

THE CRUTCH OF RITUAL: SOCIAL CONTROL IN THE MODERN

AMERICAN CAPITAL PUNISHMENT SYSTEM

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Contemporary American capital punishment contains many processual elements, such as the prisoner's last meal and the cleansing of his body immediately before death, that serve no concrete, practical purpose but share a nature with ritual practices. In this project, I utilize a hermeneutic phenomenological lens to identify and list these ritual elements. I also use concepts drawn from the structural functionalist tradition to both analyze the specific purposes the elements serve within individual parts of the death penalty and to discuss the overarching result of the inclusion of these elements within the process as a whole. Ultimately, I find that the ritual elements present in the capital punishment process serve a social control purpose, insulating and reinforcing the death penalty as a whole. Ritual works to do this by controlling the behavior and image of the prisoner and emotionally soothing both participants of the process and the public at large.

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CHAPTER 1

INTRODUCTION

No matter how you think you feel about capital punishment, no matter how you imagine you would face the giving or taking of life, you would meet the reality of it by holding tightly to the crutch of ritual.

Byron Eshelman
Former death row chaplain
San Quentin State Prison

The United States capital punishment system, which has served as a central fixture of America's beloved 'law and order' criminal justice schema since our nation's founding, is a strange creature. Despite the fact that a clear majority of voters have indicated support for an alternative punishment for homicide, 30 states still have operating death penalty statutes, and 25 American citizens were executed by their government last year (Death Penalty Information Center, 2018). This contradiction is indicative of the death penalty system's deeply paradoxical nature, which itself points to the existence of ritualism within the system. Indeed, Conquergood (2002) notes "that a key to the efficacy of rituals is their capacity to embrace paradox, to gloss contradictions" (p. 342).

We understand that ritual still functions in some parts of contemporary American life—common social practices around birth, death, and other significant life events such as rites of passage clearly indicate this. However, the possibility of ritual operating within our more formalized institutions, such as the criminal justice system, can be counterintuitive against the backdrop of our hyperrational and highly professionalized society. Weberian notions of secularization and bureaucratization have certainly taken hold in shaping the ways that our government carries out its necessary administrative processes (Lynch, Omdal, & Cruise, 1997;

Mayrl, 2015), making those processes seem incompatible with ritual's deep mysticism and ties to ancient religion.

Criminal justice in particular has become highly concerned with efficiency and consistency, as evidenced by the 20th century professionalism movements in policing and corrections. Indeed, "the long term-trend... has been to minimize explicit appeal to emotions and to refashion punishment as a technical and rational enterprise" (Kohm, 2009, p. 190). Ritual would seem to have no place in such an environment. However, a thorough examination of criminal justice processes such as criminal trials (Leader, 2018; Tait, 2001), restorative justice procedures (Bender & Armour, 2007; Bennett, 2006), juvenile transfers (Titus, 2005), and most robustly capital punishment, reveals the undeniable presence of ritual within the system. This fact is either incidental or, alternatively, means that ritual has been actively included (or at least allowed to remain) in criminal justice processes for a particular purpose. Consideration of what classical ritual scholarship posits as the meaning and function of ritual lends weight to the latter.

Many theorists who discuss the meaning of ritual, Durkheim most notably, emphasize its power as a mechanism of social control (Bell, 1992; Douglas, 1970; Durkheim, 1933; Gluckman, 1963; Radcliffe-Brown, 1948). These authors argue that in certain societies, processes and institutions related to important social goals, which in turn promote the society's survival, are consciously placed within mythicized ritual frameworks. Infusing these processes with a "mystical ethos" allows the state to "not merely promote acceptance of [them] but also to inculcate deep-seated affective responses to them" (Bell, 1992, p. 171). Put another way, states choose specific methods of addressing particular social problems (such as crime). When they then select expedient mythology-based values related to these processes and concretize them through

ritual, the citizens who come into contact with the ritual experience something beyond dispassionate acceptance; their emotions become deeply linked to the state's processes and strong consensus is formed. The public stands in agreement with each other and the state that the state's chosen method is the correct one. This consensus serves to foster social stability and maintain the political status quo, both outcomes being helpful for the persistence of a society as a whole.

Therefore, ritual's true power lies in its ability to sway the emotions of members of a group. Examining the criminal justice system, it is clear that it is permeated by emotion on all sides, making it fertile ground for ritual to take effect (Freiberg, 2001). Both direct and indirect exposure to crime events naturally elicit feelings of shock, horror, fear, sympathy, and defensiveness (among other emotions) in a populace, and these emotions often then affect the formal policy that is created or changed as a result (Karstedt, 2002). This is particularly true in the United States given our highly democratic system of governance. Public opinion is infamously connected with American social policy since our system often encourages politicians to take decision-making cues directly from their constituencies (Dzur & Mirchandani, 2007; Johnson, 2009). As public opinion of criminal justice issues is naturally emotion-laden, it becomes possible, and indeed important, for these emotions to be harnessed and shaped in service of whatever is determined to be the social good. According to ritologists, ritual is a powerful tool by which to accomplish this.

The institution of capital punishment is particularly suited to this kind of influence. Death penalty cases invariably involve heinous crimes and high levels of media coverage, both of which are intensely emotionally provocative. After a death-eligible offense is committed, "the

community shares in the horror of the crime, the fear while the perpetrator is at large, the agony of the victims' family and friends, the outrage at the accused, and the desire to see justice done—and swiftly” (Bandes, 2008, p. 490). Ritualistic elements of the death penalty process intensify and direct these emotions by othering the offender (Bienen, 2008; Conquergood, 2002; Osofsky, Bandura, & Zimbardo, 2005) and reassuring both the public and the participants in the system itself that what occurs during capital punishment is the proper manner by which to address violent crime (Crider, 2014; Damle, 2013; Kuntz, 1997). Both of these outcomes serve as means by which to create consensus over state policy, insulating it as part of a larger attempt to generate stability in the social order.

This project will utilize multiple theoretical frameworks, specifically hermeneutic phenomenology—which focuses on interpreting the *meaning* of particular aspects of the lived experience (often through symbolism and theme), and structural functionalism—which focuses on the processes by which societies survive over time, to identify the ritual aspects of the modern American capital punishment process from beginning to end and to analyze their function as a method of social control.

CHAPTER 2

REVIEW OF THE LITERATURE

Defining Ritual and Myth

Similar to many other social science concepts, there is considerable debate within the ritology community on what specifically defines ritual. In a very general sense, the idea can be conceptualized as a prescribed set of formal actions orchestrated at a meaningful place and time (Rappaport, 1999). It is more fully understood within a social context as a method of communication that transmits meaning through a group using the language of symbols (Bell, 1992; Douglas, 1970). However, it remains difficult to truly grasp the manner in which ritual is discussed by classical ritual theorists without mentioning the related idea of myth.

Myth is a “language made up of symbols whose referent is the sacred, and whose meanings are concerned with the ultimate or existential issues of human life and destiny” (Levy, 2001, p. 726). Myth’s naturalistic and intuitive symbology makes it deeply persuasive on a less-than-conscious level, and it imbues ritual with its spiritual meaning. Ritual materializes the themes embedded within mythology (Davidson, 2011; Smith, 1996), becoming more than a simple list of instructions and transforming into the vessel by which myth is transmitted to an audience.

Historical and Contemporary Perspectives on Myth and Ritual

Across ritual scholarship, the specific nature of the relationship between myth and ritual is under debate. As discussed by Robert Segal (1980) in his exploration of the myth-ritualist framework, generally it is believed by classical thinkers that one or the other holds primacy, providing the other with its form and ultimate meaning.

Classical myth-centric scholars believe that myths, shared stories that discuss facets of human life in terms of ancient and magical events, serve as a fundamental social force, with ritual following as a natural (but less crucial) application. This perspective is illustrated particularly well in the work of Bronislaw Malinowski, for whom myth serves primarily a justificatory function. Malinowski posits that by linking certain social processes to concepts of antiquity and holiness, myth justifies the existence of these processes as well as the populace's belief in and acceptance of them. Therefore, the ritual processes that myths inspire carry less weight than the myths themselves, as myth holds both ritual's original meaning and the ultimate social power of the myth-ritual unit (Malinowski, 1948; Segal, 1980). A similar view is espoused by Edward Burnett Tylor in his discussion of primitive culture, as he clearly asserts that myth itself holds deep significance without needing to be outwardly expressed by ritual. For Tylor, myth's power to explain life and the world is a sufficiently important function and indeed an end in itself (Segal, 1980; Tylor, 1913).

Other classical scholars who discuss ritual, such as William Robertson Smith, Alfred Radcliffe-Brown, James George Frazer, and Emile Durkheim, hold that ritual is instead primary over myth. Frazer and Robertson Smith both directly assert that this primacy is related to temporal order. Frazer argues that ritual development is part of the natural process by which religions evolve in human populations; Robertson Smith takes a slightly more complex approach, positing that myth develops out of a conscious effort by human beings to explain and rationalize the actions they take in ritual after the meaning has been forgotten (Segal, 1980; Smith, 1889).

For Radcliffe-Brown and Durkheim, ritual's primacy lies more in its significance than in the way in which it evolved. Similar to the myth-centric thinkers, Radcliffe-Brown acknowledges that

myths justify social activities, but he is explicit in stating that ritual is more important because it is what functionally affects the emotions the populace holds toward those activities (Radcliffe-Brown, 1952). Ultimately, he believes that myth and ritual serve similar functions, but ritual is the crucially affective piece of the puzzle (Segal, 1980).

Durkheim holds an even stronger view. As explained by Segal (1980), “for [Durkheim] the heart of religion is not the belief in god but the experience of god, and that experience occurs whenever the members of society amass to perform a ritual” (p. 177). Myth, which corresponds to ‘belief’ as ritual corresponds to ‘experience’, is not altogether irrelevant for Durkheim, as he views it similarly to Robertson Smith. However, Durkheim’s heavy emphasis on and robust treatment of the centrality and power of ritual places him firmly in the ritual-centric camp (Segal, 1980).

Durkheim discusses the meaning and function of ritual at length in his *Elementary Forms of the Religious Life*. In this work we find a conceptualization of ritual as social control, a model referred to as the ‘social solidarity thesis’. The social solidarity thesis forms a part of Durkheim’s larger body of work within the structural functionalist framework, in which he explores the means by which some societies remain stable enough to persist over time while others fall apart. For Durkheim (1915), the key to a group’s survival is maintaining solidarity, either through worldviews and values held in common or through functional interdependence. Applying this idea to ritual, the social solidarity thesis maintains that ritual is a powerful force utilized by group leaders to promote societal consensus on important beliefs and representations of reality, a consensus which then unites the group and allows it to survive (Bell, 1992).

A third camp of ritologists, most notably populated by the neo-Durkheimians Catherine Bell and Mary Douglas, have written more contemporary work focusing almost solely on ritual without discussing myth at length. It is with this third group that this project shares theoretical grounding. In her seminal work *Purity and Danger*, Douglas (1966) presents perspectives compatible with a Durkheimian framework; she places much of her analysis within the structure of social groups, discussing ritual primarily as a method of addressing and rectifying disorder within a community. Interestingly, she notes that much of the disorder needing to be remedied by ritual results from the psychic and emotional confusion present in liminal periods of human life (Douglas, 1966; Dutton, 2006). Douglas asserts the transition from life to death as among the most potent of these liminal states, lending credence to the idea that the capital punishment creates an environment where the presence of ritual is not only possible but necessary.

Catherine Bell (1992), who like Douglas does not focus on myth, presents ritualization as “a way of acting that is designed and orchestrated to distinguish and privilege what is being done in comparison to other, usually more quotidian, activities” (p. 74). Bell asserts that ritual’s trappings, such as special clothing, scripts, or physical spaces, differentiates it from other activities that may resemble it on a surface level. This differentiation is what gives ritual its particular significance and its power to create meaning. However, she throws off the boundaries by which ritual is typically fenced in, rejecting the idea that “formality, fixity, and repetition” (p. 90) are fundamental and necessary qualities in order for an activity to be considered ritual. Instead, these qualities are merely frequently-used strategies for creating a ritual environment. However, with regards to ritual’s function, Bell’s thought is more traditional, with clear evidence of influence from Durkheim.

Echoing Durkheim's social solidarity thesis, Bell describes "the end of ritualization" as "evocation of a consensus on values, symbols, and behavior" (Bell, 1992, p. 110). She also emphasizes the fact that ritual is "designed to do what it does without bringing what it is doing across the threshold of discourse or systematic thinking" (p. 93), reiterating the ritual's connection with emotion rather than with rational thought. Bell, whose primary work *Ritual Theory, Ritual Practice* is "widely recognized as one of the most influential contributions to contemporary discourse" on ritual (Phelan, 2008, p. 145), is a striking example of the fact that the Durkheimian tradition remains a legitimate and influential basis for scholarship on ritual, even to the present.

Ritual in the Contemporary Criminal Justice System and Its Social Control Purpose

Ritual can be found operating within many contemporary criminal justice processes, performing the social functions that both classical and contemporary ritual scholars discuss in their work. For example, many offenders first enter the formal criminal justice system by means of a criminal trial, at which point they find themselves participating in what is already a highly ritualized procedure. According to Durkheim (1933), the accused criminal has not only harmed his individual victim but has committed "an action [that] shocks the common conscience," (p. 81) sending shockwaves through the social group because "everybody is attacked" (p. 102) by a criminal act. The experience of victimization for Durkheim is truly communal. From a Durkheimian standpoint, the rift created as a result of chaotic, lawless action that crime represents must be repaired, as "it is impossible for offenses against the most fundamental collective sentiments to be tolerated without the disintegration of society" (p. 397).

One major tool for repairing the rift caused by crime is the process of ‘othering.’ For Durkheim (1933), offenses against the normative order must be punished in order for the collective moral principles that unite society to be reaffirmed and continue to hold weight. Therefore, formal punitive action must be taken against offenders. Punishment is by necessity harmful to those suffering it, and the prospect of causing harm to a member of society can be naturally uncomfortable both for the state and for the offender’s peers. To overcome this discomfort and emotionally justify the harm done through punishment, it can be psychically helpful to ‘other’ the offender, or discursively reclassify him as ‘no longer one of us.’

The othering process can be clearly observed within the ritualistic environment of the criminal trial. Trials, “communal ritual[s] where a private dispute is taken over by the state and witnessed by a community,” (Leader, 2018, p. 4) take place in the highly formalized setting of the courtroom. The physical and emotional spaces involved are set aside from normal life as trial participants don special garments, perform pre-written scripts, and make symbology-laden statements related to justice, good and evil, and other foundational concepts.

For prosecutors operating within the trial environment, the sole objective is to secure a conviction by convincing jurors that the offender’s behavior deserves forceful, and often harmful, intervention by the state. In order to successfully do so, the natural sympathy that some jurors may feel for the offender (particularly if the defense counsel has done an adequate job discussing extenuating circumstances such as the offender’s difficult upbringing), must be overcome. Utilizing ritual can help the prosecution team accomplish this. Garfinkel (1956) refers to this process, by which the offender’s status is effectively changed from a group member to an outsider in the eyes of those witnessing the trial, as a “degradation ritual.” When the prosecution

presents the ugliness and horror of the offender's crime, a complex human being is effectively degraded into a ritual effigy no longer belonging to the community, giving the jury the emotional freedom to punish him for the larger good of the society. This othering process also fosters psychological solidarity, as those remaining within the social boundaries of society are able to unite against a common enemy (Titus, 2005).

However, according to Garfinkel, the purpose of a trial should be understood not simply in terms of deciding the fate of an individual offender, but instead within a larger context of social control (Leader, 2018). Following Durkheimian logic, the ritual inherent in the trial process is actively commandeered by the prosecution to secure the punishment of the criminal, thereby neutralizing a dangerous threat to the social order and contributing to the survival of the community. Within this ritualized framework, the convicted criminal can be thought of as a sacrificial victim chosen by the community in order to ensure its own continued existence, hearkening back to ancient sacrificial rituals.

Echoes of sacrificial rites are also found within the juvenile transfer process, in which children who commit serious crimes are transferred to adult criminal courts and tried as adult offenders. For the past two centuries, criminal offenses committed by children have been classified and responded to differently than those committed by adults, reflecting the prevailing belief that children lack the same level of culpability for their actions that adults possess. Their lower levels of maturation are believed to render them unable to fully grasp the consequences of their actions, meaning that they do not make truly free moral decisions. Therefore, it has been traditionally considered unjust to punish them with the same levels of harshness and severity as adults are punished (Titus, 2005).

This rationale eventually led to the creation of juvenile courts, where offenders under the age of legal adulthood are typically tried for their crimes. However, in some rare cases, juvenile offenders who commit particularly heinous crimes, or who are close to the age of legal adulthood, are tried in the adult court instead. Juvenile offenders have a more robust set of legal safeguards, such as confidentiality and the option to be treated rather than punished, than do adult offenders, but juveniles tried as adults lose these protections. If a juvenile is tried as an adult and convicted, he or she may even be sentenced to serve time in an adult prison (Titus, 2005).

Titus (2005) draws explicit comparisons between modern juvenile transfers and the sacrificial ceremonies, well-documented in the ancient world, in which communities would ritually murder children in order to placate or appeal to the gods. According to Titus, children were chosen for ritual sacrifice due to their liminality, as they possessed formal membership in society but also had a natural 'otherness'; this combination made them ideal candidates to fill the role of scapegoat. Contemporary juvenile offenders share this paradoxical nature— "when confronted with (innocent) children and (evil) horrific crimes defying conventional categorization, society repositions the accused as an outsider, an 'Other', 'distanced, yet inseparable, from the social order'" (Titus, 2005, p. 123).

As discussed in reference to criminal trials more generally, the othering process allows members of a community to emotionally distance themselves from an offender enough to feel comfortable imposing harsh punishment on him or her. This process is particularly important with regards to juvenile offenders since the cognitive dissonance that punishment inspires will naturally be more powerful when the recipient of said punishment is a child. The resultant public

confusion when a child commits a violent act also adds to the emotional potency of the situation. Confusion generates emotions of threat and fear, making community members feel as if their communities, their families, and even their very selves are under attack. Indeed, reports of elevated rates of violent juvenile crime in the recent past have created “moral panics” necessitating an outlet. Transferring juvenile offenders and punishing them harshly provides this outlet and allows community members to regain the sense that their social order is safe, just as sacrificing a child victim as a scapegoat served the same functions for ancient communities. (Titus, 2005).

Ritual operating within the carceral system can also serve to promote and insulate state power. As discussed by Carrabine (2005), the prison is a place in which social order maintenance is of the utmost importance. In his analysis of why prison riots do (and more importantly, do not) happen, he emphasizes the crucial role of ritual in ensuring social stability within the prison. He argues that the dull, repetitive routines that make up prison life are consciously-designed rituals that inspire an attitude of inevitability and fatalism (a theory he specifically attributes to Durkheim) among the inmate population, thereby typically keeping them from organizing and taking violent action against prison staff. Indeed, “relentless oppression can and does effectively crush challenges to authority” (Carrabine, 2005, p. 905).

Here we observe the prison system, a mechanism of state power, actively insulating itself by means of ritual. Earlier in his argument, during a discussion of legitimacy as potential tool for order creation, Carrabine (2005) cites the social theorist David Beetham (1991), who argues that “all systems of power relations seek legitimation... [and] ‘a given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms* of their

beliefs” (p. 903). Carrabine’s specific application of this logic to prisons reflects a fundamental insecurity inherent in state institutions, particularly when they are carrying out actions that have become controversial or unpopular. They actively seek legitimation from the very populaces they control and must justify themselves to those populaces. As we will see in relation to capital punishment, ritual can be a means by which to accomplish this.

Ritual elements are clear and pervasive within formal punishment schemas, making it easy to draw relevant comparisons. However, ritual operates, though arguably in a more subtle manner, in other areas of criminal justice as well. For example, Bennett (2006) explores the ritual elements of restorative justice processes by likening them to those within prayer. Restorative justice is a relatively new model of responding to crime; it serves as an alternative to sentencing and “emphasizes the importance of the offender making reparation to the victim,” usually through a “face-to-face or indirect mediation between victim and offender” (Bennett, 2006, p. 127). Bennett argues that the elements of ritual present when a religious person offers prayers to their deity are the same as those functioning within the restorative justice process.

In a prayer scenario, as in all ritual environments according to Bennett (2006), the “form of the behaviour” (p. 132) (i.e. kneeling, folding hands in prayer) that the supplicant takes is crucial for the bare minimum performance of the ritual itself. However, it is also expressive of the proper attitude he or she is expected to have (i.e. humility, openness) in order for the ritual to be as effective as possible. Within a restorative justice schema, the same logic applies. The form of behavior, specifically the victim and offender coming together either directly or indirectly to discuss the offense and its impact, is necessary for the bare minimum performance of the act. On a deeper level, this behavioral form of two people coming together to have a meaningful

conversation also points toward the vulnerability, openness, and active listening necessary for the process to have true efficacy (Bennett, 2006).

Bender and Armour (2007) echo Bennett's thesis that restorative justice is heavily ritualistic. In their study on spiritual components within restorative justice, they identified ritual as a major theme. They begin by defining ritual as a method "used to transform the space into an environment like no other place in participants' lives and set the stage for an elevated level of intimacy and understanding not often experienced otherwise" (Bender & Armour, 2007, p. 261), a definition compatible with others discussed so far. They argue that this physical and temporal setting-aside of the restorative justice space is accomplished by the abandonment of both session time limits and the typical conversational patterns that accompany social interactions in normal life.

For restorative justice sessions, other considerations such as "who will speak first in the session, who will accompany the victim and the offender, where people will sit in relation to each other, and how far apart people will sit from one another" (Bender & Armour, 2007, p. 261), are set in advance with great care, reflecting ritual's staged nature and the necessity that the "form of the behaviour" (Bennett, 2006, p. 132) is arranged in a way that gives the ritual its best chance of success. Although neither Bennett nor Bender and Armour directly discuss Durkheimian thought in their work, the goals of restorative justice are consistent with the social solidarity framework. Durkheim was clear that crime presents a threat to the social order that needs to be neutralized, but he did not prescribe a specific penal method for doing so. His emphasis on utilizing ritual to generate consensus would certainly be supported by proponents of restorative

justice, as creation of social harmony in order to support a stronger community is a major tenet of the restorative justice framework.

Deep examination of a variety of criminal justice processes such as criminal trials, juvenile transfers, incarceration, and restorative justice conferences clearly indicates that ritual is operating within the modern criminal justice system, in service of larger social functions. We have seen ritual utilized to ‘other’ both child and adult offenders, thereby reassuring jury members that it is permitted, and indeed appropriate, to sentence them to harsh punishment. We have also seen ritual work to create specific emotional states that reinforce state power in environments where it is threatened or insecure. Finally, we have seen ritual instruct certain modes of thought and behavior that are helpful for obtaining prosocial outcomes.

All in all, we have observed ritual working to smooth over potentially difficult portions of the criminal justice process, thereby perpetuating the status quo by helping to ensure that the methods the state has chosen to address the problem of crime are accepted and followed. According to Durkheim, this attempt at creation of consensus exists, and is crucial, to maintain the existence of a community over time. We will see the same processes at work in the capital punishment system, but to a much more intense degree.

Ritual and Capital Punishment

My proposition that the death penalty process is ritualized for a particular reason echoes assertions famously made in the work of one of the most influential thinkers of the western world—Saint Thomas Aquinas. However, Aquinas gives an alternate explanation, arguing in his *Summa Theologiae* (1912) that the death penalty is permissible in part because it “profits the sinner, if he be converted, unto the expiation of his crime” (II-II, 25, 6, Ad. 2) and allows him to

avoid eternal damnation in the next life. This statement reflects Aquinas' belief in the death penalty's ritualism, as he is acknowledging through it that actions taken in a specific manner at a particular time and place (i.e. taking an offender's life through a legitimized state process) can then have deeply meaningful results (i.e. the salvation of the offender's eternal soul).

Aquinas believes that capital punishment's ritualism, which has the power to lift the earthly process of capital punishment into the realm of the divine, points toward this more spiritual aim rather than the strictly secular, social control-related purpose that I assert in this project. However, these claims are not necessarily at odds with one another. If we are to accept Aquinas' claim that sentencing a violent offender to death can help save his soul, this offender-positive argument can also be coopted by the state to make the death penalty appear more humane and therefore more palatable, which is what I argue that capital punishment's ritual arguments serve to do. In an article on the ritualism of capital punishment, Davidson (2011) asserts the very same fact, that this view "fosters a view of the DP [death penalty] as a good thing for both offender and society... 'That the priest accompanies the condemned person to the portal of eternity is what makes the death penalty bearable'" (p. 236). It is easy to see how this argument could be presented to the public in an effort to garner support for the death penalty. All in all, Aquinas' discussion of the ethics of capital punishment and its ritualism, which is treated here due to its status as one of the more significant pieces of philosophy ever written on the issue, does not provide the stumbling block to my argument that may initially appear to exist.

Moving on, we have seen that ritual is most effective on a subconscious, emotional level. Therefore, in order for ritual to take effect, it is necessary that the processes it is incorporated into engage their participants emotionally. In the examples we have seen from criminal justice,

it was possible for ritual to operationalize because criminal trials, juvenile transfers, incarceration, and restorative justice conferences all present highly emotional situations for all involved, whether those emotions be fear, anger, vengeance, hurt, or a combination of these or others. However, none of these issues are as influenced by emotion as is capital punishment, as highly emotional processes are present both before and after formation of death penalty opinions.

It is a widely accepted fact that support for the death penalty is initially shaped by emotion in most cases (Bohm, Clark, & Aveni, 1990; Bohm & Vogel, 2004; Ellsworth & Ross, 1994; Finckenaue, 1988; Gale, 1984; Gross, 1997; Harris, 1986; Jacoby, 1983; Michel & Cochran, 2011; Vidmar & Ellsworth, 1973; Wilson & Herrnstein, 1998). Vengeance, fear of crime, anger at criminals, the sadness that accompanies loss, and other potent and deeply human emotions push people toward a belief that the perpetrators of the most heinous crimes should be put to death. It is notable that emotion's heavy hand in shaping these opinions means that other, more dispassionately rational considerations like cost and crime control effectiveness are not given the same weight they are with regards to other criminal justice issues such as policing.

The death penalty debate has two very clearly defined and ideologically divided sides, both of which try to sway members of the other using emotionally charged rhetoric. Those in the anti-death penalty camp claim that all life is sacred, and that the government is forbidden to kill its citizens due to Eighth Amendment protections. Those on the other side often distort and dramatize these views, accusing abolitionists of siding with the archetypal evil and guilty offender over the sainted and innocent victim. Here we can already observe mythicized frameworks being constructed and utilized with regards to capital punishment. However, in the post-Furman era,

the abolitionist movement latched onto the argument that the death penalty executes innocent people, giving them ammunition against this accusation and effectively widening their base of support (Berns, 2009).

Similarly emotional views are found in the pro-death penalty camp, as its members hold that capital punishment provides a necessary expressive outlet for moral outrage and provides closure for the families of homicide victims. Abolitionists counter with the innocence problem, as well as by asserting that the system fails to provide sufficient due process and is racially discriminatory. In her research, Berns (2009) ultimately contends that both sides are actively attempting to widen the emotional scopes of their arguments in order to engender as much support as possible.

The nation is clearly hotly divided over the issue of capital punishment. Looking to the data, a 2010 poll cited by the Death Penalty Information Center (DPIC, 2018) found that “a clear majority of voters would choose a punishment other than the death penalty for murder” (p. 4), and one commissioned in 2009, also cited by DPIC (2018), found that “police chiefs ranked the death penalty last among ways to reduce violent crime” (p. 4). However, this issue is controversial not simply on an individual level. American states are moving towards equal division with regards to the death penalty’s legality under state law. 30 states currently authorize its use, while 20 do not (DPIC, 2018). The very existence of capital punishment, a state-chosen method of addressing crime and a major expression of state power, seems tenuous in light of this information; ritual’s power to smooth over areas of anxiety and controversy would seem helpful in addressing this problem.

In summation, the high levels of both emotionality and controversy present in the capital punishment issue make it truly fertile ground for ritual to operate. In the following chapter, I will address the methodology to be used in analysis of capital punishment's ritual elements, conducted to explore their deeper meaning and functionality.

CHAPTER 3

METHODOLOGY

Theoretical Frameworks: Hermeneutic Phenomenology

This study will examine the ritual aspects of the modern American process of capital punishment using concepts from multiple theoretical approaches. The initial decision to focus on elements of ritual within specific parts of the death penalty procedure was first inspired by the hermeneutic phenomenological model, a subset of the larger theoretical framework of phenomenology, which focuses on interpreting the meaning of lived experience. Phenomenology can be understood as “a theoretical point of view advocating the study of individuals’ experiences because human behavior is determined by the phenomena of experience rather than objective, physically described reality that is external to the individual” (Sloan & Bowe, 2014, p. 1292). More simply put, phenomenology is the study of the way that human beings experience phenomena in the world.

The body of thought that would become known as phenomenology was first developed out of German philosophy by Edmund Husserl, in reaction to the prevailing perspective that the pursuit of scientific knowledge depends on objectivity and strict empiricism. Husserl posited instead that the nature of reality is dependent on the manner by which the human consciousness interacts with the world, and that meaning is created in the human mind as a result of this interaction. Husserl’s brand of phenomenology became known as “descriptive phenomenology” (Sloan & Bowe, 2014).

Martin Heidegger, one of Husserl’s students, created a theoretical offshoot to Husserl’s work, which became a separate branch of phenomenological thought known as ‘hermeneutic’ or

'existential' phenomenology and was then further developed by philosophers such as Paul Ricoeur and Michel Foucault. Hermeneutics, the study of interpretation, adds an additional layer to phenomenology through its emphasis on interpreting *meaning*. Taken together, these concepts form the whole of hermeneutic phenomenology, which is unique in its emphasis on the *meaning* of particular aspects of the lived experience.

Hermeneutic phenomenology is used to "reveal aspects of phenomena that are rarely noticed, described or accounted for [and] [t]he intention of hermeneutic researchers is to illuminate essential, yet often forgotten, dimensions of human experience" (Crowther, Ironside, Spence, & Smythe, 2017, p. 827). In practice, hermeneutic phenomenological research often focuses on "understanding the meaning of experience by searching for themes, engaging with the data interpretively" (Sloan & Bowe, 2014, p. 1295).

As discussed, the ritualism found today in formal public processes often operates beneath the surface, so identifying it can be thought of as an exercise within the hermeneutic phenomenological model, particularly since symbolic meaning necessitates the presence of a thoughtful observer in order to be understood. The manner in which phenomena operationalize in the mind of an individual to create meaning is the central focus of hermeneutic phenomenology, and we can observe this process taking place when ritual interplays with human thoughts and emotions to inspire certain thoughts and actions deemed helpful to the social order. We can only claim that ritual's infusion with criminal justice processes creates meaning beyond the concrete functions that those processes perform because ritual interacts with the consciousnesses of its observers to inspire deep emotional responses.

A framework drawing concepts from hermeneutic phenomenology allows for deeper examination of what specific elements of capital punishment signify on a symbolic level, rather than a simple observation of their concrete, logistical functions. However, this study will differ from pure hermeneutic phenomenology in that it will not focus on the subjective impressions of those directly participating in some element of the capital punishment system, as did Markus Shintaro Smith's 2011 doctoral dissertation on the surviving victims of homicide, but will discuss instead the larger social forces that ritual elements of the death penalty serve and reinforce. This particular effort finds its grounding in the structural functionalist model, and more specifically in Durkheim's work within it.

Theoretical Frameworks: Structural Functionalism

Structural functionalism is a sociological framework focused on the processes by which societies survive over time. Structural functionalists conceptualize society as a cohesive system made up of individual parts, or structures, that work together toward the goal of societal maintenance and growth. For functionalists, the continued existence of a community relies on the creation and fostering of consensus among its members (Pope, 1975). This framework was developed in the 19th century, through sociologists such as Durkheim, Comte, and Spencer taking systems theory, originally developed to explain the survival of biological organisms, and applying it instead to human communities. Later thinkers such as Radcliffe-Brown, Malinowski, Parsons, and Merton continued to build the body of structural-functionalist scholarship throughout the twentieth century, and it remains a widely-used sociological method today (Potts and Vella, Dale, & Sipe, 2016).

After identifying the elements of capital punishment that contain ritual using a phenomenological lens, the next step of this study will be to analyze why these elements are permitted to remain in the process, i.e. what functions they serve in contemporary American society. This portion of the study will be heavily dependent on the structural functionalist approach, as I will argue, using a Durkheimian framework, that ritual operative in the death penalty process is ultimately intended to promote social consensus and survival.

In his 1886 doctoral dissertation that would later become *The Division of Labor in Society*, Durkheim (1933) first outlined his ideas that are now associated with the structural functionalist method. He discusses solidarity, that major factor that allows communities to survive, as “coherence” (p. 56) or like-mindedness between people that binds or seals them together. He also divides solidarity into two types—mechanical and organic. Organic solidarity refers to social cohesion based on the functional interdependence of the workforce, and it is therefore less applicable to questions of crime and punishment. However, the concept of mechanical solidarity is much more relevant to these themes.

Mechanical solidarity can be thought of as agreement over basic worldview and moral sentiment; it exists in a society when the “beliefs and sentiments common to average citizens of the same society forms a determinate system” (p. 79), and it is also referred to by Durkheim as “the collective or common conscience” (p. 79). He argues that a strong collective conscience is one important tool that a community relies upon for survival. Durkheim explicitly connects the concept of mechanical solidarity to criminal justice by stating that “an act is criminal when it offends strong and defined states of the collective conscience” (p. 80). Here we see Durkheim’s famous assertion that crime is socially constructed. He then defends the state’s right to punish

by declaring that “wherever a directive power is established, its primary and principal function is to create respects for the beliefs traditions and collective practices; that is, to defend the common conscience against all enemies within and without” (p. 84). In fact, punishment is actively necessary for Durkheim because

crime damages th[e] unanimity which is the source of [the collective conscience’s] authority. If, then when it is committed, the consciences which it offends do not unite themselves to give mutual evidence of their communion, and recognize that the case is anomalous, they would be permanently unsettled. (p. 103)

Here Durkheim is explicit that crime will destroy a community if it is not responded to appropriately, the proper response being punishment. This is a classic iteration of core structural functionalist ideas applied to criminal justice. This study argues that ritual aspects of capital punishment are permitted to remain in the system, or are even actively encouraged, because they are intended to create consensus over what has become an extremely controversial use of state power. By interpreting the functions of the death penalty’s ritual elements through a Durkheimian structural functionalist framework, their deeper social meaning can be understood.

The Compatibility between Functionalism and Phenomenology

It has been argued that Durkheim’s functionalist thought is in fundamental opposition to phenomenology (Bourdieu, 1979; Bourdieu, 1980); this, if true, would certainly create problems for a study that attempts to utilize both frameworks to analyze the same phenomena. However, Tiryakian (1965) strongly asserts that this incompatibility does not exist, particularly since it can be argued that Durkheim actively called for the use of phenomenological methodology in his work. The basic argument for incompatibility of the frameworks is that functionalism, usually understood as an objectivist school of thought, leaves no room for the subjectivity found in

approaches such as phenomenology; this is summed up in Durkheim's seemingly objectivist assertion that sociologists should "consider social facts as things" (Tiryakian, 1965, p. 680).

Tiryakian argues that this quotation is similar in meaning to one famously made by Edmund Husserl, the father of phenomenology, when he directed phenomenologists "*zu den Sachen,*" or "to the things themselves." Husserl's statement instructed the researcher to engage in what has become known in phenomenological circles as "bracketing," or setting aside prior observations and judgments about reality that we naturally make when moving through the world in an uncritical manner. For Tiryakian, Durkheim's directive to "consider social facts as things" actually points to the same process, one which is fundamentally phenomenological. He asserts that Durkheim is calling for social facts to be "approached naively, that is, without preconceptions as to their nature or functions... [which] implies a suspension of the causal framework within which the positivism of the physical science operates" (Tiryakian, 1965, p. 680). This indicates that there exists in Durkheimian thought a "radical description of the interdependence of social phenomena rather than... [simply a] demonstration of causal principles operative in society" (Tiryakian, 1965, p. 680). Therefore, the notion that Durkheimian functionalism is strictly positivist, and thus patently anti-phenomenological, cannot be held as true.

Tiryakian (1965) uses Durkheim's famous work *Suicide* as evidence that Durkheim took a phenomenological approach to his analysis of sociological issues. He summarizes Durkheim's treatment of the topic of suicide in this way:

The "surface" manifestations of suicide establish its presence as a social phenomenon; these objective, quantitative factors are then "reduced" phenomenologically to underlying layers of the social structure in which the act of suicide occurs, and ultimately the meaning of the act is grounded in the psychological nexus between the individual and

his social milieu (which is a subjective one). The “depth” analysis leads Durkheim to perceive that sharp historical fluctuations in suicide rates are phenomenal “surface” manifestations of much deeper societal currents of a psychological nature... (p. 681)

Here Tiryakian presents Durkheim’s method as a process beginning with observation of a social phenomenon, proceeding to deep examination of its societal context, and finally ending in analysis of its hidden meaning. The unity shown here between the frameworks of phenomenology and functionalism is precisely what this study will attempt to replicate methodologically to analyze the meaning and function of the ritual elements of capital punishment.

Data Source and Plan of Analysis

The data to be analyzed using the frameworks described here is the past extant research on ritual aspects of capital punishment. A number of previous studies, falling into one of two categories, have examined this topic. The first category is research focusing on one particular part of the death penalty process that is particularly ritualistic, for example the text of lethal injection regulations (Bienen, 2008), the offender’s last meal (Collins, 2009; Jones, 2014) or last words (Rizza, 2015), the design of the execution chamber (Damle, 2013), or the concealing of the executioner’s identity (Roko, 2007). The second category is research that attempts to address ritual throughout the capital punishment more generally, such as Conquergood’s 2002 project on lethal theatre and Davidson’s 2011 project that focused specifically on the countdown, the last meal, and the presence of religious clergy.

This second type of research, while certainly more comprehensive than that of the first category, still reveals a significant gap in the literature. The rituals embedded within capital punishment are not independent; they appear to be nested within a larger ritual, made up of

elements of the death penalty process from beginning to end, the totality of which points to the single purpose of social control. In order to advance the literature, this study will attempt to form an understanding of how elements throughout the *entire* process of capital punishment work together, forming something more than the sum of their parts. After a thorough exploration of the literature, it is my understanding that research of this sort has not yet been undertaken.

This plan of analysis is also drawn from a concept within hermeneutics known as ‘the hermeneutic circle.’ First discussed by Friedrich Ast in his 1808 work *Grundlinien der Grammatik, Hermeneutik und Kritik (Basics of Grammar, Hermeneutics and Criticism)*, the hermeneutic circle is a foundational idea of the hermeneutic model that emphasizes the circularity of interpretation. As Ast (1808) put it, “the foundational law of all understanding and knowledge is to find the spirit of the whole through the individual, and through the whole to grasp the individual” (p.178). Discussion of the hermeneutic circle is found throughout the work of later hermeneutic phenomenologists such as Heidegger (1962), in their belief that the only way to understand a concept as a whole is to properly interpret its individual parts. In this project, I will seek to understand the meaning of the capital punishment system’s ritualism by examining the way that ritual operates in discrete elements of the system.

To begin this project, I searched several research databases for studies discussing ritual and capital punishment. However, during my data compilation, it appeared that some portions of the death penalty process which facially seem to incorporate ritual had not been analyzed in the literature. In these instances, in service of my attempt at totality, I performed a review of descriptive literature of the capital punishment process and identified these neglected elements in order to build a complete body of data.

Ultimately, as discussed, this study will utilize hermeneutic phenomenological and structural functionalist frameworks to identify and describe whether and how there exists a deeper, totalizing ritual of capital punishment above and beyond the sum of its individual elements.

CHAPTER 4

FINDINGS

The modern American process of capital punishment contains many specific qualities and elements that are notable due to the fact that they “serve no immediately recognizable, rational purpose” related to the execution itself (LaChance, 2001, p. 97). These elements make up small, individual parts of the more general process, but taken together, they serve to control perceptions of the death penalty by referencing older rituals, reinforcing the system, and reassuring both participants and the public.

Pre-Trial

Ritualistic elements of the capital punishment system begin to present themselves before the offender has even been tried. Both legal and extralegal actors work to create a pretrial environment in which the defendant is characterized in a very specific and negative way, essentially creating a ritual effigy of a human being whose guilt or innocence has not yet been determined. The media, whose presence and effectual actions during the capital punishment process will be noted, begin their coverage of capital cases during the pretrial portion and have a significant and dramatic role to play in the effigy-creation process.

Media coverage of capital cases is infamously biased and is often actively harmful to those suspected, but not yet convicted, of capital crimes (Bakhshay & Haney, 2018). Pretrial publicity generated by media outlets has been known to focus on “impacting the community by dehumanizing public offenders by using ‘metaphors of filth’ (i.e., depictions of defendants as ‘dirty’ to make the distinction between ‘criminals’ and ‘noncriminals’) as opposed to presenting an accurate picture of the facts of the case” (Butler, 2012, p. 260). Media outlets also “perpetuate

images of 'stereotypical' murderers, designed to demonize the defendant and frighten the public" (Butler, 2012, p. 260); coverage is often "slanted in favor of both conviction and the death sentence" and presents aggravating factors of the accused crime without also presenting mitigating factors of the defendant (Butler, 2012, p. 260).

The manner in which the media presents information to the public during the pretrial stage shows elements of ritualism, such as myth creation and dissemination as well as emotionally-loaded symbolic language, wielded in order to control social perception about capital defendants. Turning the public against the person accused of a capital crime effectively engenders support for subsequent harsh punishment such as the death penalty. This practice leads to what Butler (2012) calls a "circus-like atmosphere—akin to the public-executions-turned-social events that used to take place in the early twentieth century" (p. 260), through which the public "can witness the symbolic execution of the legal system's most despised defendants." The ritual effigies created and sacrificed during this 'symbolic execution' harken back to ancient effigy ceremonies in which a practitioner creates a symbolic, cartoonish representation of someone he dislikes or wishes to harm. The effigy is then burned or otherwise damaged, in attempt to either cause the person real harm or simply to release the negative energy felt towards them. The exaggerated, prototype image of the defendant that the media creates is akin to the cartoonish figure created during this ritual, and it serves the same purpose—to aid in the destruction of its subject. These premature, media-generated attacks continue into the trial stage as well.

Legal figures such as prosecutors are also incentivized to engage in similar practices during the pretrial stage, with the bail hearing providing the starkest example. Obtaining bail is

certainly not a guarantee for those accused of violent crimes, and whether or not it will be granted to a capital defendant is dependent on a judge's assessment of his risk of flight and future dangerousness to the community (Reed, 1983). Since every victory the prosecution gains over the course of the legal process is helpful in ultimately obtaining a guilty verdict, prosecutors are advantaged by an effort to make the defendant appear as flight-prone and dangerous as possible during the bail proceedings. Creation and promotion of myths and stereotypes of the typical violent criminal can be a helpful tactic in doing so, which then creates a similar ritual effigy of the defendant as the one generated by the media.

The Courtroom

The criminal trial is ritualistic both in an extremely basic sense and also when considering its deeper levels of meaning. In form, a trial is a "complex pattern of gestures" with an intensely "ceremonial" nature (Tribe, 1971, p. 1376). The format and much of the language used is prescribed in advance following centuries-old patterns, similar in this way to a religious rite. Participants don formal and even ceremonial clothing. Silent reverence is expected from attendees. Even the architecture of the courtroom speaks to religious ceremony—the bench as altar, the gallery as nave, the jury box as transept, the judge's chambers as sacristy.

Although the trial in its entirety certainly does exist as a standalone ritual, individual ritualistic elements, such as prosecutorial rhetoric, particulars of the trial's structure, and victim impact testimony also exist within it. These discrete elements work toward the united purpose of dehumanizing the defendant, creating a ritual effigy in order to make conviction and punishment more likely. In the case of a capital trial, the emotional difficulty often inherent in punishment is more potent since the prosecution team is tasked with convincing a jury of twelve

civilians to sentence a peer to death at the hands of the state. This presents a formidable challenge that the power of ritual helps overcome by controlling the emotions and mindsets of jury members and witnesses, directing them toward the state's desired outcome.

Prosecutorial rhetoric is one ritual element that helps do this. In order to turn the jury against the defendant, prosecutors engage in a Garfinkel-esque 'degradation ceremony', creating a verbal effigy by reducing a complex human being with hundreds of thousands of hours of varied experiences down into a simple representation of the worst act he has ever (allegedly) committed (Conquergood, 2002). In the words of Haney (1997),

in the typical capital trial, prosecutors encourage jurors to make their ultimate sentencing decision on the basis of isolated, albeit tragic and horrible, moments of aggression that they offer, in the absence of any other information, to represent the defendant's entire life and worth as a person... from this perspective, the full measure of the person is to be restricted to this field of isolated violent acts. (p. 1456)

The result of this process of simplification is the creation of an unsympathetic caricature of a human being that is more easily punishable. Indeed, as jury members have relatively little information about the accused, upon hearing the prosecution's information, they tend to "conjure up a prototype of the most heinous murderer" (Osofsky, Bandura, & Zimbardo, 2005, p. 375).

Colomy and Phillips (2018) refer to this process as "constructing irredeemable selves." The prosecution is benefitted greatly by an image of the defendant as evil, sacrilegious, and beyond redemption and therefore actively works to create and promote this image using mythic, archetypal language. Similarly to Durkheim, Colomy and Phillips (2018) argue that capital crimes offend society's deepest and most primitive sensibilities, as

residing at the center of the collective conscience [note here the Durkheimian language] in contemporary Western societies, the 'cult of the individual' envisions humans as

'sacred in the ritual sense of the word,' casting each person as 'the worshipper and the god.' Criminal assaults on this sacred object, particularly those resulting in 'grotesque death and injury, represent 'acutely immoral' transgressions. (p. 789)

Prosecutors take advantage of this reaction by constructing capital crimes as "sacrilege," drawing on images of "horrific harm," "ideal victims," and "ideal offenders" (Colomy and Phillips, 2018, p. 789-790, 796).

Capital prosecutors often seek to frame the trial as an allegorical battle between good and evil by mythologizing the offense, the victim, and the defendant into archetypal roles. Colomy and Phillips (2018) examined the use of these strategies by Texas DAs in capital trials and found that the crimes themselves were often described in terms of "horrific harm." Prosecutors emphasized the visceral physical and emotional impacts of homicide on their victims using both verbal and visual cues. In one trial, the prosecutor even sharpened a knife in the courtroom, forcing the jurors to hear the precise sound a stabbing victim heard before she died.

The victim and defendant are also both described in highly ritualistic ways by prosecutors, who draw them as representatives of two "poles" in a "moral space"—"the sacred and the anti-sacred" (Colomy and Phillips, 2018, p. 795-795). Victims are characterized as the ideal good, personifying "innocence and vulnerability" (Colomy and Phillips, 2018, p. 797). The victims are also described as completely blameless for the misfortune that befell them, and their personal relationships and occupations are often presented in an idealized manner, all of which are intended to be emotionally influential, engendering sympathy for the victim and his or her family.

In stark contrast, the defendant is presented as an inhuman yet fully responsible "instigator of sacrilege." Prosecutors used "predatory archetypes" such as "'monsters,' 'hunters,' and 'bad animals', particularly hyenas, jackals, and wolves" to create an image of someone "not

quite fully human and unburdened by conscience... powerfully predisposed to prey on the vulnerable” (Colomy and Phillips, 2018, p. 797). According to Haney (1997), this dehumanization effort is highly ritualistic, as “rituals of killing, whether sanctioned by the state (as in executions or war) or at an individual level, almost always involve the systematic dehumanization of the victim—the stripping of human qualities from the target of the lethal act” (p. 1452). Colomy and Phillips (2018) are explicit that these verbal mechanisms used by prosecutors in capital trials, along with being heavily reliant on myth and ritual, are tools for “effective social control and the assignment of responsibility” (p. 797).

The dehumanization efforts undertaken by prosecutors are exacerbated by the structure of the trial itself. As a result of the Supreme Court’s decision in the 1976 *Gregg v. Georgia* case, modern capital trials are bifurcated into two phases. In the first phase, the jury makes a determination of the accused’s guilt or innocence. If the defendant is found guilty, the jury then decides the defendant’s sentence in the second phase. The legal teams are required during the sentencing phase to present aggravating and mitigating factors to guide the sentencing decision. Aggravating factors, such as the defendant’s prior criminal record or excessive brutality shown during the commission of the crime, are meant to lean the jury toward awarding a death sentence; mitigating factors, such as intellectual disability or history of abuse, are meant to suggest that life imprisonment is a proper alternative.

According to Haney (1997), this structure, and particularly the fact that potential mitigating factors are not presented until the very last part of the trial, assists the prosecution in the construction of their ritual effigy of the ‘evil’ offender. Indeed, “until the sentencing phase—days, weeks, or even months into the process—most capital defendants sit mute in the

courtroom, each one a kind of criminological Rorschach card onto which jurors may project their deepest fears and anger” (Haney, 1997, p. 1455). Once the mitigation is presented by the defense, it is often too late to break down the dehumanized, fully autonomous and blameworthy image of the defendant that the prosecutors have drawn.

Similar dehumanization processes also occur during the presentation of victim impact testimony, which itself speaks to another form of ritual. Victim impact testimony (VIT), in which a deceased victim’s family members speak about the victim’s life and the damage that the crime has inflicted on the victim’s loved ones, was first permitted in capital trials by a 1991 Supreme Court decision and has since become commonplace. Kaufman (2016) argues that VIT is best understood through the lens of ‘performance,’ as those engaging in VIT are expressing private emotions to a public audience as part of an institutional process. Social performance is often intended to create Durkheimian solidarity within a group, bringing “actors and their audiences together in a ritual-like affirmation of a cultural notion held dear” (Kaufman, 2016, p. 1163); in the case of VIT during a capital trial, this cultural notion is the propriety of mourning the loss of a loved one.

Kaufman (2016) presents the roots of the social mourning ritual, which can be seen throughout different social groups and periods of history, “from the Australian Aboriginal tribes, to mothers mourning their dead infants in twentieth-century Brazil” (p. 1155). For Kaufman, VIT represents a modern, institutionalized iteration of such mourning rites, one which has significant social control capability. When VIT is successful, it can incite support for a “victim’s family members. When a successful performance of mourning is coupled with a prosecutor’s argument to honor the victim’s family by voting for a death sentence, the appeal for execution is equated

with the entreaty for a strong community” (Kaufman, 2016, p. 1173). Therefore, we observe in VITs an additional example of ritual being explicitly utilized in a capital trial to facilitate ease of obtaining execution of the defendant.

The Prison

Once a capital offender is found guilty, sentenced to death, and booked, he begins a new stage of life on death row, where he is likely to spend many years before actually being executed. A crucial part of any ritual is the ‘spatio-temporal’ location in which it takes place (Rizza, 2015), and the death row cellblock serves to ‘other’ the capital offenders, segregating them from the general prison population and marking them as the worst of the worst. The average length of stay on death row varies by state, but as of 2008, the average duration between sentencing and execution in California was over two decades (Sun, 2013). This extremely lengthy time period can be seen as an additional punishment levied on capital offenders. In effect, it is a life sentence accompanying their eventual execution by the state, the latter being the only punishment they were formally assigned by their juries.

Johnson (1998) asserts that we should view “the entire period the prisoner spends in confinement waiting execution... as a continuous social control process” (p. 143). Prison life contains elements of ritualism that serve a social control purpose by stripping the inmates’ humanity and individuality. This dehumanization process breaks prisoners down mentally and emotionally in order to make them easier to control, thus ensuring order in the prison. On death row, where these elements are often made more pervasive or more extreme by the nature of life under a death sentence, an additional level of social control is operating; the degradation process also facilitates control of the public, who, down the line, are likely to be more

comfortable with the eventual execution when the victim is well-behaved, adequately controlled, and seemingly resigned to his fate. The process of creating this docile sacrificial lamb begins as soon as the offender begins his prison stay.

In Sykes' 1958 study of a maximum security prison, *The Society of Captives*, the author considers the many "signs pointing to a prisoner's degradation... the anonymity of a uniform and a number rather than a name, the shaven head, the insistence on gestures of respect and subordination when addressing officials, and so on" (p. 66). Note the language of 'degradation,' echoing Garfinkel's work on ritual degradation ceremonies. According to Sykes, the degradation of maximum-security inmates leads to a "loss of autonomy" as a result of the "vast body of rules and regulations which are designed to control his behavior in minute detail" (p. 73). Sykes also highlighted the seemingly "incomprehensible order or rule [which] is a basic feature of life in the prison," as the rules and regulations designed to degrade the inmates "'don't make sense' from a prisoner's point of view" (p. 74). The often-nonsensical nature of the prison's degradation rituals points to their ritual function as symbolic rather than practical.

In his seminal 1961 work *Asylums*, Erving Goffman explores the nature and form of what he calls 'total institutions,' or social establishments such as insane asylums and prisons that keep their inhabitants largely or fully cut off from the outside world. In his treatment of prisons specifically, he discusses at length the rituals of mortification that inmates are forced to undergo as a normal part of their daily lives. Echoing Sykes' interpretation, he notes the extreme loss of control and personal identity that this process creates, concluding that "total institutions disrupt or defile precisely those actions that have the role of attesting to the actor and those in his presence that he has some command over his world" (p. 43).

Several decades later, in John Irwin's 1987 book *Jail: Managing the Underclass in American Society*, which was greatly informed by Goffman's work on prisons, he also frames the mortification process of inmates as a Garfinkel-esque 'degradation.' In his discussion of the findings of *Asylums*, he references "numerous mortifying rituals, such as searching, stripping, bathing, spraying, and the taking of personal property" and explicitly states that they "are conducted with the institutional purpose of converting newcomers into manageable inmates" (p. 68-69). According to Irwin, this level of control is sought after in the prison because "what is needed and wanted in a jail are prisoners who will wait obediently wherever they are placed... who will make no demands... and who will willingly perform the few required jail procedures" (p. 69). This image of the ideal inmate creates a need for mechanisms of control such as the "routine demands for compliance [and] the excessive attention to security" (p. 70) seen in the prison, all of which seek to ultimately create a "loss of self-determination" (p. 70) in each inmate.

The degradation rituals that accompany prison life more generally are certainly present on death row as well. However, additional ritualistic aspects of the death row experience, such as its liminality, panopticism, extreme routinization, and similarity to ritual sacrifice, exacerbate the degradation of capital inmates and create the additional layer of social control taking place as a result. Indeed, Robert Johnson (1998) paints a bleak picture of death row as

the most total of total institutions, the penitentiary most demanding of penitence, the prison most debilitating and disabling in its confinement... here the whole person is consumed. The spirit is captured and gradually worn down, where the body is disposed of. (p. 70-71)

As discussed, ritologist Mary Douglas asserts that liminal periods, or those concerned with transitions between different stages of life, are fertile environments for ritual to operate. The transition between life and death, being arguably the most dramatic and meaningful threshold

in the human experience, is particularly suited to the workings of ritual processes. Death row provides the backdrop for the slow progression of this transition for thousands of prisoners incarcerated in prisons throughout America (Rizza, 2005). As stated by Sister Helen Prejean in her 1994 book on the death row experience, “the reality of this waiting place for death is difficult to grasp. It’s not a ward in a hospital where sick people wait to die. People here wait to be taken out of their cells and killed” (p. 27). The detrimental psychological effects of sitting in a concrete cell day after day, with minimal distractions, and waiting for the day of one’s death are self-evident and can hardly be understated. In fact, there exists a medical term, coined by Dr. Stuart Grassian in 1986, for the “psychosis that accompanies time spent on death row” (Tongue, 2015, p. 902). The extremely harmful “physical, experiential, and temporal aspects of death row,” known as ‘Death Row Syndrome,’ often lead to “suicidal tendencies and frequent waivers of appeals to expedite the execution process and end the torture” (Tongue, 2015, p. 902).

The death row experience is also defined by intense levels of surveillance. McBride (1995) describes death row as “the virtual materialization of Jeremy Bentham’s panopticon... a prison within a prison, ‘a cruel, ingenious cage’ where the inmates are watched continually” (p. 270). According to McBride, this constant surveillance has the bizarre purpose (which will be further explored later) of preventing the prisoners, who are under a state-imposed *sentence of death*, from taking their own lives. However, quoting Foucault’s 1977 work *Discipline and Punish*, McBride (1995) explains that death row’s panopticism also serves to “inscribe in the body of the inmate ‘a state of conscious and permanent visibility that assures the automatic functioning of power’” (p. 270).

Per Foucault (1977), the carceral power structure defined by unlimited surveillance is so all-consuming that the resulting power does not even need to be actively displayed to be effectual; its mere existence creates such a significant threat that those under its eye have no choice but to submit to it as slaves. The fact that death row prisoners are “being watched abstractly by the ever-present eye of the state” (McBride, 1995, p. 270) eliminates even the smallest possible measure of privacy normally granted to human beings, rendering personal choice nearly obsolete and continuing to effectively dehumanize the inmate. According to McBride (1995), death row’s panopticism makes it “a process of dying in which the prisoner is effectively reified into a body—a thing indispensable for the social mechanism of expiation” (p. 270).

The numbing routinization of day-to-day life as a capital inmate also contributes to the dehumanizing process. “Death rows offer deadening, unchanging routines as a central feature of existence” (Johnson, 1998, p. 96). Capital offender Willie Lloyd Turner described “the boring routine of claustrophobic confinement” (Flynn, 1997, p. 296, note 30) as one of the most mentally damaging features of life on death row. Although the exact routine varies by state, the typical inmate spends the vast majority of his time alone in his cell, with only very brief interludes for showers and meals. Nothing changes—not the food, not the people, not the activities, not the physical surroundings. The suffocating sameness continues to strip the inmate’s identity, and the unceasing repetitiveness wears him down emotionally bit by bit, particularly since he gets even less variety, stimulation, and human contact than the inmates in the general population (Johnson, 1998). The psychological effects that the death row experience leaves on prisoners results in extreme powerlessness, loneliness, and vulnerability, all of which eventually reduce

them to “humanized objects that are mere pawns in the modern execution process” (Johnson, 1998, p. 99).

As discussed, public approval of state-sponsored killing can be tenuous. The ritualism in the death row experience serves to break down offenders psychologically, making them more resigned to and cooperative with the execution process. This is an important social control mechanism because an atmosphere of orderliness and professionalism—the creation of a “civilized veneer” (Bienen, 2008, p. 880)—is crucial in making observers and the public at large feel morally comfortable with what is happening when the state kills (Conquergood, 2002). In his treatment of flawed (i.e., botched) executions, Haines (1992) explains that

the script of the ideal execution naturally contains a role for the person being put to death. Given the emotional fragility of the process and the potential for trauma among those who are present, it is important that the prisoner be relatively calm and noncombative... no one seems to want to watch prisoners being dragged screaming to their deaths. (p. 129)

Dehumanizing and degrading death row inmates until they become meek shadows of their former selves can force them into this ideal role, ultimately making the execution more comfortable for onlookers. Indeed, this concern for avoiding the appearance of unpleasant suffering has informed execution policy in the past, as “complaints by observers of the gore produced by death by firing squad, the smell of burning flesh during electrocutions, and the distastefulness of seeing parts of people’s faces being burned, or the twitching of the hanged” have affected decisions about both preferred execution methods and the way in which state protocols are structured (Bienen, 2008, p. 875). Indeed, Garland (1990) notes that the difference between punishments that are banned and those that are permitted and routinely used is “the *form* that the violence takes, and the extent to which it impinges on public sensibilities” (p. 243).

An additional ritual element of death row that bears mentioning is the ironic concern for the inmates' health. Death row prisoners are cared for by medical professionals in the event of injury or disease and are nursed back to health after any attempt at suicide, which, as mentioned, is forbidden. Johnson (1998) mentions one specific case in which a death row inmate refused a medically necessary triple-bypass surgery in order to obtain a quicker death. Prison officials attempted to intervene by continually insisting that the prisoner undergo the surgery "so he could be alive for his execution" (p. 94), even requesting that his lawyer assist in convincing him to do so. The mental health of capital inmates is treated as well, for similar reasons. "Prison authorities have subjected the condemned to psychiatric therapy and in some cases even drug treatment in order to render the prisoner sane enough for execution" (McBride, 1995, p. 270). This level of medical concern seems incongruous and nonsensical since the offender's death is the ultimate goal of the execution process, but it is compatible with a ritualistic framework. Ritual's effectiveness is dependent on alignment with a prescribed sequence of action, so it is not necessarily sufficient that the offender simply dies; he needs to die in the specific manner the state has decided for the ritual to have its intended potency. Ensuring he is healthy enough to make his execution date is a paramount concern.

Deathwatch

Once the capital offender's execution day is close at hand, he is relocated to a special cell for deathwatch (Haines, 1992). Deathwatch, which occurs over the last 24 or 48 hours (depending on the state) of the offender's life, is a state of continuous, individualized surveillance of the inmate by prison staff. During deathwatch, correctional officers are tasked with keeping a record of all actions taken by the inmate. As directed by Montana's execution protocol, which gives

deathwatch instructions similar to those of many other states, “the death watch officer shall constantly observe the condemned inmate, documenting significant activities on the death-watch log. Significant activities include... reading, eating, visitors, comments, sleeping, showers, outbursts of anger and rage, and suicide gestures and attempts” (Montana Department of Corrections, 2013, p. 46). This final point regarding suicide is particularly crucial. The deathwatch officers are tasked with preventing the prisoner from taking his own life at all costs (Johnson, 1998). As discussed, in order for the ritual of capital punishment to have its intended efficacy, the pre-written ritual script must be closely followed. It is critical that the state, and only the state, be granted the power over life and death that defines capital punishment.

According to Federman & Holmes (2005), the “execution protocol is an attempt by prison authorities and staff to target captive bodies for complete docility long before they are executed” (p. 328). Therefore, we see attempts at social control continuing during this stage of the death penalty process. The requirement to formally record all minutia of the inmate’s final hours seems absurd and nonsensical (as do many ritualistic actions), but its meaning and purpose can be understood within a ritual framework. Deathwatch generally, and particularly the keeping of the deathwatch log, is yet another mechanism of ritualistic social control, further governing the inmate’s actions and emotions as well as the emotions of prison staff during the delicate period leading up to an execution.

First and foremost, the “job of the deathwatch officers ‘is to sit and keep the inmate calm for the last twenty-four hours—and ready to go’” (Johnson, 1998, p. 143). The inmate’s mood and state of mind during these final hours is what will dictate his behavior in the execution chamber. Therefore, the need to mollify the prisoner, which has been a concern throughout the entire

incarceration period, reaches a climax during the period of time making up deathwatch. During this time, to help meet this vital objective, the prisoner is catered to by correctional officers in a way he has not been during his prison stay so far. Johnson (1998) relates the experience of one officer:

if he wants to make a call to his family, well, you have to dial the number.... If he wants a cigarette, well, he's not allowed to keep matches, so you light it for him. You've got to pour his coffee, too.... It's not like you can just ignore him, you've gotta be with him whether he likes it or not, and cater to his needs. (p. 144)

However, aside from simply being intended to keep the inmate happy and ensure his cooperation in the execution to come, the special treatment and privileges he is granted during this time also reflect the prisoner's status as victim in a process of ritualistic sacrifice. A significant body of extant literature draws parallels between modern capital punishment and ritualistic human sacrifice (see Beschle, 2001; Caldararo, 2016; Harding, 2000; Judges, 1999; Kirchmier, 2008; McBride, 1995; Metze, 2014; Rizza, 2005; Smith, 2000, for example). Indeed, historical evidence tells us that ritual sacrifice of criminals was commonplace in the ancient world. According to Green (1998), the Gauls

“believe that the gods prefer it if the people executed have been caught in the act of theft or armed robbery or some other crime, but when the supply of such victims runs out, they even go to the extent of sacrificing innocent men”... On the face of it, this is a curious statement: Caesar remarks that criminals were deemed the most acceptable sacrificial victims to the gods, and that blameless men were second best, subject to ritual killing only in the event of a shortfall in the supply of malefactors: for some reason, then, a guilty sacrifice was considered especially efficacious. (p. 181)

Many of the authors who liken the modern death penalty to human sacrifice ground their assertions in the theory of Rene Girard. According to Girard, mimesis, or the drive to imitate others, lies at the core of human social behavior. In the right social circumstances, the natural desire to act and live as others do will create envy and competition, which in turn can lead to an

outbreak of violence. Once violence has erupted, it spreads quickly and easily through society, creating a breakdown of the normative order. Clearly, allowing anarchy to destroy a society is against the self-interest of all its members. Girard posits that the resulting chaos can be prevented if society takes steps to purge its mimetic violence in a controlled manner (Girard, 1977).

For Girard, the necessary purgation will only be effective if citizens unite against a common enemy and channel their violence toward him. However, the choice of scapegoat can be a complicated one, revealing elements of the paradoxical nature of ritual. The sacrificial victim needs to be a legitimate member of the community but also needs to be enough of an outsider that his family, friends, or supporters will not attempt to violently avenge his death. Additionally, he must be seen as guilty but does not actually have to do anything wrong. If this is indeed the case, the victim must be encouraged to either participate in actions considered taboo, or alternatively, to receive great privileges and honor, in order that that the community at large can legitimately “mark him as a transgressor... or one who wrongfully claimed special status” (Beschle, 2001, p. 773).

Once the community’s scorn is legitimized, the scapegoat must be put to death, redirecting and releasing its mimetic violence and ending the cycle of brutality. Paradoxically, as the scapegoat’s death has purged and restored the community, he attains a revered, saintlike status that was rarely, if ever, granted to him during life. Beschle (2001) notes the contradiction inherent here, as “the victim who was declared to be the source of the community’s discord has now, by virtue of the violence directed against him, become the source of the community’s newfound peace... [and] sacred as the bestower of good and evil” (p. 774).

Modern capital punishment follows the script of Girard's scapegoat model by legally putting to death, using a very specific model and set of procedures, a society member who the community has deemed unworthy. This action is considered necessary for the continued safety of the community at large. The execution ritual is intended to prevent future acts of violence and also to communicate to the other members specific messages—what conduct is normative and appropriate, what it means to be a citizen, and what actions forfeit one's very right to exist. Throughout the death penalty process, the victim is given a Girardian status, othered yet in a sense sacred. During a capital offender's trial and much of his death row stay, he is continually dehumanized and othered, thereby meeting the first condition of the Girardian ritual sacrifice victim; his elevated treatment by prison staff during deathwatch and the breathless noting of his every move in the deathwatch log begin the process of meeting the second condition. We will also see this peculiar treatment bestowed on the offender later by the media.

However, the ritualism inherent to the deathwatch period is not solely centered on the inmate; the mechanisms of social control are also directed toward prison staff. Deathwatch can be an intensely emotional time for correctional officers, as natural empathy is often created by the daily relations between prisoners and staff. This empathy can then create an emotional conflict when it is time for the inmate to be put to death by the system the correctional officer represents and forms a part of (Johnson, 1998). In their 2005 study, Osofsky, Bandura, and Zimbardo explore the intentional emotional distancing that correctional officers engage in during this time. The researchers identified eight mechanisms of "moral disengagement" from the execution process:

- *Moral justification* – in which they focus on what they believe to be positive moral goods resulting from execution of capital offenders

- *Euphemistic language* – in which they conceptualize and discuss executions in a verbally sanitized manner
- *Advantageous comparison* – in which they compare the relative humaneness of the execution process to the crime committed by the capital offender
- *Displacement of responsibility* – in which they shift responsibility off of themselves onto the offender and the jury
- *Diffusion of responsibility* – in which they diffuse responsibility away from any individual onto the *entire* jury or the *entire* execution team as a unit
- *Minimization of consequences* – in which they stress the idea that any truly unjust outcome is unlikely
- *Attribution of blame* – in which they focus all blame for the execution onto the offender himself
- *Dehumanization* – in which they characterize the offender as nonhuman

The widespread use of these coping mechanisms by those taking part in the administration of the death penalty indicates the extreme psychological stress that the process creates. This emotional conflict creates a space for ritual's soothing properties to operate, effectively controlling the officers' natural emotions. According to Tom Kuntz (1997), the ritualistic procedures required during deathwatch, such as the keeping of the deathwatch log, allow "guards to focus on the minutiae of procedure rather than on the central fact that they are helping to take a human life."

The Last Meal

As mentioned with regards to deathwatch, the last several days of the capital offender's life represent a radical shift in the way he is treated by the arbiters of the capital punishment system. In particular, the set of ritual activities he undergoes in his final few hours, such as the last meal, the visit by religious advisors, the showering and dressing, and the recording of the last

words, bestow on him an elevated status that starkly contrasts the dehumanizing and objectifying treatment he has received thus far during his stay on death row. As do most other ritual elements of the capital punishment process, this change in treatment has multiple social control purposes that further insulate and justify the death penalty.

In keeping with ancient tradition, most states offer the prisoner about to be executed a last meal of his choice, subject to varying restrictions such as price and distance (Johnson, McGunigall-Smith, & Callahan, 2013). According to Harding (2000), “the ‘last meal’ is probably one of the most widely-known and followed rituals that proceed the sacrifice by state sanctioned execution” (p. 201, note 94). Indeed, the last meal tradition is thoroughly pervaded with ritualism. It serves no practical purpose, as the person eating will be dead within a few hours. It calls back to older customs, such as the ancient Egyptian practice of burying their royalty with food and the custom among various religious groups to make offerings of food to saints and other deceased holy figures (Jones, 2014). Most importantly, as we will see, it transmits symbolic meanings that are helpful to the state.

As discussed, treating the soon-to-be-executed in an elevated manner speaks to the reality of capital punishment as ritualized human sacrifice. In his discussion of the similarities between these two practices, Smith (2000) explains that

the convicted murderer might also be seen as serving another function similar to the sacrificial victim: he becomes signifier and representative of much more than just himself. Sacrificial victims are simultaneously ‘sacred’ and ‘profane,’ identified with both the sacrifice and the god, and in some cases made to be the bearer of the signs of the community at large while also divinized and worshipped. (pp. 14-15)

The special privileges, such as the last meal, given to the condemned immediately preceding his death reflect the system’s need to foster the sacred and revered portion of the sacrificial victim’s

identity. Within a Girardian framework, this special treatment then affords an extra incentive to the state by generating resentment of the offender on behalf of the public, who will then be more likely to support harsh punishment of him. We have observed this precise scenario occurring in reality. In 2011, Texas State Senator John Whitmire went on record denouncing the practice, commenting the following in reference to a Texas death row inmate: “He never gave his victim an opportunity for a last meal. Why in the world are you going to treat him like a celebrity two hours before you execute him? It’s wrong to treat a vicious murderer in this fashion” (Jones, 2014, p. 16).

The sacrificial ritual at play in the last meal tradition can also be viewed within an explicitly Christian framework as a reflection of the Last Supper of Jesus Christ (Collins, 2009; Davidson, 2011). Through this symbolic comparison, the execution process is infused with mythological power, as “rituals ‘draw their meaning, structure, style, and affective resonance from the traditions they reenact’” (Collins, 2009, p. 97). The state is given an advantage through this favorable comparison. The last meal, as a reflection of the Last Supper, “functions as a movement toward purity and purification through execution... Christian ideology frames the final meal as a ‘cosmic spiritual drama of sin and salvation’” (Collins, 2009, p. 97). Aligning the state’s ultimately retributive goals with themes of salvation and purification from sin grants them unique legitimacy. According to Davidson (2011), comparisons to the crucifixion create “an ethereal connection to a mythological discourse that allows its spiritualism to flavour [sic] our interpretation of state killing” (p. 231).

The granting of the last meal also serves to insulate the execution system by attempting to cloak the essentially brutal and violent process in a guise of gentleness and benevolence.

Johnson (2016) highlights the hypocrisy of this effort– “on the threshold of execution, the state pays attention to the prisoners as individuals... the implication being that justice is meted out by compassionate, caring individuals who kill reluctantly, and impersonally, in the service of justice” (p. 1220). Ultimately, the gestures are lack any real meaning because they are not accompanied by the true sentiments that are typically shown by service of a meal to another person, such as “forgiveness, hospitality, reconciliation, protection, friendship, and nourishment” (Johnson, McGunigall-Smith, & Callahan, 2013, p. 17). The viciousness and cruelty shown by the state in the execution itself invalidates this weak attempt at kindness.

Finally, and perhaps most importantly, the last meal can be understood as a statement of the prisoner’s individuality (Collins, 2009; Johnson, McGunigall-Smith, & Callahan, 2013), which, paradoxically, continues to benefit the state. The act of choosing inherent in the last meal ritual is a radical departure from the heteronomy that has governed the inmate’s life on death row up to this point. He has not been allowed to make choices about his clothing, his schedule, his food preferences, or nearly any other facet of his life for years or decades. As discussed, this near-total lack of autonomy contributes to an intense depersonalization process in which the prisoner’s identity is systematically stripped down to help ensure his cooperation with the carceral system. The privilege of the last meal allows him to express and represent himself in a way he is not typically allowed to.

As argued by LaChance (2007), this expression of identity is permitted precisely because it is expedient to the system. The demonstration of the offender’s ‘agency’ and ‘autonomy’ furthers the retributive mindset necessary for capital punishment to make sense and to continue. If capital offenders are indeed autonomous individuals, it follows that they committed their

crimes out of free will and independent choice, regardless of their life circumstances or socioeconomic conditions. These free, independent actors are therefore deserving of punishment, a perspective which makes particularly harsh punishment such as the death penalty more palatable (LaChance, 2007). As LaChance (2007) states, “amid Velcro restraints, sterilized needles, and glass partitions, last meals... disingenuously elevate to the level of the sacred a vision of human beings endowed with dignity and capable of choice” (p. 722).

Preparation for Death

In the last few hours of the capital offender’s life, after he has consumed his last meal, he participates in a highly ritualized series of other activities intended to prepare him for the execution chamber. He is first allowed a visit from a religious figure of his choice, who is typically permitted to give him counsel in his cell prior to the execution. In some states, the spiritual counselor is also allowed to accompany the condemned into the execution chamber (Bienen, 2008; Davidson, 2011; Haines, 1992). Davidson (2011) refers to the visit and the presence of religious clergy at executions more generally as “the most powerful means of shrouding calculated brutality within the garb of sacred ritualism” (p. 236). Their presence “confirms the metaphysical nature of the problem: far from being the result of social marginalisation [*sic*] and desperation, interpersonal violence is the physical manifestation of a metaphysical evil force that must be exorcised from the moral community” (Davidson, 2011, p. 236).

Here we again observe the process of mythologization of the offender, which also took place during the criminal trial. However, at this stage it is also reflective of the deeply paradoxical manner in which the prisoner is conceptualized and treated by the system, as permitting him to receive spiritual counsel and encouragement appears to exhibit some level of regard for his well-

being. Moreover, we see additional attempt at spiritualization of the execution proceedings, which, as discussed, can have a legitimizing, social control effect (Collins, 2009; Davidson, 2011). As stated by Meyer (2008), “the religiosity of death row can be merely a more insidious form of control” (p. 59).

After the last visit occurs, some states require that the inmate shower before proceeding on to the death chamber (Johnson, 1998; Montana Department of Corrections, 2013). Similar to the last meal and many other processual elements, the insistence on purification of the offender’s body is clearly ritualistic in that it serves no discernable practical purpose. Lethal injection has become the contemporary norm with regards to execution methods (Haines, 1992; Peel, 2013; Roko, 2006), and it is hard to imagine that the physical process of injecting the prisoner with lethal drugs is aided by his body having been very recently cleaned. However, this practice finds grounding in a ritualistic framework, as it has obvious connections to the clean, spotless sacrificial victim of lore. It also promotes the desirable sanitized environment that we will see apropos of the execution chamber itself.

Once the prisoner’s body has been cleaned, he often changes into specifically prescribed ceremonial clothes, such as a “new pair of denim trousers and a blue work shirt” in California (Bienen, 2008, p. 873). As discussed by Catherine Bell (1992), in order for ritual to have power, ritual activity must be set apart from similar actions taken in other, less meaningful contexts. Ceremonial attire is a ubiquitous and easily recognizable part of rituals and one that promotes this process of differentiation. For example, the sight of a man standing inside a church and muttering words over an altar has a completely different character if that man is dressed in a priestly vestment versus civilian clothing. Differentiation is a particularly important function of

the capital punishment ritual; it is crucial that state-sanctioned killing be distinguished from illegal homicide in order for it to have any chance at moral legitimacy (Rizza, 2015), especially since the citizens being put to death have invariably committed homicide themselves.

Once the condemned has been showered and changed, he is ready to make his final walk to the execution chamber. In many states, the final walk occurs at midnight, this fact itself speaking to the execution's highly ceremonial nature. Johnson, McGunigall-Smith, and Callahan (2013) have noted the dramatic and meaningful nature of the last walk, as "something as simple and human as a slip or stumble drives home the fact that a man is walking to his death, that the person... will soon be dead, reduced by force to inert matter" (p. 20). It is also notable that the last walk is the first time since the beginning of his prison stay that the inmate is allowed to walk free, without being limited by shackles and chains. As discussed in reference to the last meal, the act of giving the condemned this last taste of independence before taking away his life reflects the ultimately false sense of autonomy that the system attempts to bestow on the prisoner at this time.

The Death Chamber

The prisoner, dressed in his ceremonial garb, has now made his way into the execution chamber. The inside of the chamber represents the ritual altar on which the victim is to be sacrificed for the greater good of society. As mentioned throughout, the physical and spatial environment in which a ritual takes place is of the utmost importance to ensuring that the ritual actions are interpreted in the manner intended by their practitioners. With regards to the capital punishment ritual, the particulars of this environment are even more important since a contrast must be created between the death penalty and unsanctioned murder (Conquergood, 2002;

Rizza, 2005). Creating a sterile atmosphere with a pervasive aura of the medical is ideal for accomplishing this purpose. Each state with a legal death penalty creates a written protocol to govern the specifics of their executions, and the text of these protocols reflects the obsession with promoting an air of health and hygiene.

This might make sense at first, as more traditional medical facilities such as doctors' offices and hospitals are also rightfully attentive to physical hygiene. However, in these environments, (which, unlike the execution chamber, are true spaces of healing), the effort at cleanliness is directed toward a very specific goal—preventing the spread of disease and infection in order to promote the ongoing physical wellness of all those present. The goal of the execution process is certainly not to ensure the prisoner's health, so this insistence on hygiene is clearly impractical, reflecting the process's ritual nature. According to Bienen (2008),

The state protocols' concern with cleanliness, unexpired drugs, the insistence upon the color white (white sheets, white walls, and white coats for the technicians), and requirement regarding sterility are analogous to primitive rules governing purity at sites where spirits or evil forces are to be expunged. This attention to sterility both promotes the medical illusion and affirms the primitive need for rituals to purify the place where a controlled death or sacrifice will occur. (p. 873)

The cleanliness of the chamber is also important because “‘natural,’ ‘clean,’ ‘solemn,’ ‘dignified,’ and ‘humane’” are ideas that work together in the mind to form a conceptual whole (Conquergood, 2002, p. 361). If a process is seen as clean and sterile, it is easier for both practitioners and witness to also see it as natural, dignified, and humane. Therefore, sterility functions to insulate capital punishment from criticism by providing ready-made defenses around its dignity and humaneness.

Damle (2013) discusses execution chambers from a design perspective, asserting that the recent advent of the considerably more medical and professional-seeming lethal injection

method, as well as the accompanying redesign of execution chambers as “contemporary operating room[s]” (p. 21), served important symbolic functions. This “minimized the moral culpability of all those responsible for the prisoner’s death” (p. 21) by segmenting the execution into smaller pieces. It also “enabled officials to conduct executions with dignity and protect witnesses from traumatic experiences” (p. 19), as it promised less visible suffering for the offender. Damle (2015) argues that the reduction of suffering was intended to serve the sensibilities of the practitioners and the public far more than the offender himself. This function also betrays a deep self-consciousness within both the state and the public about the killing they are carrying out and sanctioning, respectively, and the deep importance of ritual in helping to relieve the moral dissonance of all involved.

When it is time for the execution to begin, the prisoner lies down on a cross-shaped gurney with his arms held out to his sides and strapped down. This provides a direct visual association with the crucifixion, continuing to boost the ceremony’s mythic power. He is asked if he has any last words, which in some states are recorded and even published after his death (Meyer, 2008; Milford, 2019). Rizza (2005) has argued that the qualitative content of prisoners’ last statements, which are often repetitive, typically include religious references, and frequently emphasize liminality, underscores the ritual nature of the overall death penalty process.

From a historical perspective, the last words ritual finds in the roots of its structure an echo of the *apologia*, an ancient religious practice of hearing the confession of those accused of ‘moral stain’ and recording it in writing (Meyer, 2008; Milford, 2019). In certain instances, if the condemned was able to answer the charges against him and provide sufficient justification, the conviction could be overturned and the prisoner set free (Milford, 2019). This ceremony has

become ritualized in the modern capital punishment system by the simultaneous preservation of its form and deprivation of its practical purpose. Since the contemporary death row inmate has no chance of being set free, the ritual serves to emphasize his 'moral stain' without the promise of possible redemption—an important function at this stage; when the condemned is so close to death and there remains little possibility for the state to hide the naked truth of what is occurring, it is crucial that the condemned is seen as guilty and deeply deserving of punishment.

Once the prisoner has expressed his final words, the team of executioners begins the flow of the three-drug cocktail which will leave him unconscious, paralyze him, and then stop his heart. This lethal injection procedure, which has risen in popularity since the 1970s to become the typical execution method in most states (Haines, 1992; Peel, 2013; Roko, 2006), continues to support the desired medical character of the proceedings. Indeed, lethal injection was initially rejected by some states because of the syringe's association with healing the body and alleviating suffering (Yehuda, 2013). Yehuda (2013) points out "the well-known irony of using sterile instruments and alcohol swabs before the administration of deadly chemicals" (p. 2331), precautions which, again, lack any sense of practical grounding. Lethal injection's popularity is also likely due to its apparent painlessness (Garland, 2010), especially compared to alternatives such as electrocution, firing squad, and lethal gas. The comparative lack of agony and struggle displayed by the inmate when lethal injection is used masks the brutal reality of what is occurring, making the execution more palatable for observers and practitioners (Yehuda, 2013).

Ritual continues to operate even in these final moments, through the concealment of the executioner's identity. The members of the execution team are hidden from view during the execution ceremony, usually by curtains or walls (Gawande, 2006; Johnson, 1998). This effective

identity concealment reflects a ritualistic tradition spanning centuries, hearkening back to the black-clad executioner of lore who wielded a guillotine blade or a hangman's noose. Some have drawn explicit parallels between modern identity concealment processes and the deeply evocative image of the executioner's hood (Roko, 2006). It does not, of course, affect the way the execution is carried out but instead serves the executioner himself, displaying the state's moral "discomfort" (Garland, 2010, p. 99) at the process and attempting to mitigate it by providing "diffusion of responsibility, comfort in anonymity and mitigation of the shame of taking a human life" (Crider, 2014, p. 44). This emotional distancing is also achieved by the structure of the lethal injection procedure, as typically no member of the execution team is aware of who ultimately delivers the fatal drug that claims the life of the prisoner (Bienen, 2008).

The Public Sphere

Since the symbolic power of myth and ritual operates beneath the surface of human activity, the meaning of ritual events is ultimately reliant on interpretation. van den Ende (2015) explains that "both actors and audience participate in drawing the hermeneutic circle when it comes to ritual semantics" (p. 17). In practice, this means that "initially, a ritual script is based on cultural interpretation(s), which is reinterpreted by its actors who attempt to perform its meaning, which is subsequently reinterpreted by the audience" (p. 17). He goes on to emphasize that "the media often plays an important role in mediating this meaning further for an audience" (p. 77). Thus, we see that the media is a powerful force in shaping reality, as it has the ability to dictate to the public how it should interpret a specific event and what cultural messages should be drawn from that interpretation.

As the execution ritual is taking place deep within the walls of the prison, the media is simultaneously delivering it outward into the public sphere through television and print reporting. This process of information sharing creates consumable mass-market content that invites viewers and readers to see both the execution and the condemned in a particular light, often one that reinforces the state's messaging around the death penalty and thereby helps insulate the system. The media's role in shaping the narrative around capital punishment can hardly be overstated. Shintaro Smith (2011) lists the media's framing of the facts surrounding an execution as one of the primary mechanisms by which its public meaning is constructed, along with "the agenda of the criminal justice system" and "the community's response to homicide" (p. 5). This construction of meaning is accomplished by the media's choice of what specific content to show the consumer, as well as by the particulars of the language chosen to do so.

In his 1957 essay calling for worldwide abolishment of the death penalty, noted philosopher Albert Camus shares an anecdote of the first time his father attended a public execution. Camus explains that his father initially felt a deep sense of righteousness in seeing a child murderer put to justice, but that once he observed the man's life being taken by the state, he returned home shocked and upset, as "he had just discovered the reality hidden under the noble phrases with which it was masked" (p. 132). According to Camus, the pleasant, palatable artifice constructed around the death penalty can be credited primarily to the media, who "have made up a sort of ritual language, reduced to stereotyped phrases" (p. 132). By way of example, he describes typical language the media uses to water down reports of executions. "The condemned 'has paid his debt to society' or that he has 'atoned' or that 'at five a.m. justice was done. The officials call the condemned man 'the interested party' or refer to him by a number"

(p. 132). He ultimately concludes that “people write of capital punishment as if they were whispering” (p. 132).

We see Camus’ midcentury observations echoed in research on contemporary media coverage of executions. In Lipschultz & Hilt’s 1999 project examining media construction of three Nebraska executions, the authors assert that “the mass media are willing participants in creating social myths” (p. 240) around capital punishment. Members of the media, in this case local television anchors, accomplish this by choosing specific language that routinizes the execution process and helps viewers to stay emotionally distant from it. One condemned man being executed “was said to be ‘keeping his appointment’ on a ‘cool, overcast night’ in which everyone was ‘watching the clock.’” In another case, “the governor was said to be asking people to ‘keep their cool.’” In a third, “a witness saw ‘a very polite atmosphere’” for the particular execution (Lipschultz & Hilt, 1999, p. 251).

The researchers also note the deeply symbolic nature of the content the media chooses to display to its audience and how this content works to frame executions as positive and necessary. The coverage on local news channels displayed symbolically loaded images such as “signs, candlelight vigil, heightened security, prison as a backdrop, etc.,” which served to promote chosen meanings like “the legitimization of capital punishment, polarizing public debate... [and] the state’s role in carrying out the law” (Lipschultz & Hilt, 1999, p. 250). Similar assertions are made by Miller and Hunt (2008) in their nationwide study of written news stories about executions. They found that “a primary function of reports of executions is to report justice being served” (p. 202), and that the press espouses a view that “the death sentence is a proper closure to a string of criminal and legal events” (p. 208).

The social control mechanisms operating within the media's coverage of executions echo other processes of social control we have observed throughout the capital punishment process. For example, similarly to the deathwatch officers, media outlets report on the prisoner's every move in the hours and minutes leading up to the execution, "invok[ing] a feeling of a sacred event, where every moment and movement is full of meaning" (Davidson, 2011, p. 234). The intense interest paid to the offender gives him a Girardian combination of sacredness familiarity, and yet at the same time otherness, particularly as the media highlights and even sensationalizes the horrific nature of his crimes. The media's reporting, its consumption by members of the public, and their subsequent reactions solidify interpretations of the condemned as ritual sacrifice victim deserving of death, and of his punishment as so necessary as to be nearly inevitable.

CHAPTER 5

CONCLUSION

The modern American capital punishment system strategically makes use of ritual from the moment a citizen is accused of a capital crime until after he has been executed by the state. As we have seen, many portions of the capital punishment process serve no practical purpose, mirror historical spiritual practices, and utilize mythicized images and concepts; these are all characteristics of ritualized activity. In this study, I have utilized a hermeneutic phenomenological framework to identify what individual ritual elements exist and what symbolic meanings they carry. I have then applied concepts drawn from structural functionalism to explore the manner in which these symbolic meanings equip them to perform social control functions, shaping reality in a way that attempts to justify and insulate the practice of capital punishment.

Taken in their totality, ritual elements of capital punishment control and influence *everyone* involved with the process of state-sponsored execution. Ritual controls the capital offender by shaping his public image, degrading and dehumanizing him into an effigy, and mentally breaking him down until he is nothing more than a cooperative pawn of the system. Ritual controls criminal justice practitioners by distancing them emotionally from the inmates they are supervising and ultimately putting to death. Ritual controls the public at large by garnering their support for the death penalty using disingenuous tactics such as euphemism, sanitization, mythmaking, and false displays of benevolence.

If any of these social control functions fail, the death penalty is seriously threatened. If the offender is seen as a complex figure who may not deserve harsh punishment, the system is at risk. If those who serve on execution teams begin to find the practice of killing their fellow

citizens unpalatable, the system is at risk. If the public begins to view capital punishment as an unjustified and unacceptably brutal practice, the system is at risk. From a structural functionalist perspective, then, ritual's power to soothe difficult emotions is a valuable tool in the attempt create consensus over a deeply embedded but deeply controversial social practice.

Therefore, ritual persists. Whether it is simply a part of the capital punishment process that has developed naturally over time or whether it is actively encouraged by state actors to exist and endure is certainly beyond the scope of this project and is potentially unknowable. However, what we do know is the fact that nearly half of the U.S. states have legally prohibited the death penalty, which indicates that ritual is not working to sufficiently defend it against its detractors. To me, this points to one simple and fascinating possibility. Like Lord and Lady Macbeth's fruitless efforts to hide the evidence of their evil deeds through physical cleansing, perhaps the efforts at sanitization and disguise that ritual affords the capital punishment process simply cannot hide the deep truth that what is happening when the state kills its own citizens is nakedly horrific at its essence.

The fact that these rituals and their clear social control functions nevertheless remain embedded within the capital punishment process seems to suggest an awareness of this and a feverish attempt to hold on regardless. The death penalty both relies on and reinforces ideas around the morality of retribution, the freedom and autonomy of those who commit crime, and the nature of state authority, assumptions which pervade America's entire criminal justice schema. Perhaps part of the state's reluctance to completely eradicate capital punishment is because doing so would call these foundational concepts into question, shaking the criminal justice system to its core.

Tellingly, those who operate within the execution system for decades sometimes begin to see the cracks. Byron Eshelman, the prison chaplain for maximum-security San Quentin State Prison served on death row for 20 years and emerged as an outspoken opponent of the death penalty, penning his 1962 book *Death Row Chaplain* on the issue. Fred Allen, a member of the tie-down team in the 'death house' at Huntsville, Texas, assisted in the executions of 130 inmates before suffering a psychological breakdown and stepping away from the job (Herbert, 2000). Finally, Jim Willett, a former warden at the same prison, told National Public Radio the following:

I'll be retiring next year and to tell you the truth, this [execution] is something I won't miss a bit. There are times when I'm standing there, watching those fluids start to flow, and wonder whether what we're doing is right. It's something I'll be thinking about for the rest of my life. (Willett, 2000)

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