

Dead Man Walking and the Rhetoric of an 'eye for an eye' A Punishment Out of the Public View

A sense of the 'truth' is discernible amidst the arguments for and against capital punishment. Sister Helen Prejean's novel *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States* (Prejean 1993), and Tim Robbins' film adaptation (Robbins 1995), enunciate an 'abolitionist' truth, in the form of real and quasi-fictional narratives. The perception that violent crime is increasing in its occurrence, has seen a revival of the capital punishment debate in abolitionist countries, such as Australia. For instance, in 1994 the Capital Punishment Referendum Bill was introduced in the New South Wales Parliament. It provided for a referendum in relation to 'capital punishment for exceptional cases of murder'. Proposed legislation of this kind is prompted by 'public sentiment' (some 40 000 signatures), fed by the media's fascination with murders of a particularly brutal nature (for example, the murders of Anita Cobby and Ebony Simpson) and victim's rights campaigners.

The film *Dead Man Walking*, in its promotion of informed public discourse and targeting of mainstream popular culture (the consumers of Hollywood films), is authenticated by the book and the experience of Prejean. Prejean gives an account of her experience as a spiritual adviser to two death row inmates in Louisiana's Angola Penitentiary, Pat Sonnier and Robert Willie. In the film, Robbins blends their personalities and crimes in the creation of his fictional character Matthew Poncelet. Poncelet (in the company of Carl Vitello) intercepts the young lovers Walter Delacroix and Hope Percy, who are told that they are trespassing on private property. The couple are taken from their car into the woods and handcuffed. Hope is raped by both Poncelet and Vitello and stabbed some 17 times by Vitello. Poncelet shoots Walter in the back of the head. At this point in the film, Hope is seen to be still alive (writhing) and is finally shot in the back of the head by Vitello.

The criminal justice system, the media, books and films publicly disseminate the graphic brutality of such crimes. Unlike the crime, its punishment has been deemed too offensive and grotesque for public viewing. Both the novel and the film *Dead Man Walking*, embark upon a graphic rendering of the punishment itself and provide a voice for the many speakers in the capital punishment debate. We perceive the limitations, prejudices and idiosyncrasies of the abolitionist and retentionist speaker. The book is important as an accurate first-hand account of capital punishment, the reality of its administration and the fact that it brings little relief to the victim's families. The audience and reader are not convinced that justice has been done.

The secrecy that surrounds capital punishment is disturbing. It invites questions from those concerned about understanding the legitimate aims of criminal punishment. How can an apparent pro-retentionist public (condoning capital punishment from a base retributive instinct) make an informed decision about this punishment, when the public refuse to acknowledge what it entails? How is it that justice is *seen* to be done? The image and etiquette of capital punishment is censored by the state which undertakes the act of retribution on the public's behalf. On the other hand, the publicity that surrounds horrific crimes, the conduct of the criminal trial and the determination of criminal guilt is entirely uncensored. The silence is quite deliberate and moreover, politically convenient. The rhetoric surrounding capital punishment ('eye for an eye', 'get tough') disguises the way that capital punishment is politically manipulated and employed. The truth needs to be told; a society that demands this punishment must take responsibility for it.

A reasoned approach to the death penalty presupposes a comprehensive theory of punishment. A comprehensive theory of punishment is an account of punishment which distinguishes it from arbitrary and unjust violence and which, in doing so, provides a criterion for the legitimate deprivation of rights. Whether or not the death penalty is just, whether it should or not be retained or restored can be decided only with reference to the criterion of justice generated by a true account of punishment (Brudner 1980:337).

A comprehensive theory of capital punishment is not satisfied by the dominant aims of retribution and deterrence. *Dead Man Walking* is in this respect, a true account of the shortcomings of the aims of retribution and deterrence. This is disturbing, given these aims ultimately sanction its current usage.

The abolitionist may argue against the use of the death penalty, invoking abstract philosophical notions regarding the sanctity of human life. However, the abolitionist argument is best supported by life experience, which contrasts the humane with the inhumane in real terms. The premeditation and brutality of the crime is countered by the equal premeditation and brutality of the state, which has had time to consider its options. Brutal murders are not commonly premeditated — capital punishment is meticulously planned, engineered and implemented at a huge cost to society.

People will accept the death penalty unless or until they can have an alternative they want more. This implies that advocacy for such an alternative may play a pivotal role in the struggle over capital punishment in the U.S. (Bowers 1994:149).

Sister Helen Prejean posits her alternative. The book and the film emphasise the 'humanness' of the people caught in the system, attaching a value to their lives. Offenders, victims, families and the public all have a role to play in this respect.

Capital punishment in the abstract; philosophies and theories of punishment

Who so sheddeth man's blood, by man shall
his blood be shed, for in the image of God
made he man (Genesis 9:6)

The aim of capital punishment is that the guilty must always be punished to the full extent of their desert: positive retributivism (Duff and Garland 1994:6) The notion of desert and biblical *lex talionis*, suggests a meting out or retaliation that is proportional to the initial wrong. Because it looks backward to crime, rather than looking to its social effects, retributive sentiment is a relic of a more barbarous time according to Beccaria; a mere rationalisation of the lust for revenge (Brudner 1980). Retributive theory regards punishment as a moral good, rather than morally questionable. The principal end of punishment is neither deterrence, protection or rehabilitation — but only the annulment of wrong. The last 20 years has seen the revival of retributive punishment. Rising crime rates appear to have undermined more 'reformatory' penalties. Here, Durkheim argues that the rituals of punishment reaffirm society's core beliefs and its sense of solidarity (law abiding us v law breaking them) (Duff and Garland 1994:32). Punishment provides an outlet for passions, outrage as a communicative force. For Durkheim it provides assurance and defines moral boundaries (Pratt 1994:214). It is a collective self-defence, denunciatory and reprobative (Brudner 1980).

Helen Prejean cites Camus' 'Reflections on the Guillotine' (Prejean 1993:225–226) as her moral compass. No government is ever innocent, wise, or just enough to lay claim to so absolute a power as death. History is repeated in the capital punishment debate. In the second half of the 18th century, secular Enlightenment theorists and religious persons of

conscience convinced those in power that public punishments of the body were arbitrary, cruel and illegitimate. Punishment could be humane, reformatory and punitive — rather than solely retributive. Thus, a moral consensus for reform marked the rise of the penitentiary (Ignatieff 1981:75).

The concept of punishment is problematic because in practice it means doing things that appear to be morally wrong, to an end that might not be satisfied in any case. Liberal principles advocate temperance, punishing wrongdoers no more than is necessary to secure the proper aims of punishment. Bentham's utilitarian critique steadily opposed the death penalty and instead favoured imprisonment and hard labour (Bedeau 1983:1037, 1044). Accordingly, a punishment that produces more harm than good cannot be justified, if the same benefits can be obtained at less cost and suffering (Brudner 1980:338). Burgeoning state power is seen as a threat to individual freedom and morality. A justification of punishment must show that punishment achieves some good and that it is a proper task of the state to pursue that good by these means:

The most important task for philosophy in this context is perhaps not to "justify" the penal system, but to ensure that the massive power of the penal state is subjected to constant normative scrutiny and criticism, by articulating the values against which it must be judged and by questioning the assumptions on which it rests (Duff and Garland 1994:6).

The film *Dead Man Walking* scrutinises and criticises. An important question is why the state should administer punishment that is purely vengeful. Why not the wronged individuals? A justification of capital punishment must necessarily show that condemnation, in the form of reciprocity, is both correctly delegated to the state and correctly administered via such methods as imprisonment or death (Duff and Garland 1994:14). Further, the state as a 'legitimate' embodiment of societal values, presupposes a heterogeneous society with shared value systems. According to Bentham, the principle of utility equals the greatest good for the greatest number. 'Just desserts' is a difficult thing to achieve in the context of the current administration of capital punishment; its discriminatory nature is contrary to the spirit of justice.

An example of the technology of state power

The imagery in the film *Dead Man Walking* is evocative of Foucault's analysis of the technologies of power and modern punishment (Foucault 1978). Foucault detected a significant qualitative change in the object and objective of punishment in its efficiency, organisation and invisibility. Punishment today has transcended the purely ceremonial in a more sustained effort to control the criminal subject.

The film *Dead Man Walking* captures this essence of control. Time, space, material and human resources become hyper-sensitive in the domain of state control. Prejean is at times overcome by the mechanics of state intervention, its systematic organisation, precision, detachment and sterility. Poncelet's last hours are spent enjoying the presence of loved ones, appreciating the 'humanness' of his youngest brother's once annoying, but now savoured habit of squeaking his shoes on the highly polished prison floors. The state interrupts, the warden looks at the clock, observes procedure, swiftly allocating 15 minutes for the last farewell by a man to his family, declares that 'it's time to go folks', denying a mother and son their last embrace. The film confronts its audience with the cruel reality of modern punishment.

Elias' work traces the historical development of the privatisation of disturbing events, which in a modern society has become the accepted norm:

... sex, violence, bodily functions, illness, suffering and death gradually become a source of embarrassment and distaste and are more and more removed to various private domains (Elias 1939:222).

A tension exists between punishment as public spectacle (voyeurism) and state executions that exclude public knowledge and participation (secrecy). For Foucault, the body is significant as an object and target for the exercise of power (Smart, 1983:67–68). Diagnosed, treated, imprisoned and tortured, the body is recognisable as a site of resistance and also an intersection where law enforcement, medicine and morality meet. The powerful image of Matthew Poncelet strapped to a crucifical/operating table/torture rack is fascinating. It is an almost sacrilegious image: the state ‘apparatus’ that binds a prostrated man against his will. This image is the culmination of an isolated ‘death house vacation’ (‘plenty of time to read my bible’), 10 guards and suicide watches every 15 minutes. The political investment of the body is real; so too is the technology of power that seeks to contain the libertinious body.

The political context; the revival of capital punishment

The United States Supreme Court has demonstrated an increasing preparedness to uphold the death penalty (Rhodes 1994:146–148). In *Furman v Georgia* the Court refused to enforce Georgia’s death penalty statute because of its capricious and arbitrary application.¹ However, in *Gregg v Georgia* the Court upheld the constitutionality of capital punishment and accepted the revised state systems of administration. It was held that capital punishment was not, in and of itself, unconstitutional and this decision has become the standard bearer for the modern era of capital punishment.

The shift is explained by the Reagan and Bush administration’s conservatism: the ‘Reagan Court’s’ perceived assault on civil rights.² Prejean provides an interesting account of President Reagan’s direct involvement:

... and he tells how he told his congressman, Bob Livingston, about his problem and Livingston told him to write a letter to President Reagan and he would put it in the President’s hand.

‘Well, Livingston must have gotten through,’ Vernon say, because several weeks later the phone rang and a woman’s voice said to hold please for the President. ‘Hell, I didn’t know which President the lady was talking about, the Kiwanis Club or whatever. But when I heard the voice, I knew what President it was, all right. I’d know Ronald Reagan’s voice anywhere. He told me — these were his words — “As soon as the U.S. Supreme Court turns Willie down, which won’t be long, he’ll be back to Louisiana to stand trial for your daughter’s murder, you can depend on that.” And I liked the way he put it — “as soon as the Court turns him down, which won’t be long” — that’s just the words he used, and I told him that I appreciated that’ (Prejean 1993:179–180).

1 According to Rhodes 1994, the death penalty was invoked without any guided discretion, rendering it violative of the Fourteenth and Eighth Amendments (cruel and unusual punishment, due process). The Court merely held that its manner of administration at the time, was unconstitutional. Thus the states were able to devise new systems/methods of adjudication and administration that might withstand constitutional scrutiny.

2 A conservative block emerged; headed by Rehnquist CJ, Scalia, O’Connor, Kennedy and White JJ. Marshall and Brennan remained along with moderates Blackmun and Stevens JJ.

The capital punishment promise is deployed politically. The rhetoric of 'get tough' wins votes and Vernon Harvey's 'appreciation' entails a returned favour. The media bears a large responsibility for the climate of hysteria and the belief that increased crime rates require drastic state intervention if need be.

The politics of America at the federal, state and local levels centred on crime and the television and news media made sure that America would know that crime was our primary concern.

For the past twelve years we have been bombarded constantly with news of gangs, drugs, rapes, homicides and countless acts of senseless violence throughout the country that have left thousands of innocent survivors of victims of crime without their loved ones. Conservative politicians seeking election and re-election have spent millions of dollars pandering to the fears of citizens on issues of crime (Rhodes 1994:20).

The United States judiciary appears to be extremely susceptible to political interference with its processes. Although the Constitution (1787) divides the national government into three branches (legislative, executive and judicial), Congress has the power to change the Supreme Court's appellate jurisdiction as well as its size. Further, the appointment of the Supreme Court judiciary is made by the President, pending the approval of the Senate. The potential for the politicisation of the judiciary, ultimately answerable to the President for re-appointment is obvious.

Promoting public discourse; truth vs secrecy

Pronounced dead at 12:24, said the warden.

We wrote the time in our notebooks. The warden looked closely at us.

Don't mention the times. They die instantly but their heart continues to beat for a long time. The public wouldn't understand (Lewis 1968:241).

Now looking at the heart, he repeated, 'He didn't feel anything, did he?' The doctor said 'No nothing.' Jerry said, 'Well did he move around after he was shot?' The doctor said, 'Yes, about two minutes.' 'Was that just nerves?' Jerry asked. The fellow said, 'Yes,' and added, 'He was dead, but we had to officially wait until he quit moving. That was about two minutes later' (Mailer 1976).

Abolitionists argue that an informed public should be exposed to the reality of capital punishment. The film *Dead Man Walking* fulfils an important function in this respect: it is the reality of a human story cut short by the state. The reader and audience are encouraged to draw their own conclusions, moving through an experience exposed and open to all its effects:

'Susan had a sense for the human-ness,' says Sister Helen. '[The audience] has to sense the naivety, the getting overwhelmed. Not that you're this supernun in charge who knows everything.' (*New Woman Magazine* April 1996:93).

Prejean's legacy is that it is no longer acceptable to cringe at selectively divulged details, nor reflect in a clinically detached manner, prodding a man's bullet punctured heart post-mortem, reassured by prison wardens and doctors that death was humane, dignified and painless. But she is not a bleeding heart. Prejean experiences repugnance and disbelief when confronted with extreme brutality. We bear witness to her initial disdain and perception of these men as monsters. Her initial impressions of Pat Sonnier and Eddie Sonnier respectively, are evocative of Lombroso's *l'uomo delinquente* (Gould 1987), the criminal as an evolutionary throwback and more animal than human:

... he includes in his letter a photo of himself taken after he was incarcerated. It is the first time I see his face: he's not scowling exactly but there is something about the bushy eyebrows and

the way they slant downward. I feel a sliver of fear. I feel safer knowing he is behind bars (Prejean 1993:17).

In March of 1983 I visit Eddie for the first time. He reminds me of a caged panther. He is thin, tight, his eyes narrow slits. His hands tremble. He makes me feel tense, wary. I feel afraid of him and sorry for him at the same time (Prejean 1993:41).

Prejean cannot deny the inevitability of purely emotive reactions and she struggles to overcome the anger that curses violent offenders as animals. She is attentive to the stern warning of the prison chaplain; that these men are 'the scum of the earth', 'con men' not to be trusted and the heart-felt vitriol of the victims' families:

... and the quiet voice. I think of how he exhaled his smoke downwards so that it didn't blow in my face ... 'He needs all the spiritual advisers he can get', Vernon says. 'He's an animal. No, I take that back. Animals don't rape and kill their own kind. Robert Willie is God's mistake. Frying in the electrical chair is the least of the frying he's going to do when God sends him to hell where he belongs,' and he jabs his finger downward (Prejean 1993:177-178).

Prejean ponders the aetiology of human violence. For Pat Sonnier, hunting for food at night was a 'crime' that fed and sustained a poor family. His 12th birthday rite of passage is fondly recounted; shared with a father, who embellishes him with paternal pride for his choice of whisky ('with the pretty turkey on it'). Robert Willie exudes cocky toughness, yet fears most his mother's tears. A dire need to 'belong' prompted his adoption of the Aryan Brotherhood as family. His juvenile record notes that he once asked to be kept in jail because he had nowhere else to go. Willie's father served 27 of his 53 years in the Angola Prison and believed that 'his son deserved the chair and he'd be willing to pull the switch himself' (Prejean 1993:227).

It is easier to vilify and punish scum, con men, animals, monsters — out of the public view. It is morally difficult to execute humans under conditions of public scrutiny. Following the execution of Pat Sonnier in the novel, his appeal lawyer Millard comments upon the secrecy surrounding capital punishment.

A few select witnesses brought deep inside the prison in the dead of the night to watch a man killed. If most people in Louisiana would see what the state did tonight, they would throw up (Prejean 1993:122).

It is important to recognise that the secrecy that enshrouds punishment and its oppressive procedures (such as seizing a person from their cell unannounced, weighing and measuring them) are not motivated by concerns for human dignity and well being. De-humanisation governs the death row protocol in every respect. There is irony in Matthew Poncelet's observation: 'never had so many people cared about what I was doing.' A cold-blooded politeness demands his sensible collaboration with all requests. Poncelet is conscious of the evasive contempt of the guards, reminding him of his status as a dead man.

The people who work for the state bear the burden of carrying out the job on the state's behalf. Prejean's collapse in the film places her in the prison hospital. She is conscious of the doctor and the medical apparatus that surrounds her, with its simultaneous capability of reviving and extinguishing life. Medical procedure has a special role to play in the new era of 'humane' state executions. It provides the requisite surface appearance of humanity (not arbitrary and cruel) and a further aura of legitimacy to the procedure. The physician is pondered and questioned as an executioner by Prejean. Medical supervision is required in the administration of the lethal injection (Kaiseratt 1994:291). The silence of 'confidentiality' is conveniently invoked; medical procedure serves to obscure further the reality of the execution protocol. Prejean is disturbed by the sterility and cleanliness of the death house environment and observes that everything 'is so clean. I keep feeling as if I'm in

hospital, the cleanliness, attendants following a protocol ...' (Prejean 1993:112). A similar clinical detachedness is demanded of all prison personnel. Wardens are discouraged from developing relationships with death row inmates.

He smiled at me and asked if it would be embarrassing or against the prison rules for the warden to allow an inmate to hug him goodbye. As we embraced, I thought how sad it was that it takes a tragedy such as an execution to bring two ordinary human beings together. Then he whispered to me, he told me to be brave, and he said that it was okay (Cavana 1994:291).

These words resonate the experience of Prejean and Poncelet. Poncelet walks to his death, accompanied by Prejean and we are conscious that her hand upon his shoulder is his first 'human' contact in six years.

Televised executions would promote informed public discourse about capital punishment. Enlightened choice, by informed citizenry is a basic democratic ideal (Bessler 1993:392). Several journalists and death row inmates have undertaken legal action in an attempt to secure televised executions. Indeed Robert Willie recognised that it 'would be a good thing for the people to see what they are really doing ... I'll bet if they saw it, it would change some minds' (Prejean 1993:265). *Garret v Estelle* authorises the secrecy that surrounds capital punishment; the government is not required to give the press special access to information not generally shared by the public. Ironically, foreign executions are broadcast in the United States. Televised executions would arguably contribute to the acceptable goals of punishment; justice being 'seen' to be done, if this is what the public so desire.

Civilised societies withdraw both from the victim and the vigilante the enforcement of criminal laws, but they cannot erase from peoples consciousness the fundamental, natural yearning to see justice done — or even the urge for retribution. The crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is 'done in a corner [or] in any covert manner (*Richmond Newspapers Inc. v Virginia* 1980:571).

In this context, the words of Chief Justice Burger are evocative of Durkheim's notion of punishment. Arguably, an open process of justice would help vent a public sense of outrage and hopefully expose it for the barbarism and premeditated waste of human life, that it really is. It is difficult to see how the venting of public outrage is achieved by private executions. Its barbaric reality is denied by the secrecy that surrounds capital punishment — and quite deliberately so.

The politics of class, race and 'getting tough'

Race, poverty, disadvantage and politics determine who is sentenced to death in the 'death belt' — the states of the old Confederacy that have historically carried out the most executions in the United States (Bright 1994:272). The opening images of the film, place us in proximity of the St Thomas Housing Project: 'Not death row exactly, but close' according to Prejean.

In the film Prejean's loving and affluent family are contrasted with Matthew Poncelet's poverty. Robbins' portrayal of Poncelet's family is sympathetic. Poncelet cites his 'yellowness' (cowardliness and lack of individuality) and an eagerness to impress the older 'tough as hell' Vitello, as the culmination of a downward spire into criminality — rather than his upbringing.

The film is interesting in its rendition of Prejean's own capacity for cruelty. Prejean's childhood memory of beating an animal to death with a stick, is aptly recollected, upon her drive home from the Angola Penitentiary. From the benefit of an adult vantage point, this recollection reinforces her awareness that retribution, as an infliction of cruelty, is a base and untrained human instinct. At this same moment, Prejean is returned to reality by a police officer who pulls her over for speeding. As a nun, her violation of the law on this occasion is waived. Behind the humour and light relief of this scene is the awareness that the law and its administrators are able to selectively apply its sanctions to those who are *deemed* to be properly deviate. Prejean can also admit to her own loneliness and alienation. The scent of Sunday afternoon barbecues at the St Thomas Housing Project and the sound of children's laughter, is a reminder of her own absence of nuptial and maternal intimacy. Prejean relates to these men as humans, for she is herself human and thus fallible.

The film presents a tension between the different socio-economic backgrounds of Prejean and Poncelet. Upon her initial visit she is quickly assessed by Poncelet: 'you're very sincere ... you've never done this before ... been near a murderer before ... you come from money don't you ...— and you live in the St Thomas project? — I don't know who's crazier, you or me! ... me? ... brought up poor — no one with money on death row.' Prejean is conscious of her difference, her privileged viewpoint:

I am glad to be part of an effort that draws together black and white, rich and poor — an antidote, I believe, to what I see as an endemic national malady, the isolation of socio-economic classes and races from each other.

Poncelet has many chips on his shoulder; extreme politics and racism colour an entirely unlikeable character (an anti-hero in fact). Prejean gains his respect by default: 'we both live with the poor'. Her lack of self-righteousness as a Catholic nun is refreshing, at a time when religious draconianism has alienated many. The tension between competing ideologies within the Catholic Church is also portrayed in the film. Prejean's words bespeak New Testament principles; constantly challenged by the oft-quoted retributive adages of the 'Old Testament' prison chaplain. In fact, Poncelet's sarcasm: 'Father is a *very religious man*', causes Prejean to purse her lips in suppression of a smile.

Prejean assists in the development of his personal insight, questioning his racist comments and deferment of blame. Not surprising is Poncelet's lack of recognition that he himself is an object of prejudice. As an inmate on death row, he is ignorant of the fact that he is publicly perceived as a monster: 'disposable human waste, good for nothing, sucking up tax dollars' — and is as such a 'victim'... Studies suggest that violent offenders do not see themselves as objects of prejudice because they neutralise and justify their violence. In a study conducted in Illinois and Carolina, of the 62 inmates from Illinois, 63 per cent favoured the death penalty at least in some form, including 38 per cent who strongly advocated its use. Further, of the 245 respondents in two Carolina prisons, 53 per cent favoured the death penalty as a form of punishment for certain crimes. Ironically, a high proportion favoured capital punishment, at least for 'low lifes' but not for themselves (Stevens 1992:275–277).

The death penalty is blatantly discriminatory; black people who have killed white victims comprise the majority of death row inmates. One study concluded that:

... seventy percent of the victims of crime are African-American, and almost ninety percent of the people accused of crimes are African American. When we looked at the cases for which a death penalty was sought, we saw that eighty percent of the murder victims were white (Zeisel 1981–2:273).

In *Furman v Georgia*, Justice Douglas Marshall agreed that discriminatory punishment based upon race is the ultimate affront to even-handedness. Yet, the United States Supreme

Court refuses to acknowledge the reality of capital punishment, as a form of class and race discrimination. Poverty also entails inadequate trial and appellate lawyers for capital defendants. The reality of capital punishment is that those unable to afford experienced capital lawyers comprise the majority of the death row population. In the film *Dead Man Walking*, Poncelet receives a death sentence, Vitello a life sentence. The fact that Poncelet's was defended 'by a tax lawyer, who [had] never tried a capital case before: an amateur' is argued bluntly before the Pardon Board.

Capital punishment is politically deployed. The appeal mechanisms arising out of a conviction of a capital offence — prosecutorial discretions to ask for the death penalty (Johnson 1994),³ Pardon Boards and appeals for clemency from State Governors who are given a power of final veto (as a 'last vestige of the power of kings') (Prejean 1993:74) — are reminiscent more of a political circus, than an appeal by a person to the state for their life. The film demonstrates the political currency of the 'get tough' attitude, realised in the scene where an anticipated 'private appeal' to Governor *Benedict* (the pun must have been intentional) for clemency, escalates into a full-scale press conference. Current clemency practices militate against its extension. The exercise of executive clemency by a Governor is tantamount to political suicide (Silvermann 1995:267). Judicial commutings of death penalty cases are similarly regarded⁴ (Walker 1994: 29). More disturbing, are the instances of corruption by the Louisiana Pardon Board recounted by Prejean. Arizona, Delaware, Louisiana, Oklahoma, Pennsylvania and Texas condition the grant of executive clemency on a favourable recommendation of an 'independent' clemency board.

Later Marsellus will serve time in a federal prison for rigging pardons and accepting bribes while serving time as chairperson of this board [Louisiana Pardon Board]. When he gets out of prison, he will weep as he tells how he betrayed his deepest ideals by trying to be a 'team player' for the governor by protecting him from difficult clemency decisions ... (Prejean 1993:79).

Conclusion: retribution as an insufficient aim for punishment

Of all virtues, magnanimity is the rarist (Hazlitt 1995).

A retributive theory of punishment is heavily scrutinised by both the film and the book *Dead Man Walking*. Further, the deterrent function of capital punishment is difficult to ascertain methodologically, described by Chief Justice Burger in *Furman v Georgia* to be at an 'empirical stalemate'. Capital punishment condones a violent response to the problem of a violent society. Despite its privatisation and sanitisation, it still condones extreme violence as an answer to social problems and as a legitimate device that exercises power over individuals. It institutionalises violence, rather than deters it.

Knowing that I'd get iced [executed] for killin' that son'bitch [his victim], wouldn't of stopped me. If I didn't kill the motha'fugger before I came here [Illinois prison], I'd kill'em when I get out (Stevens 1992:278).

3 Prosecutors are elected officials and serve 10 year terms. The decision to ask for the death penalty is seemingly arbitrary and self-serving, governed by election promises and the regaining of public confidence when a significant case has been recently lost.

4 Of the 3000 people on death row, 200 have been executed since 1977 and only 30 grants of executive clemency have been extended in 17 years.

Studies suggest that high profile crimes and executions might have a short-term deterrent effect on homicide because of the massive publicity that often surrounds such crimes (McFarland 1983). On the other hand, the 'brutalising effect' of a violent response to a violent problem, might provide an incentive for persons to commit violent acts and thus gain notoriety in a 'copycat' manner (Thorn 1983:204). This is the problem with capital punishment under its current administration — the fact that the state proffers a violent solution to the problem of violence. There is a possibility that the viewing of capital punishment by the public might increase the prevalence of violence in society. Abolitionists argue that an uncensored version of capital punishment would arouse public disgust and research shows that many who say they favour capital punishment in the abstract usually reject it when faced with the realities of its administration. In this respect, the film and book *Dead Man Walking* can only assist in stimulating the abolitionist debate — if for no better reason than in the promotion of public awareness and responsibility for the retribution carried out on its behalf, by the state.

Researchers have found that capital punishment has no discernible deterrent effect on murder rates and that there is no significant difference between the murder rates of capital and non-capital states (Ross 1995:21).

There are about 2,800 people on death row in this country and I daresay that we could kill all 2,800 people and none of us would be any safer walking the streets of Chicago, Detroit, Los Angeles and Miami tomorrow. There's really not much disagreement about that. Yet we persist in using the death penalty as a symbol of strength, of power and resolve in dealing with violent crime (Tabak 1994:24–25).

Retribution exclusive of deterrence is an insufficient justification for the use of capital punishment. The execution of the fictional character Poncelet and the real life execution of Pat Sonnier emphasise the fact that death is such an irreversible punishment. Eddie Sonnier and the fictional Vitello serve life sentences: criteria of proportionality and an 'eye for an eye' questionable, given that those still alive appear to be the more culpable assailants. Nor is the execution proportional to most murders, which are seldomly premeditated.

... the kids in the car, the abduction, the boy, David saying, 'Put down the gun and I'll show you who's a man,' rage, the two David's blurring, the gun in his hand. *Snap*... I see no reason to doubt Eddie. The weight on him is tangible. I can see the pain and bewilderment in his eyes at the enormity of the evil he has done.

I have heard this is the way most murders happen — an explosion of passion, not a cold, calculated, premeditated act (Prejean 1993:53).

The train of events are blurred, inexplicable, demonstrative of human fallibility in the film *Dead Man Walking*. In stark contrast is the considered and meticulously orchestrated action of the state (Pollack 1992:1000), relentless in its pursuit for revenge.

The Court represents litigation about rights as a sleekly designed functioning machine. A distinctly and palpably injured plaintiff can activate the machine, making it fabricate a remedy engineered to remove the precise injury that activated it. With the bloodless picture in mind, the Court can react with aloofness and distance to the problems that bang at its door (Althouse 1991:1199).

The lethal injection scene in the film is striking in its clinical detachment, sanitising the barbaric need to exact retribution. Robbins juxtaposes flashbacks to the earthy, dank pine forest, its sound of crickets in the darkness and faint female screams, with the loud and eerie hum that emanates from the death protocol and its apparatus. The audience is left wondering which is the more terrifying scene to watch — the actual murder of Hope Percy and Walter Delacroix — or each needle, systematically injected into a man against his

will. We recall the description of what each needle does to the body, its organs imploding, in this meticulously measured and vengeful 'armageddon'.

A sense of revenge does not appear to be satisfied in any case. Prejean's exposure to the victim's families provides a touching insight into the pain and loss, not relinquished when the criminal is executed. Vernon Harvey is left feeling that Willie's death was too quick and easy: 'he didn't suffer no pain, and my daughter had to' (Prejean, 1993:274). Prejean's contact with these families post-execution, disproves any suggestion that capital punishment eases their burden.

I tell them about Robert's last hours and his struggle to formulate his last words. I tell them that I believe he was sincere when he said that he hoped his death would relieve their suffering.

Vernon begins to cry. He just can't get over Faith's death, he says. It happened six years ago but for him it's like yesterday, and I realise that now, with Robert Willie dead, he doesn't have an object for his rage. He's been deprived of that too. I know that he could watch Robert killed a thousand times and it could never assuage his grief. He had walked away from the execution chamber with his rage satisfied but his heart empty (Prejean, 1993:247).

Prejean posits as a preferred punishment, a system which combines punishment for offenders and restitution for victims. An Amnesty International Toll indicates that support for the death penalty as punishment for felony murder, dropped by 50 per cent when people were offered the alternative of a mandatory 25 years imprisonment without the possibility of parole, coupled with restitution to the victims family from the labour of the offenders (Prejean 1993:297).⁵ Restorative justice is measured by a different yardstick; the extent to which the victim's of crime are enabled to resume a normal life as far as possible. Offenders should be given the opportunity to gain, or regain, the community's acceptance.

It is important that the secrecy and oppressive procedures continue to be exposed and scrutinised. In the aftermath of the film *Dead Man Walking*, Australia has seen an increased interest in televising documentaries of actual death row inmates in the United States (although the actual execution is still censored from the public view). In the United States other films on a similar topic have also been made.

There are acceptable alternatives to capital punishment that are more faithful to the values of a supposedly enlightened and humanistic society. Prejean and Robbins emphasise the failure of the state, its institutions and penal code to emulate the best values of our society: compassion, mercy — or at the very least, a concern for human rights. We are all aware that people can and do change. Yet some states declare that the criminal 'problem' is to be solved by killing people, in a campaign of terror that is politically expedient and secreted behind penitentiary walls.

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5 The survey was conducted in Georgia, New Mexico, New York and Virginia; Bowers, W J, Vandiver, M and Dugan 1994; Write 1991.

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