Reflections on the Needle: Poe, Baze, Dead Man Walking

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The goal of most of the “Law and . . .” movements is to bring the perspective of the humanities to legal issues. Literature and film, for examples, can cause one to envision such issues afresh. Sometimes this viewing from a new angle is premeditated, but sometimes it sneaks up on you.

During a recent fall semester my colleague, Kristen Adams, asked that I speak to Stetson’s Honors Colloquium on a law and literature topic. The only date we could work out was Halloween, and so Professor Adams and I laughingly agreed that Edgar Allan Poe would be an appropriate choice. Dipping into Poe’s stories (all of which seem to be online), I immediately sensed their resonance with the law of capital punishment, another of my academic interests. The Fall of the House of Usher seemed filled with images of the death house. The premature burial in “Usher” – which recurs in Poe’s famous disquisition on that topic, as well in Berenice – A Tale and The Cask of Amontillado – made me think of lethal injection gone wrong, in which the prisoner suffers excruciating pain but is unable to express it. And the theme of the victim’s enjoyment of revenge in The Cask of Amontillado – another example of good (or at least understandable) intentions gone wrong – reminded me of issues with which I have struggled ever since I started showing the movie Dead Man Walking to my students. Poe, Tim Robbins (the movie’s writer-director), and Sister Helen Prejean (from whose memoir the film derives) all express profound doubts about the wisdom and practicality of inflicting death to assuage the grief of victims of wrongdoing.

* Professor, Stetson University College of Law. Thanks go to Ellen Podgor for reading an early draft of the essay, to Kristen Adams for inviting me to address her Honors Colloquium, see infra note 1, and to the colloquium students for the lively discussion they provided. Any errors are of course my own.

1 This innovative interdisciplinary course for high-ranking students provides a series of weekly discussions in the fall, leading to preparation and presentation of student papers in the spring. See Stetson University College of Law, Course Descriptions, http://www.law.stetson.edu/tmp/l/about/offices/registrar/internal-1-sub.aspx?id=470&terms=honors+colloquium (last visited on June 24, 2009).

2 I have taught the course regularly since 1992 and have written in the area.

3 I have offered a sentencing course since 2001, and the death penalty has been the subject of my most recent scholarship.

4 The film has been required viewing in both my sentencing and law, literature, and film courses.
Bringing closure to the friends and family members of murder victims has long been a rallying cry for supporters of capital punishment, yet I have always questioned that process. Robbins’s film taps into a similar stream of doubt, and ever since seeing it, I have wrestled with how to express these thoughts about the movie without demeaning the unutterable pain of those close to a murder victim. This struggle led me to Prejean’s book, which grapples with the same difficulty, but even after this exposure, my thoughts had not yet jelled. Re-reading Poe’s stories, though, got me thinking about the sickened atmosphere that surrounds the death house, which in turn influenced my understanding of the constitutional controversy over lethal injection as cruel and unusual punishment. These thoughts, spurred by further examination of Poe, brought me back to Dead Man Walking, and I discovered that I was finally ready to write about the film, the book, and the delusion of closure.

In Part I, this essay evokes the images of capital punishment that weave through The Fall of the House of Usher. Part II compares Poe’s thoughts on premature burial to the recent controversies over lethal injection, which culminated in the Supreme Court’s 2008 decision in Baze v. Rees. The essay’s third part segues from the role of vengeance in The Cask of Amontillado to its treatment in both Robbins’s film and Prejean’s book, arguing that using capital punishment to attain closure for the living victims is doomed to fail.

Casting about for a title to the essay, I thought of “Reflections on the Needle,” and decided to risk the presumptuousness of using it because I liked its sound. Feeling obliged to reread Albert Camus’s Reflections on the Guillotine, I soon realized that my perceptions faintly echoed the masterly ones found in this classic literary brief against the death penalty. Each of the themes I sought to emphasize had previously been sounded by Camus. So serendipity struck again.

I. THE FALL OF THE HOUSE OF DEATH

Edgar Allan Poe is a puzzlement. Though not generally regarded as a great writer, he is nonetheless credited with developing the detective
story and perfecting the horror tale, as well as paving the way for science fiction. His renown in the United States owes more to his colorful biography (a checkered educational career, marriage to his thirteen-year-old cousin, alcoholism, and a mysterious death at forty) than to his literary output; yet he is lionized in Europe for his works.

My own exposure to Poe's oeuvre prior to speaking on him to Stetson's Honors Colloquium was superficial: I had read a few of his stories and poems in grade school (including *The Cask of Amontillado*), and seen a few of the schlocky Roger Corman movies made from them in the 1960s. While I have for several years assigned one of Poe's stories to my criminal law class—*The Tell-Tale Heart*, as an exercise in applying the insanity defense—it was not because of my assessment of the story's literary quality. So I did not really know what my reactions would be as I began reading more of his stories for my colloquium presentation.


11 See Wikipedia, Poe’s Literary Influence, supra note 9.


invocation of violence and death, but Poe’s stories spark something considerably beyond that simplistic reaction. For example, even though unintentional,\textsuperscript{14} Poe’s  \textit{The Fall of the House of Usher}\textsuperscript{15} portrays the contemporary American death house in all its decadent horror.

The protagonists in this 1839 story are Roderick Usher, his sickly sister Madeline, and the unnamed narrator, a friend of Roderick come to the family mansion to cheer up his depressed friend. But there is another protagonist, the House of Usher itself, which holds malevolent sway over all who enter.\textsuperscript{16} The narrator describes the house in the story’s opening paragraph. Approaching the house on horseback on “a dull, dark, and soundless day in the autumn of the year, when the clouds hung oppressively low in the heavens,” the narrator traverses “a singularly dreary tract of country,” to find “as the shades of the evening drew on, . . . the melancholy House of Usher”:

\begin{quote}
I know not how it was— but, with the first glimpse of the building, a sense of insufferable gloom pervaded my spirit . . . . I looked upon the scene before me— upon the mere house, and the simple landscape features of the domain— upon the bleak walls— upon the vacant eye-like windows— upon a few rank sedges— and upon a few white trunks of decayed trees— with an utter depression of soul which I can compare to no earthly sensation more properly than to the after-dream of the reveller upon opium— the bitter lapse into everyday life— the hideous dropping off of the veil.\textsuperscript{17}
\end{quote}

Even from a distance, the house produces “an iciness, a sinking, a sickening of the heart— an unredeemed dreariness of thought which no goading of the imagination could torture into aught of the sublime.”\textsuperscript{18}

\begin{footnotes}
\item[14] In Poe’s era most executions were public. \textit{See Wikipedia, Capital Punishment in the United States, Public Execution Versus Private Execution,} \url{http://en.wikipedia.org/wiki/Capital_punishment_in_the_United_States#Public_execution_versus_private_execution} (last updated June 23, 2009). Although Poe might have intended to evoke a penitentiary, he could not have had a death house in mind.
\item[16] \textit{Id.} “[O]ne of the traditional and hardly deniable interpretations of ‘The Fall of the House of Usher,’ [is] that . . . the House is defined as a sentient thing capable of exerting an influence on the brother and sister who live within and who are its prisoners.” Gerald M. Garmon,  \textit{Roderick Usher: Portrait of the Madman as an Artist}, 5 \textit{POE STUDIES}, 11, 13 (1972), available at \url{http://www.eapoe.org/pstudies/ps1970/p1972104.htm}.
\item[18] \textit{Id.}
\end{footnotes}
“[M]elancholy,” “bleak,” “dreary,” and “sickening” are words that countless depictions of penitentiaries, most of them with death houses, have also evoked. For recent examples, consider the film versions of two of Stephen King’s works, *The Green Mile* and *The Shawshank Redemption*. Both movies used former prisons—the Tennessee State Penitentiary and the Mansfield (Ohio) Reformatory—to stunning effect. Cinematic depictions of more contemporary prisons are equally dispiriting, with perhaps the best example being *Monster’s Ball*, which like *Dead Man Walking*, was shot at the Louisiana State Penitentiary in Angola.

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    The signature of “Big House” movies in particular is legend. The camera captures the microcosm of prison life as the massive stone edifices and towering guard posts are contrasted sharply with the small cells that house the inmates. . . . These are all the standard trademarks, and *The Shawshank Redemption*, the prototype of the “Big House” cinema, is Hollywood’s finest example of the prison film genre.

    Id.

    The other big plus for “Monster’[s] Ball” is its stark realism . . . . [S]hot on location at Louisiana’s notorious State Penitentiary at Angola . . . .

    [I]t was a harrowing experience for the crew [led] by director Marc Foster. ‘It is impossible for a human being to walk down death row and look into people[‘]s eyes and not be moved . . . .’ Screen writer
For a literary depiction of this same dreariness, one can do no better than John Cheever’s *Falconer*,25 which portrays a prison very much like New York’s Sing Sing,26 complete with “a tenanted death house.”27 In its opening chapter, the novel’s protagonist, Farragut, a college professor convicted of murdering his brother, arrives at Falconer (where he assumes he will die).28 First he confronts the ancient escutcheon that crowns the prison’s entrance—“[t]he bas relief was bronze, but black these days,” with age29—and soon after, its depressing interior: “Falconer was very shabby . . .—everything one saw and touched had the dimension of neglect . . . . The bars had been enameled white many years ago, but the enamel had been worn back to iron at the chest level, where men instinctively held them.”30 Like the House of Usher, the experience of Falconer Prison depresses, wringing out all thoughts of the sublime. And so Farragut soon falls under the influence of the prison,31 just as the “gray walls and turrets” of the House of Usher affect the “spirit . . . the morale of [the] existence” of Roderick Usher.32

A further similarity between Poe’s house and the contemporary death house is that in both cases their worst secrets are hidden deep in their bowels. One looks at a prison where people are executed and knows that lurking somewhere deep inside is a room with the apparatus of death. So too in the House of Usher: its greatest horrors are in its dungeons, to which Roderick Usher leads the narrator after informing him that Roderick’s ill sister Madeline has finally succumbed and that he wishes to place her body temporarily “in one of the numerous vaults within the main walls of the building.”33 The two men carry Madeline’s

Milo Addica . . . [said] the sombre reality of the surroundings hit home when he noticed someone’s initials carved into the wood of the electric chair.

*Id.*


26 Cheever lived near Sing Sing and once taught a course to inmates there. *See Batey, supra note 25, at 377.* For photos of Sing Sing Prison, see Karl R. Jusker, Sing Sing Prison Photo Gallery, http://www.pbase.com/kjosker /sing_sing (last visited July 15, 2009).

27 C HEEVER, supra note 25, at 6. “[T]hey went into a room furnished with writing chairs whose legs were broken, whose varnish was gone, whose writing surfaces were scarred with initials and obscenities and which seemed, like everything else at Falconer, to have been salvaged from some municipal dump.” *Id.* at 7.

28 See *id.* at 5.

29 *Id.* at 3.

30 *Id.* at 6. “[T]hey went into a room furnished with writing chairs whose legs were broken, whose varnish was gone, whose writing surfaces were scarred with initials and obscenities and which seemed, like everything else at Falconer, to have been salvaged from some municipal dump.” *Id.* at 7.

31 See *Batey, supra note 25, at 386–90* (discussing Farragut’s “profound emotional isolation”).

32 Poe, *Usher, supra note 15, at 397* (original emphasis).

33 *Id.* at 409.
coffin into the vault, which “was small, damp, and entirely without means of admission for light . . . . It had been used, apparently, in remote feudal times, for the worst purposes of a donjon-keep . . . .”

So the temporary funeral vault is the former scene of captivity, torture, and execution.

The vault proves temporary in a way Roderick Usher did not envision. A week later Madeline rises from her coffin—“We have put her living in the tomb!”—Roderick shrieks—and her dying appearance before the two men causes her brother’s death also, “a victim to the terrors he had anticipated,” and the narrator’s flight from the house, which collapses as he flees. The vault has once again become a scene of captivity, torture, and execution, this time for Madeline, but in her dying act she exposes the secrets hidden deep within the House of Usher, and their exposure causes it to fall.

Is it too far-fetched to see in this denouement an analogy to contemporary American capital punishment, to imagine that more and more men and women—judges, legislators, and ordinary citizens—will decide to follow the lead of Justice Blackmun and refuse to “tinker with the machinery of death,” so that it too will collapse like the House of Usher? Before answering, consider two more parallels to capital punishment, found in two literary efforts that Poe embedded in The Fall of the House of Usher.

When Madeline reappears from her entombment, the narrator has just finished reading Roderick a story to calm him down, “the ‘Mad Trist’ of Sir Launcelot Canning,” a work of “uncouth and unimaginative prolixity.” The story ends with “good champion Ethelred” slaying a dragon of “pesty breath” and “a shriek . . . horrid and harsh,” and thereby winning a “shield of shining brass”—an example of a righteous execution if ever there was one. But the narrator and Roderick hear a noise like the dragon’s shriek and then another like a shield falling to the ground, which they soon learn are the sounds of Madeline approaching. Thus the dragon’s execution becomes entangled in the horror that befell Roderick’s sister, providing a critique of the simplistic story of “good champion Ethelred” and rendering it uncouth indeed.

34 Id. at 410.
35 Id. at 416–17 (original emphasis).
37 Poe, Usher, supra note 15, at 413.
38 Id. at 414.
39 See id.
Earlier in the story, before Madeline was entombed, Roderick feverishly sings the narrator a ballad entitled *The Haunted Palace* (accompanying himself on the guitar). It tells of a house, like the House of Usher, where happiness once reigned, but no longer.\(^4\) The last stanza of the ballad could also apply to any death house in the country:

> And travellers now within that valley,  
> Through the red-litten windows, see  
> Vast forms that move fantastically  
> To a discordant melody;  
> While, like a rapid ghastly river,  
> Through the pale door,  
> A hideous throng rush out forever,  
> And laugh – but smile no more.\(^5\)

Within the unseen chambers of capital punishment “forms . . . move fantastically,” a dance to music that is more and more discordant; from the doors of these chambers comes a “ghastly river” of unsmiling corpses, whose “hideous[ness]” mocks the pious pretensions of their executioners.

The only false notes in the application of this poetic stanza to the contemporary death penalty are the implications of the words “[v]ast,” “rapid,” and “throng,” for in America today, capital punishment is becoming more minuscule, intermittent, and sparse.\(^6\) The collapse of America’s death houses may not be as dramatic as the finale of *The Fall of the House of Usher*, but it is no less inevitable.

Albert Camus foretold a similar collapse, for the “solemn shambles” of capital punishment in Europe, in *Reflections on the Guillotine*.\(^7\) Writing in 1957, the year he won the Nobel Prize in Literature, Camus noted that European executions had moved into death houses, out of public view, as if in shame for their “manifestations of sadism.”\(^8\) He advocated their outright abolition on his continent in part because of Europe’s then-recent history – “for thirty years crimes of State have vastly exceeded

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40. See id. at 406–07.
41. Id. at 407.
43. Camus, supra note 7, at 551 (a phrase attributed to Tarde).
44. Id. at 526.
crimes of individuals”—and anticipated the eventual achievement of Protocol Six of the European Convention on Human Rights: “In tomorrow’s united Europe, on whose behalf I write, the solemn abolition of the death penalty must be the first article of that European Code for which we all hope.” Camus’s literary vision, dimly prefigured by Poe a century before, was remarkably prescient, likely more so than those in 1957 who looked at capital punishment from a purely legal perspective.

II. LETHAL INJECTION AS PREMATURE BURIAL

Madeline Usher suffers a premature burial, a plot device Poe used repeatedly. Both the title character of Berenice—A Tale and the victim in The Cask of Amontillado endure this fate, and Poe himself claimed the experience in The Premature Burial, which purports to describe actual incidents of the phenomenon, concluding with the author’s own (which thankfully was interrupted). Though the story is undoubtedly fictional, Poe nevertheless captures what must go through the minds of those buried alive.

“[N]o event is so terribly well adapted to inspire the supremeness of bodily and of mental distress, as is burial before death.” In support of this conclusion, Poe mentions, among other sufferings, “[t]he unendurable oppression of the lungs,” “the rigid embrace of the narrow house,” and the “consciousness that of this fate” those who “would fly to save us . . . can never be informed.” The author’s claimed experience matches these feelings: “I remained without motion. . . . I endeavored to shriek . . . but no voice issued from the cavernous lungs, . . . oppressed as if by the weight of some incumbent mountain . . . .” Anyone in such a position must believe that his “hopeless portion is that of the really dead,” and must undergo “a degree of appalling and intolerable horror from which the most daring imagination must recoil.”

This horror is not the fate of characters in fanciful stories solely, for the risk of experiencing something like it arises whenever a state inflicting capital punishment employs the currently prevailing protocol

45 Id. at 547.
46 “The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.” Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 6, art. 1, Apr. 28, 1983, C.E.T.S. No. 114.
47 Camus, supra note 7, at 549.
49 Id. at 961.
50 Id.
51 Id. at 966–67.
52 Id. at 961.
for lethal injection. That protocol, used throughout the United States, requires the administration of a series of three drugs, as Chief Justice Roberts outlined in the plurality opinion in *Baze v. Rees*:

The first drug, sodium thiopental, is a fast-acting barbiturate sedative that induces a deep, comalike unconsciousness when given in the amounts used for lethal injection. The second drug, pancuronium bromide, is a paralytic agent that inhibits all muscular-skeletal movements and, by paralyzing the diaphragm, stops respiration. Potassium chloride, the third drug, interferes with the electrical signals that stimulate the contractions of the heart, inducing cardiac arrest.

Potassium chloride, the third drug, is both powerful and extremely painful, as a 2006 Human Rights Watch report describes: “Within a minute after it enters the prisoner’s veins, potassium chloride will cause cardiac arrest. Without proper anesthesia, however, the drug acts as a fire moving through the veins. Potassium chloride is so painful that the American Veterinary Medical Association prohibits its use for euthanasia . . . .”

The first drug, sodium thiopental, is designed to provide the necessary anesthesia, but there are serious doubts about its effective administration on death row. The second drug, pancuronium bromide,
which “paralyzes voluntary muscles,” exacerbates these doubts because it “will conceal any agony an insufficiently anesthetized prisoner experiences because of the potassium chloride.” As Justice Ginsburg phrased it in her Baze dissent, “Even if the inmate were conscious and in excruciating pain, there would be no visible indication.”

The suffering of an improperly anesthetized death row inmate bears striking similarities to the fate of the prematurely buried as described by Poe. Pancuronium bromide paralyzes the condemned man’s breathing, and his inability to move is even more confining than a narrow coffin. Perhaps worst of all, as the potassium chloride causes intense, searing pain, the paralyzed sufferer is unable to communicate the fact of that pain to anyone. His isolation in his last excruciating moments surely resembles the doomed hopelessness of those who are buried alive.

The plaintiffs in Baze v. Rees argued that the prospect of such a death constituted cruel and unusual punishment and was thus prohibited by the Eighth Amendment. Seven members of the Court rejected this contention; reading their multiple opinions strongly suggests that they did not really comprehend the “appalling and intolerable horror,” to use Poe’s description, to which their decision exposes those condemned to death. On the contrary, Justice Ginsburg’s dissent (for herself and Justice Souter) made plain her concern about “the character of the risk at stake”:

have described execution personnel poking repeatedly at prisoners trying to find a good vein.

Standard medical procedures for intravenous administration of anesthesia during surgery require that the equipment and the patient be monitored continuously by someone at the patient’s side. Yet during lethal injection executions, the execution personnel are behind a wall and window, separated by many feet from the prisoner. There is no person trained in the administration of anesthetics and the assessment of anesthetic depth present to ensure the prisoner is appropriately and continuously anesthetized before the second and third drugs are administered and throughout the execution; nor do execution team members use equipment that could determine the condemned inmate’s level of consciousness.

Id. 58 Human Rights Watch, supra note 55. Like potassium chloride, pancuronium bromide is also widely prohibited from use in animal euthanasia. See Mark Sherman, Common Drug in Lethal Injections Is Banned for Animals, HOUSTON CHRON., Apr. 5, 2008, at A4. See generally Ty Alper, Anesthetizing the Public Conscience: Lethal Injection and Animal Euthanasia, 35 FORDHAM URB. L.J. 817 (2008). In Baze, Justice Stevens remarks, “It is unseemly—to say the least—that Kentucky may well kill petitioners using a drug that it would not permit to be used on their pets.” 128 S. Ct. at 1543 (Stevens, J., concurring).

59 128 S. Ct. at 1570 (Ginsburg, J., dissenting). See also id. at 1543 (Stevens, J., concurring).

60 Human Rights Watch, supra note 55. “If the prisoner is not sufficiently anesthetized before being injected with pancuronium bromide, he will feel himself suffocating but be unable to draw a breath—a torturous experience, as anyone knows who has been trapped underwater for even a few seconds.” Id.
“Rare though errors may be, the consequences of a mistake . . . are horrendous and effectively undetectable after injection of the second drug.” 61 She consequently adopted a standard that would have invalidated any execution procedure that “poses an untoward, readily avoidable risk of inflicting severe and unnecessary pain,” and would have remanded the case for application of that standard. 62 But each of the other seven justices on the Court lost sight of the “horrendous” “risk” Ginsburg and Souter saw so clearly.

Justice Breyer agreed with Justice Ginsburg on the proper phraseology of the test, but disagreed regarding its application, finding no untoward risk. 63 Breyer devoted almost all of his concurrence in the judgment to quibbles regarding the scholarly literature on lethal injection 64—a typically cerebral approach that totally ignored what the plaintiffs were facing.

Justice Stevens, who also concurred in the judgment, showed the same ignorance in a different way. After detailing over several pages the defects of pancuronium bromide, 65 and then spending even more pages outlining his new-found conviction that the death penalty is unconstitutional, 66 Stevens wrapped up his opinion with a quick paragraph, averring that these conclusions do not “justify a refusal to respect precedents that remain a part of our law,” and that he was “persuaded that the evidence adduced by petitioners fails to prove that Kentucky’s lethal injection protocol violates the Eighth Amendment.” 67

61 Baze, 128 S. Ct. at 1567, 1569 (Ginsburg, J., dissenting).
62 Id. at 1567.
63 Id. at 1563–64 (Breyer, J., concurring).
64 See id. at 1564–67. For criticism of one of Breyer’s quibbles, see Deborah W. Denno, For Execution Methods Challenges, the Road to Abolition Is Paved with Paradox, in THE ROAD TO ABOLITION (Austin Sarat & Charles Ogletree eds., 2009), available at http://ssrn.com/abstract=1370581, at 23–24.
65 See Baze, 128 S. Ct. at 1543–46 (Stevens, J., concurring); supra note 58 and infra text accompanying note 73, 75.
66 See id. at 1546–51; supra note 36.
67 Baze, 128 S. Ct. at 1552. One student commentator speculates that Stevens’s vote to affirm might have been a response to Chief Justice Roberts’s campaign for more unity in Supreme Court opinions. The Supreme Court 2007 Term: Leading Cases, 122 HARV. L. REV. 286, 294–95 (2008). A British commentator suggests an alternate reason:

There are reasons to believe that the liberal members of the Court do vote tactically. Justice Stevens knew that the Court had a more important case, Kennedy v Louisiana [128 S. Ct. 2611 (2008), on] its docket . . . He might well have decided after conference that since there was a majority for upholding the Kentucky protocol and the evidence of risk of pain debatable, it was better to go with the majority on stare decisis grounds . . .

Justice Stevens knew that the constitutionality of imposing the death penalty for non-homicide crimes was to be tested in Kennedy . . .
One can only imagine the dispirited reaction a prospective recipient of premature burial by botched lethal injection would have to this curious opinion.

Chief Justice Roberts’s plurality opinion, joined by Justices Kennedy and Alito, was at least more consistent in its reasoning than Stevens’s concurrence, but it was no less inconsiderate. By asserting that “[s]ome risk of pain is inherent in any method of execution—no matter how humane” and emphasizing that the principal target of the Eighth Amendment is “the deliberate infliction of pain for the sake of pain,”68 the plurality laid the groundwork for requiring the Baze plaintiffs to show that the use of lethal injection was “sure or very likely to cause serious illness and needless suffering,” and give rise to ‘sufficiently imminent dangers’—in other words, to show “a ‘substantial risk of serious harm,’ an ‘objectively intolerable risk of harm.’”69 Having erected such a high barrier, Chief Justice Roberts had little difficulty in establishing that the plaintiffs had not surmounted it: “Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of ‘objectively intolerable risk of harm’ that qualifies as cruel and unusual.”70

Categorizing the botched administration of the three-drug protocol as mere “pain” willfully disregards its searing reality, a disregard betrayed by subsequent phrases like “an ‘innocent misadventure’” and “an isolated mishap.”71 No matter how innocent or isolated the incident may be, it is no less real and no less painful to the victim of the “misadventure” or “mishap.” The plurality’s denigration of the potential fate of the condemned continued in its defense of pancuronium bromide—the paralytic agent—where Chief Justice Roberts weighed the state’s interests “in preserving the dignity of the procedure” and “in

68 Baze, 128 S. Ct. at 1529, 1530 (plurality opinion).
70 Id.
providing for a quick, certain death”72 over the death row inmate’s interest in avoiding overwhelming pain. Justice Stevens’s concurrence effectively dispelled the notion that pancuronium bromide makes any contribution to a quick death,73 leaving only the “dignity” interest. As characterized by the plurality, that interest arises because without the paralyzing agent the inmate’s “convulsions or seizures could be misperceived as signs of consciousness or distress”74—so the Chief Justice thinks it better that the condemned suffer than that the witnesses to the execution think that they are seeing him suffer. That this “aesthetic”75 concern outweighed the condemned prisoner’s interest in avoiding great pain shows what little concern the plurality has for the death row inmate’s suffering.

A final demonstration of this lack of concern came in the plurality’s refusal to require minimal tests of consciousness—“calling the inmate’s name, brushing his eyelashes, or presenting him with strong, noxious odors”76—after administering the first drug: “[A]n inmate cannot succeed on an Eighth Amendment claim simply by showing one more step the State could take as a failsafe for other, independently adequate measures.” And why not, when so much is at stake for the inmate? Because the state needs to stick to its timetable: “This approach would serve no meaningful purpose and would frustrate the State’s legitimate interest in carrying out a sentence of death in a timely manner.”77 So the mere convenience of the state means that taking minor steps to prevent unimaginable pain “would serve no meaningful purpose.”

Not content with joining the plurality, Justice Alito added a concurrence that further aggrandized the convenience of the state. He reiterated the plurality’s concern about “a grave danger of extended delay,” and warned against any finding of fact questioning lethal injection based on “the testimony of an expert or two,” no matter how

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72 Baze, 128 S. Ct. at 1535 (plurality opinion).
73 Id. at 1543–44, 1544 n.3 (Stevens, J., concurring) (noting that potassium chloride is the direct agent of death). See also PREJEAN, INNOCENTS, supra note 42, at 235 (“The drug . . . serves no real purpose other than to mask distress.”).
74 Baze, 128 S. Ct. at 1535 (plurality opinion).
75 The term is Justice Stevens’s. Id. at 1544 n.3 (Stevens, J., concurring). See also Michael C. Dorf, How the Supreme Court’s Lethal Injection Ruling Elevates Appearances over Reality, http://writ.law.findlaw.com/dorf/20080421.html (Apr. 21, 2008). “Aesthetic interests in dignity are not entirely trivial . . . . However, until recently, one would not have expected such interests ever to trump constitutional rights to such basic goods as health and the avoidance of excruciating pain.” Id.
76 Baze, 128 S. Ct. at 1536–37 (plurality opinion).
77 Id. at 1537. For criticism of the plurality’s concern over the remedy a contrary decision might force the states to adopt, see Berger, supra note 57, at 293–96.
persuasive. Most importantly, he underscored the need to avoid “procedural requirements that cannot practicably be satisfied,” apparently even those supported by more than an expert or two. His rather astounding example of this principle at work regarded medical personnel at executions by lethal injection. Because the ethical rules for physicians and nurses prohibit their participation in executions, Justice Alito would eschew any requirement that could necessitate their presence, regardless of the advisability of their involvement and of the risk of extreme pain posed by their absence. There hardly could be better evidence that Alito either did not fully understand the horror of a botched lethal injection or just did not care.

Justice Thomas, concurring in the judgment for himself and for Justice Scalia, was more forthright in expressing his lack of care. Because “a method of execution violates the Eighth Amendment only if it is deliberately designed to inflict pain,” Thomas summarily rejected the contentions of the Baze plaintiffs. In the world of Justices Thomas and Scalia, no amount of negligently inflicted pain constitutes cruel and unusual punishment, so botched executions are not a concern for the

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78 Baze, 128 S. Ct. at 1542, 1541–42 (Alito, J., concurring). For implied criticism of Alito’s concern for speed, see Berger, supra note 57, at 304.
79 Baze, 128 S. Ct. at 1539 (Alito, J., concurring).
80 Id. at 1540, Justice Alito commented:

Assuming . . . that lethal injection is not unconstitutional per se, it follows that a suggested modification of a lethal injection protocol cannot be regarded as “feasible” or “readily” available if the modification would require participation—either in carrying out the execution or in training those who carry out the execution—by persons whose professional ethics rules or traditions impede their participation.

81 Baze, 128 S. Ct. at 1556 (Thomas, J., concurring in the judgment). Scalia wrote a separate concurrence in the judgment, joined by Thomas, specifically criticizing Stevens’s attack on the constitutionality of the death penalty. Id.
82 Id. Thomas somewhat gleefully catalogued the torturous punishments the Framers meant to prohibit: “burning at the stake,” “gibbeting,” “public dissection,” “embowelling alive, beheading, and quartering,” “mutilation or dismembering, by cutting off the hand or ear,” “slitting the nostrils, or branding in the hand or cheek.” Id. at 1556, 1557, 1541 n.* (quoting STUART BANNER, THE DEATH PENALTY: AN AMERICAN HISTORY 72–74 (2002); 4 WILLIAM BLACKSTONE, COMMENTARIES 376, 377 (1769)). For an argument that the intentional infliction of pain should accompany execution, see Robert Blecker, Killing Them Softly: Meditations on a Painful Punishment of Death, 35 FORDHAM URB. L.J. 969 (2008).
83 Baze, 128 S. Ct. at 1563 (Thomas, J., concurring). “[T]he risk of negligence in implementing a death-penalty procedure . . . does not establish a cognizable Eighth Amendment claim.” Id. (quoting Workman v. Bredesen, 486 F.3d 896, 907 (6th Cir. 2007)).
courts, no matter how horrific. Any judicial interference would be “micromanag[ing] the States’ administration of the death penalty.”

Justice Thomas specifically objected to the plurality’s test for violation of the Eighth Amendment because it “cast[s] substantial doubt on every method of execution other than lethal injection” by “requir[ing] an anesthetized death.” In specifically countenancing a return to “hanging, the firing squad, electrocution, and lethal gas,” Thomas and Scalia showed their utter disregard for the suffering of the condemned inmate.

Most of the opinions in Baze v. Rees disclose a failure truly to understand the risks faced by a person undergoing lethal injection, risks that Edgar Allan Poe intuited and expressed long before anyone had ever thought of that method of execution. A hundred years after Poe, Albert Camus did imagine the use of a lethal “anesthetic which would permit the accused to pass from a state of sleep to death.” While rejecting capital punishment entirely, Camus considered this anesthetic option more acceptable than the “disgusting butchery” of beheading. Tellingly, in describing the horrors of the guillotine, Camus quoted the account of two doctors who witnessed executions: “[D]eath is not immediate . . . . Thus each vital element survives decapitation to some extent. There remains, for the physician, the impression of a hideous experiment, a murderous vivisection followed by a premature burial.”

84 Id. at 1562.
86 Baze, 128 S.Ct. at 1561. This recalls Chief Justice Rehnquist’s comment, as a Supreme Court law clerk at the time of the execution of the Rosenbergs, “It is too bad that drawing and quartering has been abolished.” Prejean, Innocents, supra note 42, at 207 (citing Ilene Phillipson, Ethel Rosenberg: Beyond the Myths 303 (1988)).
87 Camus, supra note 7, at 551. Characteristically, Camus would have allowed the condemned inmate to choose when on a given day he would take the anesthetic, with administration of the drug only “in cases of refusal or failure of nerve.” Id. at 551–52.
88 Id. at 551. Note that Justices Thomas and Scalia would almost certainly find the guillotine constitutional, and perhaps so too would the justices in the Baze plurality, if they believed, along with Dr. Guillotine himself, that death by beheading was instantaneous. See id. at 517 n.H.
89 Id. at 518 (emphasis added) (attributed to Drs. Piedlièvre and Fournier). Camus subsequently repeats the term. Id. at 519.
90 See supra text accompanying note 11.
could envision the appalling nature of an unanesthetized execution. It is a pity more members of the United States Supreme Court could not.

III. CLOSURE

The premature burial in *The Cask of Amontillado*, unlike those in the works of Poe previously discussed, is not the result of negligence; the story’s narrator fully intends it as an act of revenge. The role of revenge in modern capital punishment—specifically, revenge to assuage the pain of the victim’s family—has fascinated me ever since seeing Tim Robbins’s 1995 film *Dead Man Walking* and subsequently reading the memoir of Sister Helen Prejean on which the movie is based. In their wide-ranging inquiries into the death penalty, both the film and the book strongly suggest the hollowness of whatever comfort execution

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91 **DEAD MAN WALKING** (PolyGram 1995) [hereinafter DMW].
93 *Dead Man Walking* touches on many of the issues surrounding lethal injection. One speech by a defense attorney, see infra note 116, anticipates several of the arguments in *Baze v. Rees*:

Now we have developed a device . . . that is the most humane of all:
Lethal injection.
We strap the guy up. We anesthetize him with shot number one.
Then we give him shot number two which implodes his lungs.
And shot number three stops his heart.
We put him to death just like an old horse.
His face just goes to sleep . . . while inside, his organs are going through Armageddon.
His facial muscles would contort, but shot number one relaxes those muscles.
So we don’t have to see any horror show.
We don’t have to taste the blood of revenge . . . while this human being’s organs writhe, twist, contort.
We just sit there quietly, nod our heads and say: “Justice has been done.”

Dead Man Walking Script—Dialogue Transcript, http://www.script-o-rama.com/movie_scripts/d/dead-man-walking-script-transcript.html (last visited July 29, 2009) (original ellipses) [hereinafter DMW Script]. The movie also shows how the practice of lethal injection becomes routinized. As one member of the execution team—“I’m on the strap-down team, left leg”—says, “It’s just part of the job.”

94 Prejean’s book briefly discusses lethal injection. See **PREJEAN, DMW**, supra note 92, at 216–18 (mentioning Camus). Capital punishment is repeatedly assessed from religious and philosophical perspectives. See id. at 20–22 (quoting Camus), 121–24, 142–44, 193–97. There are discussions of the Supreme Court’s death penalty jurisprudence, see id. at 43–53, 114–17, the role of the media in capital punishment, see id. at 128–30, the clemency process, see id. at 169–74, the execution of innocents, see id. at 218–21 (quoting Camus), and the treatment of crime victims, see id. at 231–34.
gives to the families of the executed person’s victims—a conclusion at which Poe’s story also hints.

In the first sentence of *The Cask of Amontillado*, the narrator Montresor mentions that he has suffered a “thousand injuries” from his victim Fortunato, “but when he ventured upon insult I vowed revenge.”95 We never learn more of the injuries or the insult that passed between these two Venetian gentlemen, but their courteous behavior toward one another, as well as Fortunato’s apparent trust in his friend, implies that Montresor’s homicidal revenge is definitely disproportionate to whatever provocation he has received. This puts the story’s narrator in a long line of mentally imbalanced Poe protagonists—examples include not only the bipolar Roderick Usher,96 but also the monomaniacal narrators of *The Tell-Tale Heart* (who kills an old man because of his evil eye)97 and *Berenice—A Tale* (who disinters his prematurely buried cousin so that he can extract her teeth).98 Montresor’s particular monomania is revenge, which he plans with devilish care.

He lures his intoxicated victim into the catacombs below the Montresor palazzo with the promise of a rare amontillado, which the narrator knows Fortunato, who “prided himself on his connoisseurship in wine,”99 cannot resist. Because it is “the carnival season,” there are no servants about as the two men descend among the “piled bones” of Montresor’s forebears.100 Finally reaching a crypt lined on three sides “with human remains” and open on the fourth, the narrator inveigles his victim to enter the crypt, where Montresor swiftly padlocks Fortunato to the wall, and then with “building stone and mortar” set aside for this purpose, “beg[in]s vigorously to wall up the entrance of the niche.”101 Fortunato responds with “a low moaning cry,” then “furious vibrations

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96 See generally Garmon, supra note 16.


99 Poe, *Cask*, supra note 95, at 1257.

100 *Id.* at 1257, 1260.

101 *Id.* at 1261–62.
of the chain” that binds him, and later “[a] succession of loud and shrill screams,” and finally attempts to laugh off the event as “‘a very good joke, indeed—an excellent jest,’” but Montresor continues on with his plan, burying his victim alive and then departing.¹⁰²

The narrator purports to be happy with this well-executed revenge, but several details of the story suggest otherwise. As they descend into the catacombs, Montresor says to his victim, “[Y]ou are happy, as once I was”¹⁰³—so even the prospect of revenge does not brighten the avenger. Nor, more significantly, does its accomplishment. When the narrator pauses to listen to Fortunato rattling his chain, stopping work so “that I might hearken to it with more satisfaction,” Montresor “s[il]t[s] down upon the bones,”¹⁰⁴ becoming a part of the ghastly atmosphere of death (the same atmosphere Poe would later evoke in The Fall of the House of Usher).¹⁰⁵ Even this degraded enjoyment is short-lived, because Fortunato’s subsequent screams cause Montresor to flinch—“For a brief moment I hesitated—I trembled”—and then frantically to thrust a sword into the small opening that remains and to reply to his victim’s “yells” with ones that “surpassed them in volume and in strength.”¹⁰⁶ To this sadistic and bestial behavior, the narrator finally adds blasphemy: Fortunato’s last plea is, “‘For the love of God, Montresor!’” to which the reply is, “‘Yes, . . . for the love of God!’”¹⁰⁷ This bitter statement also does not satisfy:

But to these words I hearkened in vain for a reply. I grew impatient. I called aloud—

“Foruntato!”

No answer. I called again—

“Foruntato!”

No answer still. . . . My heart grew sick—on account of the dampness of the catacombs. I hastened to make an end of my labor. I forced the last stone into its position; I plastered it up. . . . In pace requiescat!¹⁰⁸

Achieving revenge only makes Montresor “heart . . . sick” (for which he gives a lame rationalization). We know that the victim of this premature

¹⁰² Id. at 1262–63.
¹⁰³ Id. at 1259.
¹⁰⁴ Id. at 1262.
¹⁰⁵ See supra text accompanying notes 16–18, 33–34.
¹⁰⁶ Poe, Cask, supra note 95, at 1262.
¹⁰⁷ Id. at 1263.
¹⁰⁸ Id.
burial will not “rest in peace,” but the irony in Montresor’s comment is that neither will he.109

The narrator of The Cask of Amontillado wants to savor his revenge like a fine wine, but it seems insipid.110 The story provides an image of revenge’s inadequacy in the coat of arms of the Montresors: “‘A huge human foot d’or, in a field azure; the foot crushes a serpent rampant whose fangs are imbedded in the heel’,” with the motto, “‘Nemo me impune lacescit’.”111 “No one injures me with impunity.”112 The motto commits the family to revenge, but the image of the foot and the serpent locked in eternal struggle suggests that revenge will provide no satisfaction. And who is the serpent—the Biblical symbol of evil—the punished or the punisher?113

Poe’s story thus implies that the pursuit of revenge, even if righteous, can be problematic. The same implication arises from Dead Man Walking and the movie derived from it, though it is presented somewhat differently in the two works. Sister Helen Prejean’s book narrates her counseling of two inmates on Louisiana’s Death Row, Patrick Sonnier and Robert Lee Willie. She also describes her encounters with the families of their victims. In writing the screenplay for his movie, Tim Robbins melded these actual prisoners into a single fictional character, Matthew Poncelet,114 and created two sets of parents for his teenage victims, combining aspects of the family members with whom Prejean interacted.

In the film, Poncelet and another man have been convicted of abducting a teenage couple, Hope Percy and Walter Delacroix, raping the girl, and shooting them both.115 While concentrating principally on the ministry of Sister Helen (Susan Sarandon, in an Oscar-winning performance) to Poncelet (Sean Penn, also nominated for an Academy

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109 Id. According to the story, the narration occurs fifty years after its events. See id. Thus, one might assume that Montresor now has few qualms about his behavior. See id. On the contrary, the events are still vivid to him half a century later, including their negative aspects, suggesting that they still prey on his mind. See id.

110 See generally Joswick, supra note 97, at 251.

111 See Poe, Cask, supra note 95, at 1259–60.


113 I am indebted to Professor Kristen Adams for the religious reference.


115 Poncelet’s co-defendant, who is arguably the more guilty of the two, receives a life sentence. Cf. Dow, supra note 114, at 546 (noting that the movie could “cheat” by “saddl[ing]” the codefendant “with both murders,” but “does not take this out”).
Award), the movie also describes the different reactions of the four parents of the victims to the capital punishment process.

All four parents attend the hearing at which the parole board refuses to reduce Poncelet’s death sentence, but that is the last the audience sees of Walter Delacroix’s mother. When Sister Helen subsequently calls on Walter’s father Earl—who confronted Prejean during a break in the parole board hearing to ask why she had not extended her ministry to him and his wife—the nun finds Earl alone, because he and his wife have separated: “She says she wants to put the past behind her. She says she has to move on in her life.” Later, after Sister Helen attends a group therapy session for the parents of murdered children with Earl, he tells her that his wife has filed for divorce. “We just have different ways of dealing with our son’s death. . . . We’re nothing special. Most folks that lose a kid split up. Seventy-percent or something.”

Walter’s mother’s reaction contrasts with the behavior of Hope’s parents, whom Sister Helen also visits. Clyde Percy wishes he had taken advantage of the one chance he had to kill Poncelet:

I met Poncelet face to face in the hallway during the trial.
[“]I ain’t gonna get no chair, Daddy.[”]
[“]You’re gonna fry, and I’m gonna watch you sizzle.[”]
There was a sheriff standing pretty close by me.
I could have grabbed his gun and shot Poncelet right then and there.

116 Poncelet’s volunteer lawyer, Hilton Barber (based on the lawyer Millard Farmer and played by the late Robert Prosky) argues persuasively for a lesser sentence. In addition to the life sentence received by the codefendant, see supra note 115, potential grounds for clemency include the inadequacy of Poncelet’s previous counsel—a tax lawyer who had never before tried a capital case, selected a jury in just four hours, and made only one objection in a five-day capital sentencing proceeding—as well as Poncelet’s disadvantaged upbringing (with a sharecropper father who died when Matthew was fourteen, leaving him to care for his feckless mother and his younger brothers). See Dow, supra note 114, at 550. See generally Harding, supra note 114, at 1178-79.

Apparently convinced that the film Dead Man Walking was insufficiently opposed to capital punishment, Farmer subsequently condemned it as “a betrayal of truth, a betrayal of the inmates who were spiritually advised by Sister Helen and a betrayal of the people who worked with Sister Helen in assisting the inmates.” Millard Farmer et al., Death Is Different: Reducing the PACE of Executions, http://www.goextranet.net/Seminars/BlackHole/PACE /PrintFriendlyPACE.htm (1996); cf. AUSTIN SARAT, WHEN THE STATE KILLS 245 (2001) (“Dead Man Walking legitimate[s] state killing . . . .”).

117 DMW Script, supra note 93. “My wife and I had a big fight. We got back from the pardon board hearing. She took Walter’s clothes out of his closet, put them in boxes . . . . called Goodwill.” Id. Raymond J. Barry portrays Earl Delacroix.

118 Id.
I could’ve killed him on that day, and I wished I would have.  I’d be a happier man today.119

Mary Beth Percy is less direct than her husband, but just as eager for Poncelet’s execution. Speaking to Prejean of Hope’s dentist uncle, who identified her mutilated and decomposed body from dental records, the girl’s mother says, “Before he’d stuck his hand into that bag . . . with all that lime in it and fished Hope’s jaw out . . . he’d been against the death penalty. And after that, he was all for it.”120 Hope’s parents participate in other execution vigils, demonstrating their support for capital punishment, and are aghast and indignant when they discover that Sister Helen’s visiting them does not mean that she has decided to give up advising Poncelet: “’[N]ow, you can’t have it both ways! You can’t befriend that murderer and expect to be our friend too. You brought the enemy into this house, Sister. You gotta go.’”121

The Percys’ attitude toward revenge is certainly more common than the stance of Walter’s mother,122 but there is a growing body of psychological scholarship doubting the common approach. In a recent paper, Professor Kevin M. Carlsmith, Timothy D. Wilson, and Daniel T. Gilbert question the notion that punishment provides a catharsis that leads to closure.123 From their experiments, involving the opportunity to punish free riders in a game, the researchers conclude “people believed that exacting revenge would bring closure, in the sense that they would think less about the free rider, when in fact it had the opposite effect—punishing the free rider made people think about her more, which in turn made them feel worse.”124 The paper’s final paragraph further summarizes its findings: “[R]evenge has hedonic consequences that are

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119 Id. (italics deleted). In the film’s chronology, this exchange would have taken place in the late 1980’s, before Louisiana switched its method of execution from the electric chair to lethal injection. R. Lee Ermey appears as Clyde Percy.
120 Id. Celia Weston is Mary Beth Percy in the film.
121 Id.
122 See, e.g., SARAT, supra note 116, at 239 (quoting the parents of one victim at the climactic (and wrongful) execution in the film The Green Mile: “Kill him twice,” and “Does it hurt yet. I hope it does. I hope it hurts like hell.”). See also Marilyn Peterson Armour & Mark S. Umbreit, The Ultimate Penal Sanction and “Closure” for Survivors of Homicide Victims, 91 MARQ. L. REV. 381, 399, 409 (2007) (quoting family members: “They should have let us see a little bit of the terror in [his] face,” and “I got to hear him choke. And that was a wonderful feeling.”).
124 Id. at 8.
the opposite of what people expect. Revenge can prolong peoples’ hedonic reactions to a transgression because punishing others can cause people to continue to think about (rather than to forget) those whom they have punished.”

These psychological findings help to explain Montresor’s incipient dissatisfaction with his revenge, his inability to obtain psychic closure from the literal closure he effects on Fortunato. Another example from literature would be Roger Chillingworth, the cuckolded husband of Hester Prynne in Hawthorne’s The Scarlet Letter, whose pursuit of revenge against Arthur Dimmesdale renders Chillingworth a “fiend” who has no further reason to live after Dimmesdale publicly confesses his adultery and dies.

But it is quite a leap to compare reactions to a free-riding gamester, an insulting friend, or even the man who impregnated your wife, with parents’ attitudes toward the murderer of their children. Some point in between Mrs. Delacroix and the Percys is more likely in this extreme situation. Dead Man Walking exemplifies this middle way in Mr. Delacroix. Unlike his wife, Earl Delacroix attends Poncelet’s execution, along with the Percys—where Matthew apologizes first to the father of the boy he killed and then (after Clyde Percy interjects, out of Poncelet’s earshot, “How about us?”) to the parents of the girl he raped. Delacroix also appears at Poncelet’s funeral, telling Prejean, “I don’t know why I’m here. I got a lot of hate.” When Sister Helen suggests that they should “work . . . [to] help each other find a way out of the hate,”


In a concluding literary flourish, Carlsmith and his co-authors quote Sir Francis Bacon: “A man that studieth revenge, keeps his own wounds green, which otherwise would heal, and do well.” Carlsmith, supra note 123, at 9 (quoting THE WORKS OF FRANCIS BACON 93 (James Spedding et al. eds., 1858)).


Id. at 140, 198–99.


In the film, the parents’ comments in the support group for parents of murdered children starkly indicates this extremity.

DMW Script, supra note 93.
Earl is doubtful, but the movie ends with shots of him and Sister Helen praying together in a rural church. This conclusion to the film implies a preference for the attitudes of the Delacroixs over those of the Percys, whose petulant comment at the execution and continuing hostility to Sister Helen suggest they will never find the catharsis and closure many family members seek in capital punishment. On the other hand, the attitudes of the Delacroixs recall those images of nobility that occasionally surface in the media when persons, whose desire for revenge would certainly be understandable, choose instead to forgo it.

In 2005, the severely injured victim of a nineteen-year-old, who had thrown a turkey through the windshield of the victim’s moving car, asked the prosecutor to show mercy, and then caressed the sobbing boy just outside the courtroom where he had received only a six-month sentence. In 2006, a man shot eleven Amish girls in a Pennsylvania town, killing four of them, before killing himself. Reeling from this tragedy, people in the small religious community met, to try to sort out their questions. “But,” in the words of one commentator:

[O]ne question they asked might surprise us outsiders. What, they wondered, can we do to help the family of the shooter? Plans were already underway for a horse-and-buggy caravan to visit [the shooter’s] family with offers of food and condolences. The Amish, it seems,

131 Id.
132 See Harding, supra note 114, at 1177.
133 Another hint is the behavior of Hope Percy’s younger sister, who interrupts her parents’ conversation with Prejean because the daughter wants to watch a television program—life goes on.

Court testimony by crime victims is often pitched as a sort of retributive therapy, a way for angry, injured people to force criminals to confront their shame. . . . It’s hard to imagine that those hurt by crime reliably find healing in the courtroom. Given the opportunity for retribution, Ms. Ruvolo gave and got something better: the dissipation of anger and the restoration of hope, in a gesture as cleansing as the tears washing down her damaged face, and the face of the foolish, miserable boy whose life she single-handedly restored.

Id.
don’t automatically translate their grieving into revenge. Rather, they believe in redemption.135

In 2007, the parents of a murdered twenty-year-old who “wanted to be an Episcopal priest and was passionately opposed to the death penalty,” wrote their governor, asking him to commute the death sentence of their daughter’s killer, because in the words of the father, his execution “wouldn’t change my grief, my sense of loss”; “he added, ‘If you are not obsessed about revenge, you can have some release.’”136 In 2008, the mother of another young murder victim testified that she no longer supported the death penalty for the man who killed her daughter: “I told [the prosecutor] I would be satisfied with a life sentence. I did not want state-sanctioned murder to tarnish the life of my beautiful child.”137 These and other examples138 show that the rejection of revenge is a surer

135 Sally Kohn, What the Amish Are Teaching America, Oct. 6, 2006, http://www.commondreams.org/views06/1006-33.htm. The shooter was apparently seeking his own twisted form of “revenge,” but the families in the victimized community chose not to respond in kind:
[N]othing Roberts has done changes the fact that he was a human being, like all of us. . . . [T]he Amish in Nickel Mines seem to have been able to see past Roberts’ actions and recognize his humanity, sympathize with his family for their loss, and move forward with compassion not vengeful hate.
We’ve come to think that “an eye for an eye” is a natural, human reaction to violence. The Amish, who live a truly natural life apart from the influences of our violence-infused culture, are proving otherwise. If, as Gandhi said, “an eye for an eye makes the whole world blind,” then the Amish are providing the rest of us with an eye-opening lesson.

Id.


path to serenity than its embrace. Montresor, Chillingworth, and the Percys prove this by negation, while the Delacroixs seem to be groping their way to its affirmation.

The Percys and the Delacroixs are, like Montresor and Chillingworth, fictional, but they have their real-life counterparts in Helen Prejean’s memoir, parents of children murdered by two of the men Sister Helen counseled on death row. Like Matthew Poncelet, Patrick Sonnier and his brother had kidnapped a young couple, raped the woman, and then shot and killed them both. 139 As in the movie, the father of the murdered boy, Lloyd LeBlanc, accosted Sister Helen at Sonnier’s hearing before the pardon board, asking her why she had not come to see him and his wife, as well as the Bourques, the parents of the murdered girl.140 But because the state executed Sonnier soon after the pardon board hearing, Prejean never did so, a decision she came to regret.141 When she later ministered to Robert Lee Willie, she did visit Elizabeth and Vernon Harvey, mother and stepfather of Faith Hathaway, the young woman Willie and another had raped and stabbed to death.142 Like the Percys in the movie, the Harveys misunderstood the nun’s attitude toward Willie’s execution and resented her intrusion in their lives.143 After Willie’s execution, however, they reinitiated contact with Sister Helen.144

The Harveys, especially Vernon, were avid and vocal supporters of the death penalty,145 but even in her early exposure to them, Prejean saw that their pursuit of execution was self-defeating. If Robert Lee Willie had been sentenced to life “[h]e would have slipped into anonymity behind Angola’s walls, his fate sealed, his crime punished, and maybe these grieving parents could, over time, have laid down their grief and carried on with their lives.” But Willie’s sentence was death, so:


139 See PREJEAN, DMW, supra note 92, at 4. Unlike the movie, see supra note 115, Patrick Sonnier’s codefendant (his younger brother Eddie, who received a life sentence) apparently shot both victims. See PREJEAN, DMW, supra note 92, at 16–17, 41–42.
140 See id. at 64–65; supra text accompanying note 115.
141 “I wish now I had gone to visit the Bourques and the LeBlancs. Too late now. Their hurt and anger sting.” PREJEAN, DMW, supra note 92, at 65; see id. at 11–12, 31–32.
142 See id. at 118–19.
143 See id. at 140, 175–76; supra text accompanying note 121.
144 See PREJEAN, DMW, supra note 92, at 224.
145 “In recent months [Vernon Harvey] has given interviews to the press, saying that he can’t wait to see Robert Willie ‘fry,’ . . . to see the ‘smoke fly off his body.’” Id. at 118; see supra note 119 and accompanying text. Elizabeth Harvey told the pardon board, “‘I would like Mr. Robert Lee Willie’s life to end here.’” PREJEAN, DMW, supra note 92, at 168.
now they are like two deer paralyzed by headlights in the road. All they think, all they know, all they want is the death of their child’s murderer that the state has promised them. So they follow the case in the courts. They hold their breath each time there’s a new appeal. They wait and wait, reliving their daughter’s murder again and again.146

After witnessing Willie’s execution, the Harveys expressed profound satisfaction,147 but when they renewed contact with Prejean, she found Vernon still troubled: “[N]ow, with Robert Willie dead, he doesn’t have an object for his rage . . . . I know that he could watch Robert killed a thousand times and it could never assuage his grief . . . . [H]e still wants to see Robert Willie suffer and he can’t reach him anymore.” Her conclusion: “[I]t will not be Robert’s death which brings [the Harveys] peace. Only reconciliation: accepting Faith’s death – can finally release them to leave the past and join the present, . . . to rejoin the ranks of the living.”148

It was Lloyd LeBlanc, the father of one of Patrick Sonnier’s victims, who instantiated this reconciliation for Sister Helen.149 When taken to

146 Id. at 137. See generally Vandiver, supra note 125, at 621–24. When Robert Lee Willie expressed a similar opinion regarding Vernon, see id. at 147, Sister Helen told him, “[Y]ou understand, don’t you, that you are the last person in the world with the right to say that to Vernon Harvey?” PREJEAN, DMW, supra note 92, at 147.

147 PREJEAN, DMW, supra note 92, at 212.

Vernon Harvey pours himself a drink and smiles, and says to the clutch of reporters that he’s sorry every victim doesn’t have the satisfaction of watching a murderer die . . . . When asked if he’s happy, Vernon Harvey says, ‘Do you want to dance?’

Elizabeth Harvey says Willie’s unrepentant attitude made her want to witness his execution and that she’s glad he’s dead . . . .

Id. Even their remaining child, a fourteen-year-old daughter, expressed her happiness, “tell[ing] reporters this is the ‘best Christmas’ she has had in a long time.” Id.

148 Id. at 226. For similar conclusions, see David Kaczynski & Gary Wright, Building a Bridge, in Wounds, supra note 125, at 85, 100; Linda L. White, A Tiger by the Tail: The Mother of a Murder Victim Grapples with the Death Penalty, in WOUNDS, supra, at 49, 65. See generally Armour & Umbreit, supra note 122, at 414-15 (quoting Sarah Dugan Goodrum & Mark C. Stafford, Homicide, Bereavement, and the Criminal Justice System 148 (May 15, 2001) (unpublished Ph.D. dissertation, The University of Texas at Austin)) (family members “may feel depressed when the resolution (or ending) does not make them feel better”); id. at 415 (discussing a similar study); Bruce A. Arrigo & Christopher R. Williams, Victim Vices, Victim Voices, and Impact Statements: On the Place of Emotion and the Role of Restorative Justice in Capital Sentencing, 49 CRIME & DELINQUENCY 603, 619 (2003); Michelle Goldberg, The “Closure” Myth, http://dir .salon.com/story/news/feature/2003/01/21/closure (Jan. 21, 2003).

149 See also PREJEAN, INNOCENTS, supra note 42, at 12 (discussing LeBlanc).
the crime scene to identify his murdered son, LeBlanc sank to his knees, saying the Lord’s Prayer. “And when he came to the words: ‘Forgive us our trespasses as we forgive those who trespass against us,’ he had not halted or equivocated, and he said, ‘Whoever did this, I forgive them.’”

LeBlanc “would have been content with imprisonment for Patrick Sonnier” and tried to avoid attending his execution. When Sonnier, just before his electrocution, said, “Mr. LeBlanc, I want to ask your forgiveness,” . . . Lloyd LeBlanc had nodded his head, signaling a forgiveness he had already given.”

According to Prejean, LeBlanc recognized that “[f]orgiveness is never going to be easy;” perhaps that is why he periodically met with Sister Helen in a rural church to pray.

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151 Prejean, DMW, supra note 92, at 244; see id. at 243. At the pardon board hearing, LeBlanc had supported the death sentence, but primarily because the Bourques, the parents of the other murder victim, had asked him to speak for all of them. See id. “[A]fter the execution he was troubled and sought out his parish priest and went to confession.” Id.

152 Id. at 244. When Sonnier apologized to LeBlanc, the father of the other victim asked, “What about me?” Id. at 93. See supra text accompanying note 130.

153 Id. at 245. His grief—“LeBlanc . . . cannot sit behind teenagers in church because he cannot bear to look at the backs of their heads,” id. at 107—frequently led to “feelings of bitterness and revenge.” Id. at 245.

154 See id. at 243–44; supra text accompanying note 132. When later asked her definition of forgiveness, Prejean responded:

Lloyd [LeBlanc [sic]] whose 17-year-old son David was killed, had the best working definition of forgiveness. He said, it doesn’t mean I condone. Every day of my life I’ll think of my boy and how he was killed, but if I don’t deal with the bitterness and hatred that’s taken over me I’m going to lose my life, too . . . . It was almost like depriving the killer from taking his life, too.

The Author of Dead Man Walking Talks about the Opera, the Movie, and Her Work on Death Row, http://www.pbs.org/kqed/onenight/helenprejean/ (visited July 15, 2009). Bud Welch, the father of a victim in the Oklahoma City bombing for which Timothy McVeigh was executed, parallels Lloyd LeBlanc. See Prejean, Innocents, supra note 42, at 263–64 (“[K]illing McVeigh would only dishonor Julie.”). See also Armour & Umbreit, supra note 122, at 421 (quoting Marilyn Armour, Meaning Making in the Aftermath of Homicide, 27 DEATH STUDS. 519, 535–37 (2003)), quoting the sister of a murder victim:

I can’t (loud voice) hate this person anymore, I can’t (loud voice) want to kill this person anymore because what am I going to get from it? (loud voice) Nothing. No satisfaction. I’m still not going to get [the victim] back. And look how many people’s lives I’m going to (loud voice) hurt if I hurt him.

Id. For another example, from a survivor of one of the Unabomber’s attacks, see Kaczynski & Wright, supra note 148, at 97.
Supporters of capital punishment ought not piously mouth that they are doing it for the victims’ families. Both science and the humanities suggest that the death penalty does family members of the murder victims very little good. Most of those engaged in sanctimonious celebration of “closure” for the families could not care less about these

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155 A joint statement issued in 2007 by the organizations Murder Victims’ Families for Human Rights (to which Prejean dedicated her second book), Murder Victims’ Families for Reconciliation, and Journey of Hope put it simply: “[C]losure is a myth. . . . We don’t need more killing.” Death Penalty Information Center, New Voices: Victims Organizations Issue Joint Statement for National Victims’ Rights Week, http://www.deathpenaltyinfo.org/new-voices-victims-organizations-issue-joint-statement-national-victims-rights-week (last visited July 15, 2009); see PREJEAN, INNOCENTS, supra note 42, at vii, 193, 238 (“The promised healing seldom comes at all.”); Goldberg, supra note 148; Vik Kanwar, Capital Punishment as “Closure”: The Limits of a Victim-Centered Jurisprudence, 27 N.Y.U REV. L. & SOC. CHANGE 215, 237–45 (2002). For similar statements from other family members, see Charisse Coleman, Matters of Life and Death, in WOUNDS, supra note 125, at 17, 31–32; Marsha Kimble, My Journey and the Riddle, in WOUNDS, supra note 125, at 138; Dan Levey, Feelings from the Heart, in WOUNDS, supra note 125, at 33, 37, 38, 42 (multiple victims); Roberta Roper, One Family’s Journey, in WOUNDS, supra note 125, at 124–25. One family member of a murder victim said: “I get sick when death-penalty advocates self-righteously prescribe execution to treat the wounds we live with after homicide. . . . Those who hold out an event—execution—as the solution to pain have no understanding of healing. Healing is a process, not an event.” Armour & Umbreit, supra note 122, at 411 (quoting Levey, supra, at 44). A judge agreed:

Prosecutors often sit down with the victim’s family and explain the realities of going to trial and the possible result, . . . . One reality is that there isn’t much difference from their own healing standpoint between a defendant receiving the death penalty vs. life in prison without the possibility of parole.


collateral victims of the legal process. Instead they are shamelessly pursuing some (usually political) advantage, much like the prosecutor Buckley in Richard Wright’s Native Son, who uses a full set of ethically and morally dubious tactics to obtain a death sentence against a young black man, so that the prosecutor can do well in an upcoming election.

Both Robbins’s film and Prejean’s book show similar behavior. The movie depicts the media circus surrounding the death penalty—talk radio, film clips of a perp walk, television interviews of the defendant and of the victim’s family members—and those who exploit it for political gain, most notably the movie’s Governor Benedict, who turns what was to be a private meeting regarding executive clemency into a grandstanding news conference. The last sequence parallels Helen Prejean’s actual experiences with (subsequently incarcerated) Louisiana Governor Edwin Edwards.

This behavior—reaping personal gain from the infliction of pain on others—suggests the sadism that inevitably inheres in any application of capital punishment. Revenge is sadistic, as the behavior of Montresor, Chillingworth, and the Percys shows, and inflicting revenge supposedly for the benefit of others, as with Buckley and Governor Benedict, is even more so. The film extends this latter criticism more subtly to other characters—the prison workers who purport only to be doing their jobs, but whose willing embrace of death discloses the awful underlying psychology.

Dead Man Walking illustrates the banality of the death penalty process, as Sister Helen notices guards practicing the traverse to the death chamber, secretaries typing the necessary paperwork, and witnesses munching sandwiches prior to the execution. The bulk of these participants would likely join one of the guards in proclaiming that death is “just part of the job” (though he does admit that participating in

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156 See Prejean, Innocents, supra note 42, at 239–40. At the film’s group session for parents of murdered children, one parent notes the ill treatment many victims’ families receive, “The D.A.’s office treated us like we were the criminals.” DMW Script, supra note 93 (italics deleted); see also Armour & Umbreit, supra note 122, at 413.


159 See Dow, supra note 114, at 548. Kevin Cooney plays Governor Benedict.

160 Prejean, DMW, supra note 92, at 55–57. Sister Helen’s second book quotes Millard Farmer, see supra note 116, that “death penalty cases are 95 percent about politics and 5 percent about criminal justice.” Prejean, Innocents, supra note 42, at 103.

161 Cf. Prejean, DMW, supra note 92, at 87 (Prejean’s descriptions of similar scenes). See also Prejean, Innocents, supra note 42, at 10–11, 47. Prejean notes, “I’m amazed at how banal the steps are to kill a human being.” Id. at 10.
one lethal injection did cause him a sleepless night). While these death workers do not seem actively to enjoy the pain they inflict, they do profit from it, and so are not far removed from the headline-grabbing governor, or from the overly punctilious warden, who despite his superficially courteous manner cuts short Poncelet’s last visit with his family, will not let his mother hug him, and seems to enjoy announcing to the prisoner that there will be no eleventh hour reprieve.

But the character who best captures the sadistic streak that runs through all those who enable Poncelet’s execution is the prison chaplain, a priest who takes every opportunity to challenge Sister Helen as a Catholic and as a woman. At their first meeting, Chaplain Farley asks what brings the nun to the prison—“Morbid fascination? Bleeding-heart sympathy?”—and they fence about whether papal doctrine requires Sister Helen to wear a habit. The chaplain offers a final put-down: “I’m sure you’ll interpret it in your own way. Whatever’s convenient.”

They meet again, closer to Poncelet’s execution, and argue this time about whether Sister Helen should be participating in anti-death-penalty vigils outside the prison, trading Biblical passages until Prejean faints. The nun is not the only object of the priest’s antagonism, which is directed through Sister Helen to Matthew Poncelet. Chaplain Farley reaches his apogee of pettiness toward them both when he denies Sister Helen’s request to sing with Matthew on the day of his death, because “music stirs up emotion.”

DMW Script, supra note 93. Cf. Prejean, DMW, supra note 92, at 101–06, 179–81 (describing attitudes of guards and their supervisors). MONSTER’S BALL, see supra note 23, depicts contrasting responses to working in a lethal injection chamber. A father (played by Billy Bob Thornton) adjusts to it, while his son (played by the late Heath Ledger) commits suicide.

Cf. Prejean, DMW, supra note 92, at 86, 200 (somewhat similar behavior by two different wardens). Nesbitt Blaisdell portrays Warden Hartman.

DMW Script, supra note 93. He needles her again at the end of their conversation: “These men don’t see many females. For you to wear the habit might help instill respect. For you to flout authority will only encourage them to do the same.” Id. (italics deleted). Prejean’s actual experiences with a prison chaplain were similar, but not quite so pungent. See PreJEAN, DMW, supra note 92, at 25–26; see also id. at 89–90.

Sister Helen actually did faint in the presence of the prison chaplain, but they were talking about a prayer service for Patrick Sonnier. See PreJEAN, DMW, supra note 92, at 79.

“Matthew Poncelet. I remember him from the news. Him and another fella... shot two children in the back of the head on Lover’s Lane. Raped the girl. Stabbed her several times. Do you know what you’re getting into?” DMW Script, supra note 93. “There is no romance here, Sister. No Jimmy Cagney ‘I’ve been wrongly accused. If I only had someone who believed in me’ nonsense. They are all con men. And they will take advantage of you every way they can.” Id.

Id. Scott Wilson, who three decades earlier portrayed one of the condemned killers in In Cold Blood (Columbia 1967), plays Chaplain Farley.
Dead Man Walking thus depicts a continuum of those who seek some gain from the execution of another human being, from the contemptible governor, chaplain, and warden, through the perfunctorily lethal prison employees, to the pitiable families of the victims. Our revulsion at one end of the continuum ought also to inform our reaction to its other points. Sadism cannot be avoided for anyone implicated in the infliction of death; abolition is the only way out.

Albert Camus saw this decades ago. In Reflections on the Guillotine, he identified “revenge” as the heart of capital punishment and described its consequences: “[I]t perverts or destroys the human quality and reason of all who participate in it . . . .” Focusing on the executioners, he speculated about their own penchant for homicide: “[B]ehind the most familiar, the most peaceful face lies the instinct to torture and to kill.” This “depravity” extends beyond direct participants, however; for Camus, “demoralization” and “manifestations of sadism” are everywhere in the death penalty process. “[T]he new ‘official’ murder, far from offering redress for the offense committed against society, adds instead a second defilement to the first.”

As Poe hinted, as Robbins and Prejean implied, and as Camus argued, the alleged search for “closure” for the victims’ families brings dire results instead—perversion, depravity, demoralization, defilement—to those families and to everyone else implicated in the death penalty process. It ought to cease.

168 “Let us call it by a name which, lacking all patents of nobility, at least provides that of truth—let us recognize it for what it ultimately is: a revenge . . . . It is a feeling, and a particularly violent one, which is involved here, not a principle.” Camus, supra note 7, at 527–28.

169 Id. at 527. The sister of one murder victim writes compellingly of the “almost sensual satisfaction at the thought of extinguishing the life that has taken my brother’s away,” and of “the seductive sway of bitterness,” “sinister whisperings urging me to feed an unending appetite for revenge,” and “the vertigo of longing to take a dive straight into a chronic and deep mistrust of the world, all the people in it, myself.” Coleman, supra note 155, at 26–27.


171 Camus, supra note 7, at 526–527. “As one [execution witness] put it, ‘[W]atching someone die is a saddening sinking feeling.’ It doesn’t always produce the effect one thinks it will.” Armour & Umbreit, supra note 122, at 412 (quoting FERNANDO J. GALAN & DAN R. GUERRA, THE IMPACT OF VIEWING EXECUTIONS ON HOMICIDE SURVIVORS 6 (1999)).

172 Camus, supra note 7, at 513. “The death penalty’s most ‘pernicious’ effect is on those who practice it . . . [I]ts implementation taints everyone it touches, especially when politics is thrown into the mix.” Prejean, Innocents, supra note 42, at 238.