

## **Representing 'The Killing State': The Death Penalty in Nineties Hollywood Cinema**

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*Abstract: This article explores the ways in which the issue of capital punishment was raised in nineties Hollywood cinema. It is argued that the death penalty cycle of the mid- to late-1990s represented a conscious attempt by film makers to diffuse an anti-capital punishment sentiment through popular culture. Consideration of the effects of this cycle of films should be included in any assessment of the reasons for the waning of public support for capital punishment in America at the turn of the century.*

In March 2002, African-American actress Halle Berry won an Academy Award for her performance in the 2001 film *Monster's Ball*. Berry's award was seen as particularly newsworthy, it being the first occasion on which an African-American woman had won an Oscar for the category Best Actress in a Lead Role. That this Oscar winning performance arose in a film that told the unlikely story of a developing romantic relationship between Berry's character, the recently widowed wife of a death-row inmate, and a white racist guard involved in the execution of her late husband, although noted, attracted relatively little surprise or comment. Featuring a death-row prison setting and execution as the backdrop to the film was not of itself seen as being particularly remarkable.

Prior to the success of *Monster's Ball* Hollywood had by no means ignored the issue of the death penalty. The 1990s saw the production of at least five mainstream and popular death penalty films made by or featuring household name stars and / or directors.<sup>1</sup> From 1995's *Dead Man Walking*, which won Susan Sarandon a Best Actress Oscar, to Clint Eastwood's (1999) *True Crime*, these films generated an enormous amount of publicity and comment. The debate surrounding them took in film review and journalistic comment, but also extended to more serious considerations with a number of articles being published in academic law journals (see Shapiro 1996; Sarat 1999). Given that Hollywood had turned its attention to the issue of the death penalty it seemed reasonable to enquire as to the nature and significance of its attention. Were these films pro- or anti-capital punishment? How did they choose to represent the

death penalty and its operation? What ideas and understandings of capital punishment did they promote and circulate?

The 1990s cycle of death penalty movies, and the debate that accompanied them, emerged at a time when support for the continued use of capital punishment in America was running at an all time high. Public belief in the appropriateness of capital punishment in cases of murder stood at 80% in 1994. The number of executions was also steadily rising, reaching a post-war high in 1999. This coincidence suggests a number of pertinent questions. We could ask: why did the death penalty cycle of films emerge when it did? Why did the cycle choose to represent the death penalty in the manner in which it did? And, what was the impact of these films on the broader debate about capital punishment?

The present article seeks to suggest some answers to these questions. It will be argued that the films in question represented a conscious attempt by film makers to make an intervention into the debate surrounding the use of the death penalty in America, and, that the results of their efforts are worthy of serious consideration. After some introductory comments on the use of capital punishment in America the article is in three main parts. The first section supplies the context to the emergence of the death penalty cycle through a consideration of one view of the state of play concerning the death penalty in America. This section draws heavily on the work of Austin Sarat (see Sarat 2001). In particular it examines his arguments concerning the development of America as a 'killing state'. Secondly, the article examines, more briefly, Sarat's own views as to the manner in which the death penalty films of the 1990s represented the issue of capital punishment and the significance of this film cycle in understanding the contemporary cultural politics of capital punishment. The third section develops an alternative reading of the films involved, drawing on Sarat's own analysis of 'the killing state' and the abolitionist response to it. It will be suggested that, on balance, the films under consideration successfully translated a case against capital punishment into a popular cultural form, and, that both individually and collectively, the films influenced the climate within which the death penalty was debated. The article concludes with a brief discussion of some of the methodological problems involved in advancing such claims.

### **Capital Punishment in the United States**

From the time of its introduction into the American colonies in the 1600s, the death penalty has been controversial both in its principle and its operation. Which crimes should warrant a penalty of death, and by what means such a penalty should be carried out have always been a matter of contention and debate. With individual states variously adopting, adapting or rejecting the death penalty at different times there is no general history of the use of capital punishment in the United States. However, for our purposes it will suffice to note that it is thought that executions in the US reached an all-time high in the 1930s with 199 executions carried out in 1935.<sup>2</sup> Post-1945, both public support for the death penalty, and the

number of executions carried out, fell steadily reaching a low during the 1960s. In 1972, the US Supreme Court found in its decision in *Furman v. Georgia* (408 US 238 (1972)) that the use of the death penalty was arbitrary in its operation and therefore unconstitutional in practice, although not in principle. The *Furman* decision brought a temporary halt to executions. But in response to *Furman* pro-death penalty states adopted measures to separate the determination of guilt from the sentencing stage of capital proceedings, and to provide guidance as to which crimes (kinds of murders) should carry a capital sentence. In 1976, the US Supreme Court ruled that these measures were sufficient to overcome the charge of arbitrariness in operation and the use of the death penalty again became constitutional (Sarat 2001).

From its reinstatement in 1976, both public support for capital punishment and the practical use of the death penalty have grown steadily. By 1994, support for the death penalty had reached an all-time high, with 80% of the public thinking that capital punishment was an appropriate punishment for those convicted of murder. The number of executions carried out reached a post-1976 high with 98 executions carried out in 1999. Enormous academic, intellectual and practical energy has gone into documenting the radical shift from the *de facto* abolition of capital punishment in the late-1960s and early-1970s to its reinstatement and then later resurgence in the 1990s. Rather than attempt to review this entire debate here, the discussion will instead focus on one account of the manner of operation of the killing state, namely that provided by Austin Sarat in his recent book *When the State Kills: Capital Punishment and the American Condition* (Sarat (2001) and see Garland (2002) for an appreciation and critique of Sarat).<sup>3</sup>

#### **Austin Sarat on The Killing State**

Sarat (2001) uses the term 'the killing state' to refer to a situation in which the use of the death penalty has become routinised and normalised. His main concern is to examine the processes by which the operations of the killing state are legitimised. How and why can state killing come to be accepted and tolerated? Here Sarat points to the general trend in American society towards an obsession with crime. The role that crime and fear of crime plays in the public imagination has encouraged politicians to adopt the stance of being 'tough on crime'. In the 1990s, this translated into an across-the-board political support for the death penalty, with politicians from (liberal) President Bill Clinton to (conservative) state governor George W. Bush supporting capital punishment and playing the 'tough on crime' card.

In this context a number of general discourses on crime and punishment in circulation in society are reproduced within the criminal justice system and operate to assist in securing capital convictions and in turning sentences into executions. If the death penalty is to be reserved for the most heinous crimes then the crimes of the accused in capital cases must be described in the most heinous terms. Sarat is able to show how prosecutors

act to maximise the violence and senselessness of the crimes of the accused (through their discursive descriptions, through victim impact statements and particularly through use of still photographs of bloodied crime scenes) (Sarat 2001, ch. 2). At the same time the processes, practices and beliefs surrounding the operations of the capital punishment act to minimise the violence of state killing which is, by default, represented as being detached, rational, clinical and bureaucratic (Sarat 2001, ch. 3.).

Juries in capital cases are further encouraged to acquiesce to prosecutors' demands for capital sentences through the operation of a number of 'myths'. It is, for example, easier to bring in a capital verdict if jurors believe that 'death doesn't mean death'. Sarat is able to show how the belief that a verdict of death will be contested through a series of higher courts allows jurors to opt for a death sentence in the belief that it will in fact mean a lifetime spent on death row (Sarat 2001, ch. 5). This could be referred to as the 'myth of justice postponed' (Amsterdam 1999). The success of the state in turning verdicts into executions during the 1990s justifies us in referring to this belief as a myth. It is an oversimplification and, despite the protected nature of the appeals process in some cases, at best a partial truth. Similarly, sentences of death may be encouraged by a jury's belief that: 'life doesn't mean life'. Even when directed that a sentence of life without parole is an option, juries can bring in a verdict for death in the belief that a life sentence will be overturned at a later date. Underpinning the operation of the above myths are a number of other more generalised notions about criminality and the criminal justice system, including, a belief in dangerousness - that if a killer has killed once they can and will kill again, and a more general loss of faith in an ideal of rehabilitation.

In Sarat's analysis, the emergence and promotion of these ideas about crime and criminality are a 'top-down' phenomena. Politicians encourage (and then respond to) a (racialised) fear of crime. Politicians, the media and parts of the judiciary encourage a demonisation and monsterisation of those whose crimes can be represented as beyond comprehension and understanding. Finally, both politicians, the judiciary and the media, have propagated the view that the system is soft on cynical criminals who will persist in making frivolous and unmeritorious appeals to escape the judgment of the law. Throughout the 1990s a series of legal decisions operated to reduce the effective rights to appeal for defendants in capital cases. Death penalty lawyering, and opposition to the death penalty more generally, appeared to be operating within a cold climate of a much reduced ability to effectively challenge the operations of the killing state (Sarat 2001, ch. 6.).

There are two more aspects of Sarat's work that we need to consider. Firstly, Sarat provides an illuminating discussion of the ways in which death penalty lawyers adjusted to the cold climate of the 1990s through telling the narratives of their capital case defendants, both in an attempt to save their lives, but also to develop a record witnessing the operations of the death penalty in late 20th Century America. In a hostile climate lawyers defending capital cases shifted away from outright across-the-board

challenges to the constitutionality of the death penalty, and adopted a defensive strategy of contesting individual cases through telling the unique stories of their individual defendant. Here a recounting of the facts alone, or even the discovery of new facts, or technical arguments on legal process will rarely be sufficient to achieve the desired outcome. Rather a story must be told which humanises the client, which places their acts in context and establishes why it would be an injustice to let this client die in this instance. The client's story could be said to consist of three elements: the story of the crime, the story of the trial, and the story of the defendant's life. But we should note that, particularly in the post-conviction stage of trial, defending lawyers never argue that their clients are not responsible for their actions. The context of their crime is introduced to influence the decision about which punishment is appropriate not to deny that clients can and should take responsibility for their actions. Although such stories are usually conducted in terms of an individualised narrative, the death penalty lawyer will always look for the opportunity to point towards the structural inequalities and injustices within which their clients' individualised biographies unfold. The stories play a dual function of both attempting to save a life in this instance, and in putting down a record for history of how the death penalty operated in late 20th Century America (Sarat 2001, ch. 6.).

The final aspect of Sarat's work that we need to consider is his exploration of debates surrounding the televising of executions. If executions were to be televised what would the effect be? Would television turn executions into a voyeuristic spectacle (a modern-day Roman games) or, alternatively, would television inevitably sanitise the real event? Sarat fears that it is possible that in watching the televised representation of execution, viewers might believe that they had fully witnessed the real event - that they had come to 'know death'. But whilst accepting that television never will be able to represent 'the truth' about death - for example, it is not possible to see if a method of execution is painless - Sarat rejects the arguments against televising executions. He suggests that the effect of the televised image on a mass audience is diverse and unpredictable. There is an 'instability of the image' in as much as there is no unique way an image can be read or a conclusion drawn from it. Sarat (2001, ch. 7.) is in favour of televising as it makes state killing visible, even if only in its televised representation. This moves us back toward the public execution and public opinion as the final court of appeal. It opens up state killing to the possibility of contestation. In Sarat's analysis the reason executions are not televised has little to do with taste or decency, but rather, is maintained because state killing requires invisibility in order to maintain its fiction of a non-sadistic, administrative death (Sarat 2001, p.208).

#### **Austin Sarat on the Death Penalty in Film**

Having reviewed some of the key elements of Sarat's thinking, we are now in a position to consider his discussion of the ways in which the death penalty has been represented in Hollywood cinema. Sarat (2000, 2001)

develops an analysis of three contemporary death penalty films, namely, *Dead Man Walking* (1995), *Last Dance* (1996) and *The Green Mile* (1999).

Sarat's analysis of these films is based on a very detailed and close reading of each. Sarat quotes extensively extracts of dialogue from the films, and describes in detail the key scenes which he believes reveal their meaning and cultural significance. These three very different films turn out on closer examination to be merely elaborations on the same themes. All three are held to possess two main failings. Firstly, they are charged that they reduce the issue of the death penalty to its individual cases. The films are held to focus unduly on the issue of individual responsibility for criminal acts. The social origins of crime, and the social and political choices surrounding the use of the death penalty, are said to disappear in these films which present individualised narratives of guilt, innocence and dessert. The second main failing of the films is held to be that they focus fetishistically on the mechanisms of execution and in so doing purport to be able to 'represent death'- to leave the viewer believing that they have seen what an execution is 'really like' (Sarat 2001, p.234). Undeniably each of the films under consideration does seek to meticulously recreate for the camera the process of execution. In both *Dead Man Walking* and *Last Dance* lethal injection is the method of execution, but to Sarat the matter of fact 'realist' representation of this process, rather than revealing any truth about state sponsored executions, serves only to reproduce the fiction of state killing as a rational, bureaucratised and medicalised death.

Whilst there is much of value in Sarat's analysis of the operations of the killing state his treatment of its representation in film is arguably the least satisfactory area of his work. There are any number of problems with Sarat's readings of the films in question which are highly selective, examining in detail those scenes which (in his view) support the reading he wishes to advance whilst ignoring other aspects of the films. The readings of the films are excessively literal with the dialogue the characters speak often being held to represent the view of the world that the film is endorsing. The analysis confines itself to a reading of the films themselves which are held to operate as conservative cultural texts reproducing the notions of criminality which underpin the cultural politics of the killing state. Yet this is asserted without any reference to how the films were actually received and debated, or any consideration of the role that they actually played in the public debate about capital punishment.

#### **Cycles and Genres: Death Penalty Film in the 1990s**

Sarat (2000) suggests that there is a long history of American films which appear to question the death penalty. From James Cagney's *Angels With Dirty Faces* (1938), through *I Want To Live* (1958) to the more recent offerings, we can identify a death penalty film genre (and see Rafter (2000) for a further discussion of some of the films in this genre). Sarat suggests that this genre has two sub-types: the search to discover the redeeming qualities in the guilty inmate about to die; and, the action-packed, down-to-the-wire, race-to-save-an-innocent-person-from-execution (Sarat 2000,

p. I).<sup>4</sup> Space here does not permit a discussion of whether there is a death penalty film genre. Suffice to say genre analysis tends to focus on identifying the unchanging common characteristics of a group of films and the ideological work that those films do. The analysis below is less concerned to show that the death penalty films of the 1990s constituted a genre than to explore the ways in which the films in the cycle could be seen to be in implicit and explicit debate with each other, both in the questions they raise and their manner of addressing them.<sup>5</sup> The discussion below suggests that an alternative reading of the films that is at least as plausible as that advanced by Sarat is possible, but further seeks to go beyond readings of the films themselves to consider the ways in which the films both point to each other and things outside themselves in order to enter the culture.

### *Dead Man Walking and The Green Mile*

Released in 1995 and directed by Tim Robbins, *Dead Man Walking* follows the unfolding relationship between death-row inmate Mathew Poncelote (Scan Penn), and his spiritual confidant Sister Helen Prejean (Susan Sarandon), in the countdown to his execution. As Sarat suggests it is a story of the search to find the humanity and redeeming qualities in the guilty man. Whether it represents a conservative cultural politics in support of the operation of the killing state is less clear. Sarat's reading of the film is too literal. We need to pay more attention to the context in which it emerged and its strategy for putting an anti-death penalty case in a cold climate.

*Dead Man Walking* is best viewed as being the opening film of the 1990s cycle. It emerged at a time of a high level of support for the death penalty and a climate apparently hostile to opponents of the death penalty. In this context *Dead Man Walking* adopts the view that there is little point in preaching to the converted. Robbins's aim is clearly to make a film which will put a foot in the door, or create some chink in the discourse and mentality of 'let 'em fry'. Its aim is to reopen a discussion which appeared to have been closed. The strategy adopted is to present an apparently even-handed treatment of the capital punishment issue, or indeed one which leans towards the perspective of 'the victims'. Throughout the film, Sister Helen's doubts about the death penalty are represented as being a minority point of view. The trick of the film is to see how far this relentlessly even-handed treatment can be pushed whilst still ending up with an anti-death penalty film. The film achieves its aim in its last 20 minutes. In the final hour before the execution, Poncelote becomes a person with thoughts and feelings, family and relations, a human being who has a life outside of the crime that they committed, someone who is 'more than the worst thing that they ever did' (Prejean 1993). The final scene of the film shows a tentative reconciliation between Sister Helen and Earl Delacroix, the father of one of Poncelot's victims, the film's apparent even-handedness giving way to a final thought that perhaps there is a way out of the politics of revenge.

Sarat accuses *Dead Man Walking* of reproducing the individualised, asocial notions of criminal responsibility which underpin conservative

perspectives on law and order, and, of deluding its audience into believing that they can know death through its cinematic representation, whilst in fact reproducing the fiction of state killing as a civilised, bureaucratised death. Both arguments appear to be strange almost to the point of being perverse in the light of Sarat's (2001) own discussion of the narrative strategies of death penalty lawyers, and the arguments for and against televising executions. *Dead Man Walking* is an example of the narrative strategy of death penalty lawyering, that Sarat cites so approvingly, translated to film. The film tells the story of the client, the story of the crime and (to a lesser extent) the story of the trial. The film succeeds in taking Poncelot from being a dangerous out-of-control monster who will kill again if freed to being someone who made a mistake when they got into a situation where they were in over their heads and didn't know what to do.

Sarat's argument that *Dead Man Walking* reproduces a notion of state killing as being clinical and non-sadistic is even more surprising. The film clearly flags up that it is not possible to tell if lethal injection is painless, etc by watching it. Sarat should have made more of his own 'instability of the image' argument here and recognised that the representation of the execution is indeterminate in its effect and could be read several ways. Arguably *Dead Man Walking* in any case shifts the argument about 'cruel and unusual' away from the technique of execution to the entire process revealing the unnaturalness of the psychological pressures associated with the death-row wait. In doing this *Dead Man Walking* does make visible the operations of the killing state, albeit in their cinematic representation, and so opens them up to public scrutiny and debate.

*Dead Man Walking* clearly aimed to attempt to win space for opposition to the death penalty and arguably succeeded in doing so. We could suggest that the film was intentionally constructed to point outside of itself in several ways. Firstly, in being based on a book of the same name and a (composite) 'true story', the film encouraged interest in the work of the real life Sister Helen. The book, *Sister Helen and her Order* received an enormous amount of publicity and attention as a result of the film. Secondly, the film was accompanied by a soundtrack of music 'from and inspired by' which included contributions from artists such as Bruce Springsteen, Johnny Cash, Suzanne Vega, Lyle Lovett, Steve Earl, Nusrat Fateh, Eddie Vedder, Tom Waits, Michelle Shocked, and Mary Chapin Carpenter. *Dead Man Walking* was also later made into an opera. In Sarat's abstract textual reading *Dead Man Walking* reproduced the conservative cultural politics underpinning the killing state. In the real world the film won space for a renewal of opposition to the death penalty and allowed a wide range of public figures to publicly associate themselves with the anti-death penalty cause.

The extra-textual references in *Dead Man Walking* extend to relationships with products not conceived of or produced until after the film itself was made. Most notably Frank Darabont's *The Green Mile* (1999) name checks *Dead Man Walking* in several ways. Tim Robbins who directed *Dead Man Walking* is perhaps best known for his starring role in Darabont's *The Shawshank Redemption*. Darabont was clearly aware of Robbins's film when

he made *The Green Mile*. Early on in the film death-row inmate John Coffey is brought onto the mile accompanied by the hail of 'dead man walking, dead man walking'. In *Dead Man Walking* the family of one of the victims is named Delacroix, in *The Green Mile* it is the name of one of the death-row inmates, an admittedly minor instance of one film name checking the other. But we might note that films are not necessarily watched in the order in which they are released. So whilst it is quite possible that someone might see *The Green Mile* and recognise that it was name checking the already seen earlier film it is also possible that watching the later film might prompt an interest in the earlier film. The films point to each other.

Based on a short story by Stephen King, *The Green Mile* tells the story of John Coffey, a physically huge African-American, who is on death row convicted for the rape and murder of two young girls. As the story unfolds it emerges that Coffey, who was caught red-handed with the dying girls in his arms covered in their blood, has magical healing powers and was in fact attempting to save their lives. This film doesn't fit either of Sarat's death penalty sub-types. Although Coffey is innocent there is no action-packed, down-to-the-wire race to save him. Nor is the film really about the search for his humanity and redeeming features. Coffey is superhuman and has in any case extraordinary redeeming qualities.

Anyone wishing to develop a reading of the film would need to recognise and locate it within the tradition of 'magical realism' and approach it through a theoretical lens appropriate to that mode of representation.<sup>6</sup> Such an analysis is not necessary for our purposes here. Suffice it to say that much effort has gone into fathoming the meaning of the film with almost every reviewer being able to find something different to say about it. For some the decision to play John Coffey, the innocent death-row inmate, as a deferential African-American is pandering to racist stereotypes - for others it is a brave case of playing with and against the stereotypes. For some the film is packed full of religious allegory and is a fable about the need to find good even in a bad situation - that is, nothing to do with the death penalty at all! For others the electrocution scenes (sufficient to move the film from a 15 to a 18 rating in the UK and to achieve an R rating in the United States) indicate that Darabont clearly intended making an anti-death penalty movie. The point is of course that the film is all of these things and none of them. Darabont has packed the film with an excess of meanings in order to empty it of meaning. It means what you want it to mean. The film itself has absolutely nothing to say of any substance about the death penalty in contemporary America, although it can no doubt be read extensively for implicit theories of criminality, metaphors of good and evil, parables on racial (in) justice, etc.

Having identified the elusive probably non-existent nature of 'the meaning of the film', we can recognise that its intended effect is entirely extra-textual. In making the film Darabont clearly realised that it would be discussed as a death penalty movie and as a contribution to the debate about capital punishment. The film attempts to do no more than to keep open the space opened up by *Dead Man Walking*. *The Green Mile* was by far the biggest film of the death penalty cycle in terms of box office gross. The

film achieved blockbuster status achieving a gross of \$268,700,000 at the worldwide box office. The film is ranked number 131 in the all-time worldwide box office (Internet Movie Data Base (IMDb)) and ranked 93rd in list IMDb users' favourite films. Internet Movie Data Base lists 173 links to reviews and comment pieces on the film. The film prompted Austin Sarat to write his own short comment piece 'Death row, aisle seat' (Sarat 2000). In short the film, without doubt, generated publicity. The significance of this publicity will be returned to below.

#### *Last Dance and The Chamber*

Released in 1996 and starring Sharon Stone, *Last Dance* tells the story of Cindy Liggett, a death-row inmate awaiting execution whilst her appeals process is exhausted. Rob Morrow plays Rick Hayes, a young lawyer recently appointed to the public clemency board, whose job it is to make the case report dial will inform her final plea for clemency. Widely panned by (some of) the critics, intensely disliked by academic commentators such as Sarat (2000, 2001), *Last Dance* was never going to achieve the critical acclaim of *Dead Man Walking*, or the box office success of *The Green Mile*. Playing like a slightly better-than-average made-for-TV movie *Last Dance* is the kind of film which finds its way into the video stores and will be seen by many on its TV showing. Like its better known counterparts it is a significant film in the death penalty cycle of the 1990s.

*Last Dance* is an action-packed, down-to-the-wire, race-to-save-a-gwz(i)-person-from-execution. Cindy's guilt in the murders of which she has been convicted is never in doubt. By the time the film starts she has already come to terms with and accepted responsibility for the crimes she committed. Indeed in twelve years on death row she has already changed and become a different person to the one she was when the crimes were committed.<sup>7</sup> Hence there is no search for the redeeming qualities in the inmate about to die. They are self-evidently already diere. The drama of die film revolves around whether Rick (Rob Morrow) will be able to come up with previously unreviewed evidence that will breath new life into the case and make the basis for an appeal for clemency. But early on Rick discovers that his investigation and report are intended only as a formality; the governor, for reasons of political expediency, has already decided to commute the sentence of another prisoner.

*Last Dance* runs in the tradition of movies in which an investigator-hero uncovers and battles corruption in public office (see Ryan and Kellner (1990) and Denzin (1995) for further discussion). There are any number of films within this tradition which show official wrongdoing and which purport to question social institutions.<sup>8</sup> But it is usually the case that by the end of the film the wrongdoing is revealed, the corrupt get their comeuppance and 'the system redeems itself in the last reel' (Ryan and Kellner 1990). An often-used device in this tradition is the twin-track storyline whereby the main protagonist, as well as experiencing strain in his public life, is also undergoing a crisis in his personal life. But by the end of the film both the public wrongdoing and the personal trauma are

resolved. The hero receives some kind of public vindication for his investigative efforts and is reunited with his wife/girlfriend.<sup>9</sup> Romantic success is the reward for male decency, and the actions of principled men redeem corrupt social institutions. *Last Dance* consciously fails to reproduce these conventions. Rick fails to right the injustices he encounters and ends the film alone. There is no romance with Cindy and the girlfriend who appeared briefly at the outset of the film disappears never to reappear when Rick risks his career for a principled stance. The film ends with Rick walking alone outside the Taj Mahal.

In *Last Dance*, who lives and who dies depends not on merit or desert but on political expediency and the vagaries and machinations of the criminal justice system. Sarat's reading of the film (reproducing notions of individual criminal responsibility, pretence at knowing death) is too harsh a judgment on a film which both in its style and substance does raise questions about the legitimacy of the death penalty. To be sure it asks not if the death penalty is right or wrong *se* but whether it is right or wrong in this instance. But just like the death penalty lawyers you have to tell the story on a case-by-case basis. And like the narrative strategies of the death penalty advocates, the unique stories of the individual can point the way to the broader social structures. °

Starring Gene Hackman and based on the novel by John Grisham, 1996's *The Chamber* is best paired with *Last Dance* although it is often discussed in review as being a poor relation to *Dead Man Walking*. The film is the story of how a young lawyer Adam Hall travels to Mississippi to defend death-row racist bigot Sam Cayhall (Gene Hackman) in his final appeal before sentence is carried out. In the unfolding story every legal avenue is explored and every possible argument raised in order to gain a stay of execution, including the argument that Sam's racism is a product of his upbringing and culture. *The Chamber* is different to *Last Dance* and *Dead Man Walking* inasmuch as the method of execution is gas (hence the film's title). The film airs all of the arguments relating to this method of execution as being 'cruel and unusual'. There are plenty of verbal and visual cues that this is not a painless and clinical method of death.

*The Chamber* seems to go further than any of the other films under consideration in meeting (some of) Sarat's demands. It is perhaps significant that Sarat mentions the film only in passing and does not produce a reading of it. It is possible that if he had read this film in the same manner as his chosen films he may have been forced to conclude that this film raises some of the questions he feels are neglected elsewhere. But having said this *The Chamber* is possibly the least satisfactory of the films in the death penalty cycle. Although all the anti-death penalty arguments are raised and aired the film is widely held to have had little impact. Many reviews concur with the assessment that by the end of the film the viewer actually cares little if Sam lives or dies. *The Chamber* would seem to be the film that did little more than make up the numbers in the death penalty cycle.<sup>11</sup> It could be argued that both *Last Dance* and later Clint Eastwood's *True Crime* had a clearer idea of their anti-death penalty intentions and were more successful in translating them on to screen.

Austin Sarat dismisses Clint Eastwood's 1999 *True Crime* in one word - forgettable (Sarat 2000, 2001). This is both unfair to the film and its makers, and unproductive in developing an understanding of how the death penalty cycle of the 1990s operated. Sarat (2001) should have analysed this film but did not. Directed by, and starring Clint Eastwood, *True Crime* is an execution movie. It is an action-packed, down-to-the-wire, race-to-save-an-innocent-person-from-execution. In this instance the innocent man is African-American Frank Beechum, a man with a slightly bad boy past who has already cleaned up his act prior to his wrongful arrest for a convenience store murder. Beechum is stoical in the face of his impending execution and has the support of his family (wife and child). This however is not an example of the counter-stereotypical representation of the dignified black male being press-ganged into the service of white society. The film explicitly flags up a racially divided society and suggests some of the ways in which racist fears and assumptions can contribute towards a miscarriage of justice. And although Clint (as newspaper man Steve Everett) solves the case, and has his own small personal vindication, this again, like *Last Dance*, is not a case of 'the system being redeemed in the last reel'. Clint doesn't enjoy a happy reunion with his wife and ends the film alone. This is less a case of the actions of one principled individual correcting the shortcomings of social institutions and more a case of showing that one washed-up journalist can in one instance show how arbitrary and capricious the criminal justice system can be.

Reviews of Eastwood's *True Crime* were mixed. Sarat's dismissal of the film as 'forgettable' is presumably a reaction to the style of the film. *True Crime* is undeniably 'hammy', packed full of corny dialogue and heavily flagged-up 'significant moments'. The story line involves Clint in solving, in less than twelve hours, a case that the police and prosecutors office have worked on for two years, whilst at the same time finding time to take his daughter to the zoo. Nonetheless, regardless of box office showing, it is a film that will find (has found) its way into the video rental stores and onto DVD, and will be seen by many on receiving a TV showing. But what message does the film convey? Arguably it puts a 'new abolitionist' (Sarat 2001, ch. 9) case against the death penalty. That is, it finds the death penalty wrong because it can not be operated fairly in practice. The fact that journalist Steve Everett (Clint Eastwood) is able to correct the failings of the system in this instance does not show that the safeguards in the system work but rather draws attention to how tenuous they are.

*True Crime* was accompanied by an official website which contained links to anti-death penalty organisations. The DVD of the film contained a short feature of a true story of an African-American man who was wrongly arrested for murder, convicted and sentenced to 50-years imprisonment after calling into a convenience store for a bottle of AI sauce. The man was later freed after a journalist following the story got lucky and found the missing witness and documents that supported the man's previously unproved alibi. Again this story serves to illustrate the unreliability of

conviction. All-in-all the film and its spin-off products publicly associate its director and star, more usually associated with pro-law and order roles, with the anti-death penalty cause.

It is perhaps useful to conclude with one last example to close our discussion. *Witness to the Execution* was a made-for-TV movie which later went to video and can be rented from video stores and watched as if it were a regular movie. The film is set in the very near future where entertainment companies have exhausted all of the possibilities for pay-per-view spectacles. The last untelevised event is a live execution. An upcoming young female television executive sells the idea to her bosses and the state correctional department and lines up a willing candidate. The event is planned but in the count-down to the execution the television executive begins to have doubts about the guilt of the condemned man and tries to halt the execution.

*Witness to the Execution* is probably the most dishonest film of the 1990s death penalty cycle. The film begins by styling itself as a thoughtful critique of the morality of staging an execution as a live televised event. The plot then switches to the doubts about guilt and the race-to-save-the-innocent-man. However, here the twist in the tale is that our female investigator-hero has been duped, and the innocent man turns out to be guilty after all. *Witness to the Execution* ends up reproducing the view that death-row inmates are manipulative liars who will go to any lengths to escape justice. This is perhaps the one film of the six reviewed here that operates to circulate some of the myths underpinning the killing state.<sup>12</sup>

#### **The Effect of the Cycle on Popular Debate**

Austin Sarat reviewed three of the films in the 1990s cycle of death penalty movies and found that all were conservative cultural products reproducing notions of criminality and punishment which underpin the operations of the killing state. The analysis presented above considers six films and suggests that of these, four, *Dead Man Walking*, *Last Dance*, *The Green Mile*, and *True Crime*, were broadly oppositional to the killing state in intent and effect. Of the remaining two, *The Chamber* might be seen as putting an anti-death penalty case so weakly as to be neutral in its effect. One minor made-for-television movie *Witness to the Execution* could be said to reproduce and trade on notions harmful to the anti-death penalty case. There are of course a number of problems involved in advancing such claims. What confidence can we have in the readings advanced? Do we have any basis for choosing between the alternative readings advanced? Here we may have to accept that the reading of films is subjective and that such readings are only ever provisional and offered in the spirit of debate (see Sparks (1992) and Barker (2000) for a discussion of some of the issues involved here).

More serious perhaps is the issue of whether we can move from readings of the films to speculation about their possible impact and effect. Here it is obviously not possible to prove scientifically what impact the death penalty film cycle had on public sentiment regarding the death penalty or the public debate surrounding the legitimacy of capital

punishment. We can however make the following points. Firstly, the films and the issues that they raise undoubtedly became talking points. They generated an enormous amount of media coverage in the press, on radio talks shows, etc. A slew of media reports pondered the meaning of the films. Comment pieces headlined: 'Capital punishment; what is entertainment industry's role?' (Waxman 2000), 'Films probe the death penalty: what messages do they convey?' (Randall nd), 'Death row, aisle seat' (Sarat 2000), and 'Hollywood pleads its case', abound. It is quite possible that the films had a catalytic role in setting the agenda for other film and television producers. It has been argued that the vast majority of output in US film and television crime drama which serve up an hourly diet of senseless killing and mayhem on the streets is implicitly pro-death penalty. Even responsible mainstream television crime drama shows such as *Crime Scene Investigation* and *Law and Order* seem to be engaged in a campaign to single-handedly restore faith in the law. Both of the above shows would seem to have a bias towards the view that not only can the fact of guilt and innocence be ascertained but that the law can find an appropriate disposal to 'make the punishment fit the crime'.<sup>13</sup> These messages could serve to erase the very real doubts and questions that should exist about possibilities for miscarriages of justice in a society obsessed by crime and where politicians as Sarat (2001) suggests 'govern through crime'. The efforts of Eastwood, Robbins, Stone, etc. are best seen as an attempt to win some space for the idea that we need to debate the other side of the coin. Significantly the issues raised by the death penalty film cycle were picked up by television. In the year 2000 prime-time television shows such *The Practice*, and *The West Wing* aired episodes heavily featuring death penalty storylines.

Whether and how this media attention influenced real world decision makers would require further investigation. Here we can only note that at around the same time, both public confidence in the death penalty and the number of executions carried out began to fall. In January 2000, Governor George Ryan of Illinois announced, in the light of a growing number of cases of mistaken conviction coming to light, that he would impose a moratorium on executions until the death penalty had been thoroughly investigated. The reasons for the apparent decline in public support for the death penalty and the slackening of executions carried out has been linked to many factors (see Lilly 2002). The increased use of DNA testing revealing mistaken convictions, the results of research showing the extent of inequalities in sentencing, the growing critical media coverage of the issue possibly all played a role, although sorting out the relative contribution of each is well-nigh impossible. Sarat (2001) views the shift as being a victory for a new abolitionism: a set of arguments which abandons the notion that the death penalty is wrong in principle but which insists only that it can not be operated fairly in practice. In seeking to explain why the new abolitionist arguments began to make headway at the end of the 1990s, Sarat can point to the few key decision makers who simply gave up trying to defend the indefensible. Whilst there is no doubt some mileage in this approach it does not address or allow for the role of

public opinion and the rising level of media criticism in influencing these decisions. But, given Sarat's own arguments concerning the pressures on politicians to be seen to be tough on crime, we can suggest that it is presumably easier for Governor George Ryan to abandon something about which widespread doubts are being raised anyway.

It is perhaps worth noting that none of the factors advanced as reasons for the downturn in support for the death penalty are necessarily of themselves significant for the anti-death penalty case. The number of innocent death-row inmates freed prior to execution can be taken as indicative that the safeguards in the system work. The emergence of DNA testing could be argued to increase the reliability of conviction. Evidence about disparities in sentencing is not really a new factor and is in any case open to contestation. None of these factors of themselves need necessarily lead to a downturn in support for capital punishment. The role of the films here may have been as much to convey a sentiment that the problems associated with the operation of the death penalty constituted an injustice as a means of conveying rational argument about the abolitionist case. Whatever the methodological problems involved in investigating these issues it surely seems counter intuitive to suggest that the growth of media attention and criticism played no role and had no effect in the process<sup>14</sup>.

### **Assessment and Conclusions**

The argument of this article has suggested that the death penalty films of the 1990s attempted to raise doubts about the death penalty and to translate a case against the death penalty into a popular cultural form. The films raised a number of arguments drawn from both the old abolitionism (no one deserves to die) and the new abolitionism (some may deserve to die but we can not operate the system reliably enough to say who). The films shifted the issue of 'cruel and unusual punishment' from the technique of execution to the psychological stresses of the experience of the death-row inmates. The films showed guilty death-row inmates who had redeeming qualities and were capable of rehabilitation. They showed innocent death-row inmates who simply did not deserve to die anyway, and a legal system that could not be relied upon to distinguish between the two.

When we move to assessing the impact that the films may have had, the methodological problems involved in establishing to what extent film and television drama effected any shift in popular sentiment are probably near insurmountable. There is however a mass of material available to support the view that film and television drama became talking points and reinvigorated public debate. The problematic nature of the death penalty is registered in the products of mainstream film television drama . The example of the death penalty is a significant one. In the mid-1990s it may have seemed that support for the killing state was entrenched and enduring. By the year 2000, support for state killing seemed more fluid. Most recently Governor George Ryan's emptying of Illinois' death row on leaving office in January 2003 would have been unthinkable only a few years previously<sup>16</sup>. Sarat's conclusion that the death penalty movies of the

1990s reinforced the killing state seems unlikely given that the cycle coincides with a downturn in support for capital punishment and perverse in the light of his own arguments around the narrative strategies of death penalty lawyers and the instability of the image in representations of state killing. Sarat believed that the operations of the killing state should be made visible so that they could then become open to contest and challenge. It is the argument of this article that the films *Dead Man Walking*, *Last Dance* and *True Crime* did just that.

### Notes

- 1 The five films that are clearly part of the cycle are *Dead Man Walking* (1995), *Last Dance* (1996), *The Chamber* (1996), *The Green Mile* (1999) and *True Crime* (1999). An earlier made-for-TV movie, *Last Light* predated *Dead Man Walking* and could have been considered in the analysis although *Dead Man Walking* is usually regarded as being the first film in the cycle under consideration. In addition to the five films identified above the analysis presented below considers a made for TV movie *Witness to the Execution*. The analysis excludes discussion of *Return to Paradise* which is arguably a death penalty film although again not one usually regarded as part of the cycle under consideration. Finally Robert Altman's (1992) *The Player* is generally regarded as being a sharp satirical sideswipe at the Hollywood movie industry. Interestingly one of the film's sub-plots concerns the making of a movie about the death-row wait of an innocent inmate. The film is originally pitched as definitely not having a Hollywood ending. The film that is eventually made ends up with the female lead (played by Julia Roberts) being saved by Bruce Willis who bursts into the execution chamber for a last-minute rescue. Whether this sub-plot is sufficient to qualify *The Player* as a death penalty movie is contentious. Nevertheless it is interesting that the film starred Tim Robbins, a name which will crop up again in our later discussion.
- 2 Information taken from Clark County Prosecutors Office 'Death Penalty Timeline' [online] (available at: [www.clarkprosecutor.org/html/death/timeline.htm](http://www.clarkprosecutor.org/html/death/timeline.htm)).
- 3 The discussion below concentrates mainly on that which is of value in Sarat (2001) and takes his notion of the killing state as having some purchase in summing up the state of play of capital punishment in 1990s America. Having said this there are a number of problems both with Sarat's notion of a generalised nationwide killing state and with his formulation of a 'new abolitionism'. The text below avoids developing a discussion of these issues although see Garland (2002) for a lucid appreciation and critique of Sarat.
- 4 Unfortunately Sarat does not provide an annotated filmography to show the derivation of his distillation of these two sub-types. Nevertheless it is interesting that Sarat formulated the genre in this way. The discussion below will suggest the films in the 1990s death penalty cycle generally do not fit either of these two sub-types.
- 5 The notion of a cycle is intentionally a much looser formulation than that of genre. Cycle is used as a loose descriptive term for a group of descriptively similar films which emerged during a particular moment in time (the alien invasion cycle of the 1950s, the disaster movie cycle of the 1970s). This looser notion can accommodate the idea that not all the films in the cycle belonged to the same genre. *The Green Mile* arguably operates within a genre of magical realism. Both *Last Dance* and *True Crime* are probably best understood as generically similar to the investigator-hero movies discussed by Ryan and Kellner (1990) and Denzin (1995). The identification of the cycle is still problematic. The discussion here follows the convention of focusing on post-sentencing/pre-execution movies as constituting the cycle. Arguably the 1990s contained a number of pre-sentencing courtroom dramas which also address death

penalty issues. These are excluded from consideration in the current discussion. Finally the more recent *Monster's Ball* falls outside the time frame under consideration and in any case is probably best regarded as a mutation of the cycle rather than part of the cycle proper.

- 6 The term magical realism has come to be used in the study of literature to describe a style of writing in which the magical or fantastic is unproblematically inserted into an otherwise realist text. This style of writing has for some time been popular in Latin America but more recently authors such as Salman Rushdie (*Midnight's Children*, *The Satanic Verses*) have become associated with the term. In cinema recent films such as *The Green Mile* and *Magnolia* have also been suggested as containing elements of magical realism.

In magic realism, it is suggested, the magical/supernatural/fantastic elements of the story are told without comment as they happen. The 'author' maintains a neutral stance towards the events depicted. As such magic realism operates as a *hybrid genre* combining fantasy and fiction in a manner which maintains a generic tension between the two. It has been suggested that:

*MAGIC REALISM* resorts to deliberate artistic innovation, and employs exaggeration, hyperbole, totalization, aphorism, paradox, stereotype, parody, farce, uncertainty, dreams and hallucinations, the grotesque and discordant. It prefers wisdom to knowledge, which it distrusts, along with rationality. ...[Magic realism operates on] .. behalf of the human, the traditional, and the communal or *folk*, is inevitably a critique and subversion of *REALISM*, which purports to represent the *truth* or the *official view*, (from: Magic Realism at: [www.usm.maine.edu/~eng/magicrealismnotes.htm](http://www.usm.maine.edu/~eng/magicrealismnotes.htm))

This perspective could be applied to reading *The Green Mile* but the text avoids this opting to regard the film as being simply *polysemic*.

- 7 As Sarat points out the story of *Last Dance* eerily *anticipates* the story of Karla Faye Tucker who in 1998, amidst a fanfare of publicity, was the first woman since 1984 to be executed in the United States. Tucker's crimes and subsequent personal transform are remarkably similar those of Cindy Liggert her fictional forerunner. Having said this it is equally possible that the makers of *Last Dance* were aware of the Cindy Liggett case prior to the extensive publicity surrounding her execution.
- 8 A good recent example of this tradition would be the Denzil Washington / Meg Ryan offering *Courage Under Fire*.
- 9 The masculine is used here intentionally as investigator heroes are invariably male. There are a few attempts to bring women into this character type but there are few examples of women occupying the role unproblematically. See for example Sandra Bullock in *The Net*, Kelly McGillis in *The House on Carroll Street* and Julia Roberts in *Erin Brochovitch*.
- 10 Some reviewers recognised that *Last Dance* contained a parallel story whereby for middle-class rich kid Rick a misspent youth and an earlier mistake in his legal career led to a second chance job in the Public Clemency Board whereas for 'poor white trash' Cindy, her misspent youth ended on death row.
- 11 Of course alternative views of the film are possible. In addition to the issue of cruel and unusual punishment the film could be said to raise the issue of whether any point is served by executing burnt out bigots years after their crime has been committed. Arguably the film may have contributed something to the cycle and it is possible to read the film differently if one is aware of and gives credence to reports that author John Grisham changed his views on the death penalty as a result of the work he did doing the research for the book on which the film is based. This is again an example of one of the ways in which death penalty films seem to be particularly rich in extra-textuality.

- 12 Again it could be suggested here that alternative readings of the film are possible. One might regard the manipulateness of death-row inmates as being an issue which deserves attention. But even here this issue is arguably much better dealt with in *Dead Man Walking* which relates attempts to postpone death to desperation rather than inherent character faults.
- 13 *Crime Scene Investigation* is notable for having a clear-up rate that any real world law enforcement officers would die for. The team routinely solve even the most bizarre and chaotic crimes providing certainty as to both the means and motive pertaining to the crime. But even here, doubts about the law emerge and in one episode in season two the team close too early on a case allowing the suspect to go down for a murder that they most probably did not commit whilst allowing the suspect's guilty brother to go free. *Law and Order* is an even more complex case given that the format of the show invariably involves a case which presents moral/legal dilemmas for the prosecutors' office. Although these dilemmas are usually resolved by the end of the show this is not to say that the audience has to be convinced by the resolution. *Law and Order* invariably involves questions of homicide (murder or manslaughter) but tends to tip-toe around the issue of the death penalty. Both the shows mentioned here are worthy of more in-depth serious analysis.
- 14 Lilly (2002) does not mention the films at all in his discussion of the factors influencing decline in support for capital punishment. Sarat (2001) would seem to be arguing that support for the death penalty fell despite the influence of the films which he sees as reinforcing the killing state.
- 15 It is perhaps worth making the contrast here with the issue of mass incarceration and the rise of super-maximum-security prisons. These issues have hardly been addressed at all by mainstream Hollywood cinema which has continued to produce formulaic prison film fantasies which are in no way critical of any real world experience of incarceration - the latest of these being *The Last Castle* (2001). See Rafter (2000) for a discussion of the mainstream and independent versions of the prison film genre.
- 16 In January 2003, in his last days before leaving office, Governor George Ryan pardoned four death row inmates and commuted the sentences of 167 other condemned inmates. This mass pardoning, which cleared the Illinois death row, was justified by Ryan by arguing that the death penalty was 'arbitrary and capricious and therefore immoral'. Ryan, a one time supporter of capital punishment, reached this decision from his personal involvement in being the last appeal for Illinois' death row inmates. It is not being suggested here that the films influenced Ryan's decision but it is quite possible that the backlash against the decision would have been greater if film, television and media debate had not already prepared the ground, rehearsing Ryan's doubts about the arbitrary and capricious nature of the death penalty.

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