, and Ebb's musical crystalizes. *The Scottsboro Boys* purposefully intended to critique the U.S. justice system and its historically malicious treatment of black men, as well as theatre's roll in stereotyping black male bodies.

[312] David Thompson, John Kander, and Fred Ebb, *The Scottsboro Boys* (New York: Music Theatre International, 2010), 38-39.

**Figure 16**
"Electric Chair" Scene, *Scottsboro Boys,* 2010[313]

[313] "Scenes from 'The Scottsboro Boys,'" *Center Theatre Group YouTube*, accessed April 29, 2020, https://www.youtube.com/watch?v=SZltnLDJ2xU.

Shows such as *The Scottsboro Boys* and *Assassins*—discussed briefly in the introduction—serve as dutiful examples of how contemporary U.S. theatre has turned execution drama on its head. Critiques of the death penalty in the U.S., execution itself, or capital punishment writ large are not merely attempts to mirror real-life executions, but are rather complex investigations into the who, what, where, when, and why of people getting condemned in the United States. Between my opening discussion of *Assassins* and the conclusion, however, this dissertation has discussed, researched, and debated the intricate and dark history of execution drama in this country in an effort to reveal how musicals such as these actually exist within a genealogy of theatre in the U.S. that make such complex critique possible.

In chapter one, the introduction, I laid out the ways in which theatre and performance studies have overwhelmingly relied upon Foucault's *Discipline and Punish* as a means to explore how theatrical representations of the condemned function. These investigations were limited by their reliance on *Discipline and Punish* as they did not fully understand some of the more complex terms that Foucault pulled upon in the work and the deeper histories that he references, such as liberalism, the security/freedom paradigm, the performance of power, biopolitics, and more. In order to more fully research the U.S.'s theatrical representations of execution, its relationship to the Cruel and Unusual Punishment Clause, and the real-life executions themselves, I argued that a more in-depth examination of Foucault's body of work was necessary in order to understand the complex nature of liberalism's entanglement with the death penalty, citizen-making, and more.

From there, I turned to Foucault's decade-long lecture series published after *Discipline and Punish* and the scholarship that draws upon it to discuss theatre, capital punishment, and liberalism. I parsed out how some of Foucault's account regarding the history of liberalism and

capital punishment was specific to France, whether in terms of the Reign of Terror or France's own abolishment of the death penalty in 1981. I additionally identified the ways in which his history diverged from that of the U.S., such as through the history of the Eighth Amendment in the Bill of Rights and the ratification of the Fourteenth Amendment over one hundred years later. Moreover, I argued that liberalism relies upon the existence of the security/freedom paradigm in order to intervene upon its given citizens, particularly citizens in the U.S., particularly in regard to constructions of danger.

From there, I spent chapter two researching the execution of Major John André in colonial America in 1780 and into two re-stagings of the execution at the turn of the eighteenth century with William Dunlap's *André* (1798) and its re-write, *The Glory of Columbia* (1803). By first exploring the debate surrounding Major John André's execution, I contended that the U.S. government during the American Revolution struggled to institute liberalism in the new-found country. This struggle was uniquely revealed through the debate of how to hang André, via the gallows or by firing squad. To choose a method was to choose a method's history and reputation, a vital choice when attempting to establish a firm liberal footing, yet a choice that revealed the unstable ground on which the founding fathers walked.

While liberalism was a key concept in the formation of the country and a driving force in the execution of André, how actual citizens engaged with the concept and how the theatre embraced it turned out to be wholly separate. In the second half of the chapter, I explored how the U.S. theatre struggled with liberalism and concepts of Americanness in its earliest days through an in-depth examination of Dunlap's two plays. As Dunlap revisited the André story twenty years after his real-life execution, audiences were resistant to sentiments that seemed sympathetic to the British general and held in overwhelming favor those that reinforce the myths

of founding fathers, in particular, George Washington. By triangulating the three performances of a singular condemned man, this chapter offered new insights into a canonized work and its lesser-known re-write by establishing how fundamental capital punishment politics were to the formation of American identity both on and off the early U.S. stage.

Chapter three fast-forwarded to the mid-nineteenth century to explore how melodrama pre- and post-Civil War played a role in constructing liberal notions of civility. I began with two canonical melodramas—George Aiken's *Uncle Tom's Cabin* (1852) and Dion Boucicault's *The Octoroon* (1859)—and interrogated how each play used spectacular suffering in order to achieve certain audience responses. In particular, I articulated how sentimentalist melodrama in U.S. in the mid-nineteenth century sought to further the Abolitionist Movement through onstage suffering and read these onstage tropes through Foucault's understanding of nineteenth century liberalism. I argued, however, that the benefits of such representations simultaneously built constructions of danger brought forth by the punishment of evil, villainous characters. When read alongside Foucault, such representations clearly created inroads for liberal governance. With the Civil War and the ending of formal slavery practice in the U.S., however, the stakes of such representations changed. Still, when theatre returned following the war, melodrama continued with much of the same content and form. The chapter, by looking at Boucicault's *Belle Lamar* (1874), maintained that the genre failed to change in the wake of so much political and cultural upheaval.

With chapter four, I delved into three electrocution dramas on Broadway in the late-1920s and early-1930s that staged those who were about to be executed: Sophie Treadwell's *Machinal* (1928), John Wexley's *The Last Mile* (1929), and Elliott Lester's *Two Seconds* (1931). Highly influenced by the death and destruction witnessed in World War I, the three works reveal

the multiplicity of narratives existing on the U.S. stage by the twentieth century. While Treadwell and Wexley deployed Expressionism to actively critique different parts of the criminal justice system and liberalism during what Foucault termed the crisis of liberalism, Lester merely continued melodrama's dangerous constructions. This chapter thus argued that a new era of theatre clearly emerged by the time that Treadwell and Wexley's plays hit Broadway, an era characterized by theatre willing and able to openly critique the politics and order of the country and world—in this instance, capital punishment politics. Those critiques existed, however, alongside complex and dangerously subversive, supportive representations of capital punishment such as Lester's *Two Seconds.*

I questioned in the introduction the role the theatre played in developing and/or critiquing the Cruel and Unusual Punishment Clause. The title of this dissertation is (re)producing capital punishment on the U.S. stage. For the first part of this country's history, theatre artists produced capital punishment on stage, but often as a means to discuss, debate, and critique when and in which instances the government levied it. With early American theatre and melodrama, the plays and genres that were discussed within these chapters pushed back on the very hegemonies necessary for the maintenance of capital punishment in the U.S. Although the critiques in plays such as *Machinal* are more clear and have such a long legacy in American theatre, they truly build upon a complex genealogy of more than 150 years of artists working to critique the system and inquire about the methods and means by which capital punishment is levied.

**THE FUTURE OF THIS PROJECT**

This genealogy of execution drama is only part way there, however. More work needs to be done. This dissertation is only the beginning of what I imagine to be a longer, more in-depth

project that could expand into two different directions as it expands into the twentieth and twenty-first centuries. For the first envisioning, I plan on investigating World War II, neo-liberalism, and the age of constant wars that arises out of neo-liberalism, according to Foucault. During the Crisis of Liberalism, the U.S. and other countries implemented fail-safe welfare measures during the global Great Depression. The National Socialist party rose to power in the Germany as a means to help the struggling country. World War II revealed the holes in liberal societies and flushed clear the security/freedom paradigm. By the 1960's, "the crisis manifests itself in a number of re-evaluations, re-appraisals, and new projects in the art of government which were formulated immediately before and after the war in Germany, and which are presently being formulated in America."[314] The emergent governmentality that won out was neo-liberalism. Unlike liberalism, neo-liberalism "should not be identified as laissez-faire, but rather with permanent vigilance, activity, and intervention."[315] Foucault, writing from the late 1970s, demarcated numerous formations of neo-liberalism, including that of Germany and France. Most helpful to my own research, however, is how he delves into American neo-liberalism, which Foucault marks as a return to *homo economicus*, a man wholly defined by his ability to exist in the economic system, both producer and consumer.

Biopower's emergence specifically coincides with the incorporation of liberalism into the economic and political systems of Western societies at the tail end of the 18th century. Foucault swiftly defines biopower in *Security, Territory, and Population* as, "the set of mechanisms through which the basic biological features of the human species became the object of a political strategy, of a general strategy of power, or, in other words, how, starting from the eighteenth

[314] Foucault, *Birth of Biopolitics,* 66.

[315] Ibid., 132.

century, modern Western societies took on board the fundamental biological fact that human beings are a species."[316] Biopower is thus the control of populations, not individuals. With the emergence of biopower, great focus is placed on "human life processes," or rather processes the control the biased development of the human species. Biopower allows human beings to be made into controllable subjects through the process of subjection.[317] Biopolitics in the American neo-liberal society are thus concerned with processes that creating populations of producers and consumers. Prisons become focused on reforming the worker. Medical advancements focus on prolonging the life and stamina of the worker. I plan on delving into how biopower in the neoliberal era functions in relation to capital punishment. I seek to continue to expand upon *Discipline and Punish,* where Foucault argues that punishment is now focused on the soul and understand how capital punishment is rationalized in a neoliberal governmentality driven by *homo economicus.* Moreover, I seek to explore how the theatre grapples with this transition and how theatre artists continue to conceptualize themselves alongside such politics.

With the Great Depression and World War II in the immediate cultural past, reorganizations of governmentality were happening globally. This reorganization involved how the emergent neoliberal biopolitics regarded capital punishment, and such considerations were unstable until 1976. In the U.S. specifically, the attitudes toward this reorganization can be tracked through theatrical stagings of executions, as numerous theatre artists sought to investigate the place of execution in a post-war society. In a future iteration of this work, I seek

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[316] Foucault, *Security, Territory, and Population,* 1.

[317] Foucault, *History of Sexuality: Volume II,* 27. In the longer explication of my theory and methodology, I plan on delving deeper in "mode of subjection" as discussed by Foucault. He defines it as "The way in which the individual establishes his relation to the rule and recognizes himself as obliged to put it into practice." I also plan on explore how this relates to Althusserian conceptions of subjectification and Marx ideas of fetishism.

to explore a group of plays—Fryn Jesse and Harold Harwood's *A Pin to See the Peepshow* (1951), Megan Terry's *The People vs. Ranchman* (1967), and William Inge's *The Disposal* (1972)—that all stage executions and yet drastically differ in their opinions towards capital punishment. A critical investigation of these works will hopefully yield new insights into theatre's role in reshaping these ideas and identities.[318]

From there, I want to turn to the very works that have found their way into this dissertation. *Assassins* (1990), *Scottsboro Boys* (2010), and, in addition, *Welcome to the Murder House* (2018) all have two things in common.[319] First, they are all musicals. Second, they all stage real-life executions, many of which have already been discussed in the preceding chapters. Stephen Sondheim's *Assassins* stages the hanging of Charles J. Guiteau, the assassin of President James A. Garfield in 1881, through a Brecht-inspired campy ballad of his last words. In the Kander and Ebb song "Electric Chair," the Scottsboro Nine—circa 1931—are threatened with

[318] A large body of critical work surrounds William Inge. *The Disposal,* however, is often considered one of his failed plays. The only actively published version of the text appears in *Somewhere in America — Six One-Act Plays* (2016). *The Disposal* has minimal treatment in the numerous works that look at Inge from various angles, from biographies to critical analyses of gender representation across his plays. Such works include Ralph F. Voss' *A Life of William Inge: The Strains of Triumph* (1989), Jeff Johnson's *William Inge and the Subversion of Gender: Rewriting Stereotypes in the Plays, Novels, and Screenplays* (2015), and Richard M. Leeson's *William Inge: A Research and Production Sourcebook* (1994).

[319] Although many of Sondheim's musicals have received critical acclaim and much scholarly focus, *Assassins* is the exception. Martin Gottfried's *Sondheim* (1993) discusses the work for a few pages, mostly positioning it as Sondheim's failed work. Robert Gordon's *The Oxford Handbook of Sondheim Studies* (2014) discusses the failure of the original production rather briefly. He instead focuses on hailing the political dimensions of the work, looking at its overall resonance in 1991 and during its 2004 revival. The execution scene, however, only receives one mention, when Gordon references the lack of dancing in the musical. In Robert L. McLaughlin's *Stephen Sondheim and the Reinvention of the American Musical* (2016), the play only receives an obligatory summary. From there, *Assassins* is treated in scholarship for its dark tone. Journal articles such as "*Assassins, Oklahoma!,* and the 'shifting fringe of dark around the camp-fire'," and "Psychopathic Characters on the Stage of Stephen Sondheim" come to the work from unique angles, but often fail to recognize the deep commentary on American political systems happening within the work.

the thought of the electric chair and contemplate their death in a minstrelsy dance. *Welcome to the Murder House* uses the variety show format to help five death-row inmates stage a play during their last night of life, where they discuss the life of William Kemmler, the man who invented the electric chair. All three works deploy distinctly historical theatrical forms to comment on contemporary death penalty politics and historical moments that have informed the current state of capital punishment. All three musicals are thus fertile ground with which to explore how contemporary theatre artists grapple with, upheave, and/or submit to the maintenance of capital punishment in the U.S. during the current state of neoliberal governmentality.

The other future of this project lies in developing the theory of affective justice as it relates to the melodramatic form and as it finds root in the U.S.'s rhetoric surrounding executions, which I briefly touched upon the previous chapter. The rhetoric, however, does not end with the media, but rather influences formal policy change in the U.S. In the 1991 Supreme Court Case, *Payne v. Tennessee,* the Supreme Court looked at the case of Pervis Payne, who was convicted of murder and sentenced to death under a Tennessee law that allowed victim impact statements to be read in court during the sentencing phase alongside character witnesses benefiting the defendant. [320] Payne's post-conviction lawyers argued that such statements violated the Eighth Amendment of the U.S. Constitution, specifically the defendant's right to a fair trial and sentencing. Justice William H. Rehnquist delivered the opinion, deeming victim-impact statements admissible in court. Justice Rehnquist wrote, "In fact, assessment of a harm caused by a defendant has long been an important factor in determining the appropriate

[320] "Payne v. Tennessee, 501 U.S. 808 (1991)," *Justia,* accessed December 10, 2018, https://supreme.justia.com/cases/federal/us/501/808/.

punishment for the crime and victim-impact evidence is simply another method of informing the sentencing authority about such harm."[321] This first part of Rehnquist's opinion seems to focus on assessing the crime itself and what Foucault calls this the "What have you done?" question.[322] Justice Rehnquist seemingly rationalizes the inclusion of the victim-impact statements as a way to access the effects of the defendant's actions.

His focus, however, shifts. Rehnquist writes, "Thus, a state may properly conclude that for the jury to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before that the sentencing phase victim-impact evidence."[323] The Justice now identifies that the victim-impact statements should be included within capital punishment sentencing in order to determine the "moral culpability" of a defendant's actions. Thus, the statements seek to also access the causal nature of a defendant's actions and no longer simply look at its effects.

This immediate shift in his opinion moves from "What have you done," to "Who are you?"[324] According to Foucault, "the jurisdictional function of the penal system [is] being transformed, or doubled, or possibly undermined, by the question of veridiction."[325] In this moment, along with other major Supreme Court decisions regarding the death penalty, the penal system of the United States is transforming the way in which the state can find someone culpable for their actions through the inclusion of victim-impact statements. For Foucault, Rehnquist's

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[321] Ibid.

[322] Foucault, *The Birth of Biopolitics,* 34.

[323] "Payne v. Tennessee," *Justia.*

[324] Foucault, *The Birth of Biopolitics,* 34.

[325] Ibid., 34-35.

opinion reveals a shift in the veridiction of moral culpability, and "[brings] to light the conditions that had to be met for it to be possible to hold a discourse on…" blameworthiness and thus capital punishment.[326]

The incorporation of victim-impact statements in capital punishment sentencing hearings, however, also reflects the government as a "phenomenal republic of interests":

> It can only exert a hold. It is only legitimate, founded in law and reason, to intervene, insofar as interest, or interests, the interplay of interests, make a particular individual, thing, good, wealth, or process of interest for individuals, or for the set of individuals, or for the interest of a given individual faced with the interest of all, etcetera. Government is only interested in interests.[327]

This has long been reflected in rhetoric such as "We the People," "In the interest of the people," or Trump's more recent, "…the security of our nation and the safety of every single American." We similarly see this affirmation of interests, specifically victim interests, reflected in Rehnquist's opinion. Foucault, however, calls out the focus on "injured party's interests," writing, "Punishment appeared as having to be calculated in terms of the injured party's interested, in terms of redress for damages, etcetera. Punishment will be rooted only in the play of the interests of others, of the family circle, of society, and so on…."[328] This "thin veil" placed on the interests of the injured party, or the injured party's family, only seeks to rationalize the level to which the defendant is punished. This is the core of affective justice: as the Court finds that juries should weigh victim-impact statements equally in the determination of punishment,

[326] Ibid., 36.

[327] Ibid., 45.

[328] Ibid., 46.

they are essentially relieving themselves from the burden of assessment and placing it in the hands of the "interests of people."

## THE FUTURE OF THE U.S. DEATH PENALTY

Before I end this historical investigation, I would like to address my readers. It does not take a genius to see that I disagree with the death penalty in historical and/or contemporary contexts within the U.S. or abroad. I thank my readers for working through this narrative, even as some may have disagreed about some of my more political assertation made surrounding the relationship between society and contemporary death penalty politics. I encourage my readers, however, to consider how they felt as I described the real-life executions of André, Ruth Snyder, and Guiteau—or even those of fictious characters. What feelings were aroused? Was justice truly achieved? Are these technologies of killing effective? Can anyone truly say that these mechanisms of killing are painless? Were the interests of you, "the people," truly represented? If not, please do something about it.

Separate from how people within their own time reflected on these executions, there is a resounding consensus today that these men and women were treated in hostile and/or cruel ways, either in their trials or in their methods of execution. Why, then, can we look back and understand such issues—champion the courageous efforts of men and women executed and yet continue to execute. Often, the refuting argument revolves around the ways in which the death penalty is levied in contemporary society. Today, we have DNA. Today, we only execute the worst of the worst. Although I challenge these two assertions, I must save those arguments for another day. My specific interests in these moments revolve around time. How long until we recognize our own society's wrong doings? How long until we see a method of execution to be

too cruel? How long until we champion a person that we once condemned? As the saying goes, hindsight is 20/20; however, when the stakes involve actual peoples' lives, we should bring these issues into focus as quickly as possible.

As I write, 1,941 men and women are currently awaiting execution in the U.S. Yes, many of them are guilty of atrocious crimes, crimes I do not condone. In many of the cases, however, there are issues of systematic hostility towards the defendants that make me question the accuracy of guilt: hostility towards their race, hostility towards their perceived crime, hostility towards gender, etc. These issues culminate in a system not built to execute. As I pointed out at the beginning of this work, its flaws are too great to be willfully killing. 1,941 men and women are currently awaiting to be killed. Many may not agree with their perceived crimes; many may not agree with my politics, but if even 25% of those cases are wrong—which is a strong underestimate—then 500 people will be killed for no reason.

So now I use affect—maybe even affective justice—but for the other side. I plead to you, reader, for even just those five hundred lives that you might even believe for a brief moment to be undeserving of such cruel and unusual punishments. Please think about the destruction that killing causes. Please think about why we choose to kill. Please think about why we are raised, as I was, to champion the death penalty. Please. Actual lives are at stake.

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# VITA
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## CURRENT EMPLOYMENT

Seattle Pacific University
Assistant Professor of Theatre

## EDUCATION

PhD in Theatre History and Theory, University of Washington June, 2020
Dissertation: "Cruel and Unusual Performance: (Re)producing Capital Punishment on the U.S. Stage." Committee: Scott Magelssen (Chair), Catherine Cole, Stefka Mihaylova, Stephen Groening

MA in Theatre Studies, Florida State University 2016
Thesis: "Resolution through Radio: Juvenile Delinquency, Buffalo, and the Federal Theatre Project."

BFA in Theatre Performance 2014
Minor in Political Science

## PUBLICATIONS

### JOURNAL ARTICLES

"(Re)negotiating Democracy and Theatre: Hallie Flanagan Davis's Integration of Antiquity in the Federal Theatre Project." In *Texas Theatre Journal,* 2019

### BOOK CHAPTERS

Scott Magelssen and Shelby Lunderman. "Tactical Slowness: Fomenting a Culture of Mental Health in the Academy." In *Reversing the Cult of Speed in Higher Education,* edited by Jonathan Chambers and Stephanie Gearhart. Routledge, 2019.

Elizabeth A. Osborne and Shelby Lunderman. "This is the Dawning of the Age of the Online Course: Reimagining Introduction to Theatre." In *New Directions in Teaching Theatre Arts,* edited by Anne Fliotsos and Gail Medford. Palgrave Macmillan, 2018.

### BOOK REVIEWS

By Cecelia Moore. *The Federal Theatre Project in the American South: The Carolina Playmakers and the Quest for American Drama.* Texas Theatre Journal, 2018

## TEACHING EXPERIENCE

### INSTRUCTOR OF RECORD

Theatre 4913 : History of the Theatre II — Spring 2020
Lecturer, 1700CE-Present
Seattle Pacific University

Drama 101: Introduction to Theatre — Spring 2020
Lecturer, 200 students
University of Washington

Theatre 2450: Analyzing and Interpreting Theatre — Autumn 2019
Play Analysis Course for Theatre Majors
Seattle Pacific University

Drama 201: Plays and Styles — Spring 2019--Winter 2020
Play Analysis Course for Drama Majors
University of Washington

Drama 103: Theatre Appreciation (Online) — Spring 2019-Winter 2020
Introductory Theatre Course for Non-Majors
University of Washington

Humanities 498: Summer Institute in Arts & Humanities — Summer 2018
Co-Instructor, Interdisciplinary Course on Dark Histories of Seattle
University of Washington

### TEACHING ASSISTANT

Drama 302: Critical Analysis of Theatre — Autumn 2019
Reader/Grader for Critical Theory
University of Washington

Drama 101: Introduction to Drama — Autumn 2016-Autumn 2017
Quiz Section Instructor for Non-Majors
University of Washington

THE314: World Theatre History II — Spring 2016
Large Lecture Teaching Assistant for Majors
Florida State University

THE2000: Introduction to Theatre for Non-Majors (Online Course) — Fall 2015
Online Section Moderator/Grader for Non-Majors
Florida State University

THE2000: Introduction to Theatre for Non-Majors (Hybrid Course) — Fall 2014
Quiz Section Instructor for Non-Majors
Florida State University

## APPLIED THEATRE TEACHING

BRAVE: Substance Abuse Education for Women — Summer 2016
Course Instructor
Travis County Jail, Texas

Career Development Through Simulation — Summer 2015
Course Instructor
Wakulla State Correctional Facility, Florida

Literacy in Life: Developing Tools Through Simulation — Summer 2015
Course Instructor
Wakulla State Correctional Facility, Florida

## CONFERENCE PRESENTATIONS

"Reconceptualizing the Condemned: The Rejection of the Melodramatic Narrative in Early 20th Century Electric Chair Dramas." Mid-America Theatre Conference. Chicago, Illinois. (March 5-8, 2020).

"The 'Mixed Assembly' of William Dunlap's *André*: Navigating Sentiments Towards Execution in the "Earliest American Tragedy." Pre-1950 Publics Working Group, American Society for Theatre Research. Arlington, Virginia. November 7-10, 2019.

"Embodying BRAVE: Toward a Theatrical Methodology in Prison Education." Mid-America Theatre Conference. Cleveland, Ohio. March 7-10, 2019.

"The Strike of Disenfranchised and Disparate Crowds: The Nationwide Prisoner Strike and the Failed Formation of a Performative Commons." Working Group, American Society for Theatre Research FORUM. San Diego, California. November 15-18, 2018.

"The Incarceration of Language: Xhosa and the Performance of Race in South Africa's *Ubuze Bam*." Mid-America Theatre Conference. Milwaukee, Wisconsin. March 15-18, 2018.

"Power Perspective, and Role-Play: Mock Interviews with Inmates." Mid-America Theatre Conference. Milwaukee, Wisconsin. March 15-18, 2018.

"The Nature of *Orca Encounters*: SeaWorld Post-*Blackfish*." Working Group, American Society for Theatre Research. Atlanta, Georgia. November 16-19, 2017.

"The Last 'Last Meal': Reexamining Execution and the Performance of Power." Mid-America Theatre Conference. Houston, Texas. March 16-19, 2017.

Elizabeth A. Osborne and Shelby Lunderman. "This is the Dawning of the Age of the Online Course: Process, Practice, & Pageantry in Introduction to Theatre." Mid-America Theatre Conference. Minneapolis, Minnesota. March 17-20, 2016.

"'A medium for informing persons:' Kamishibai and Land Reform in Allied Occupied Japan." Mid-America Theatre Conference. Cleveland, Ohio, March 6-9, 2014.

## SERVICE

### SERVICE TO THE PROFESSION

Graduate Student Liaison 2018-2020
Mid-America Theatre Conference (MATC)

Excellence in Editing Award Committee Member 2015-2019
Association for Theatre in Higher Education (ATHE)

Southern Illinois University Press Exhibition Booth 2018
American Society for Theatre Research (ASTR)

Graduate Student Conference Assistant 2015-2016
Mid-America Theatre Conference (MATC)

### SERVICE TO THE INSTITUTION

Season Selection Committee 2019-2020
University of Washington, School of Drama

Mentor for Undergraduate McNair Scholars' Research Experience 2019
Mariela Galvan, "Parallels in the Detainment of People of Color in the US: From Japanese Incarceration to Immigration Detention Centers"

Mentor for Mary Gates Scholar 2019
Min Su Kim, "The Impact of the Media's Rhetoric"

Instructor for Residency Workshop for Graduate Students 2018, 2019
University of Washington, School of Drama

Panel Chair for "Mental Health in Theatre" Workshop 2018
University of Washington, School of Drama

Conference Organizer for the Routledge Companion to Theatre and Performance 2017
Historiography Chamber Conference and Round Table in Seattle

## AWARDS

School of Drama Scholarship, University of Washington 2019
Scholarship given for merit and leadership within the School of Drama

Undergraduate Research Mentor Award – Nominee 2019
Student-nominated awards for excellence in mentorship

*Celebrate: UW Women* 2019
Identified as an outstanding woman-identified member of the UW community

Simpson Center for the Humanities, University of Washington 2018
Research funding awarded in conjunction with Summer Institute in Arts & Humanities

Michael Quinn Award, University of Washington 2017
Annual award for the best academic essay by a doctoral student in the School of Drama

Undergraduate Emerging Scholar, Mid-America Theatre Conference (MATC) 2014

## DRAMATURGICAL EXPERIENCE

*Rutherford and Sons,* University of Washington 2019

*The Great Inconvenience,* Annex Theatre 2018

*Hedda Gabler,* Florida State University 2016

*One Third of a Nation,* Baylor University 2014

*Arabian Nights,* Baylor University 2014
Pre-Production Dramaturgy

*Mad Forest,* Baylor University 2013
Pre-Production Dramaturgy

## PROFESSIONAL AFFILIATIONS

ASTR, American Society for Theatre Research.

ATHE, Association for Theatre in Higher Education.

MATC, Mid-America Theatre Conference.