ABSTRACT:

I’M READY, WARDEN: AN EXAMINATION OF THE RHETORIC OF DEATH

Zac Wendler, Ph.D
Department of English
Northern Illinois University, 2015
John Schaeffer, Director

This dissertation examines the rhetorical context, preservation, and dissemination of the final statements of American felons executed between 1985 and spring 2012, as well as the history of these items in the West generally and America specifically. This examination found little variance in final statement genre incidence rates with respect to ethnicity, gender, date of utterance, or any other temporal or demographic factor. As a result, it examines in detail the cultural context which stabilizes and centers this type of utterance and explores how such statements move through American society and are transformed in the process. It argues that such distortion is productive and both the result of and a key tool in a search for common identity amongst modern Americans.
DEDICATION

To my mother, for showing me that it could be done
To my father, for encouraging me to see that it should be done
And to my wife, for seeing that it was done
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CHAPTER ONE: EXECUTION IN AMERICA

“Let’s do it, man. Aint life a bitch?”
G.W. Green, executed by lethal injection on October 18, 1991, at the James T. Vaughn Correctional Center.

This study is about the dead and dying. It is about rhetoric, politics, and our society. It is about the moment at the end of someone’s life, when death is so plain and present that it might as well be a physical presence in the room.

To say that thought on execution is complicated and controversial is a profound understatement. Whether a person supports or opposes the death penalty, thought on and about capital punishment has become a part of the political and philosophical lives of every man and woman in America. Execution is, for all of us, imbued with a significance which we cannot ignore. Here, we kill people when they kill others, if we find the crime to be outrageous enough.

Why is this? Why do we execute criminals? Why are we so divided by the practice? Why, in short, does execution matter to us so much that it has become an integral part of political and philosophical identity in contemporary and historical America? These are questions without easy answers, and for them we must first examine the practice of execution from its deeper roots.

But first, I feel that I ought to explain myself before I delve into the particulars of the execution process. This study does not aim at something fundamentally new or wholly unexpected. Rather, it taps into an ongoing multidisciplinary conversation which the field of rhetoric has not addressed in depth for some time as it dealt with fundamental, theoretical questions about the nature of rhetorical discourse itself. Armed with that theoretical knowledge,
we have been ready for some time to rejoin a scholarly conversation which has been active and vital for as long as the academy itself has been, but which we have largely neglected. While a full exploration of all aspects of the debate on capital punishment is impractical for a project of this scale, I seek to make a meaningful start here.

I also feel the need at the outset of this project to make a clear delineation of what, exactly, I will be examining. This is a study of the last words of men and women executed in America between 1985 and the spring of 2013. It does not examine the last words of men or women who died outside of that timeframe, or in different contexts, be they of natural causes or as the victims of brutal crimes. I do this for two key reasons, both of them practical. First, without a limitation of the corpus, this project will stretch to infinity in all directions. I am looking here at modern final statements delivered by condemned men and women. The final statements of others, at other times and in other places, are of interest to me in principle, but the task of looking at even a single year's worth of final statements—a single month's worth, even—is a task so monumental that no human being could hope to finish it in his or her lifetime. The second reason for my limitation of the corpus is that we do not keep transcriptions of the typical death-moment outside of death chambers, and as such have almost nothing in the way of concrete, reliable records-keeping to fuel such an examination. While I could theoretically rely upon the eyewitness recollections of those present at the death of another, there are deep and complex bibliographic issues with such an approach, as I will demonstrate in detail. Such confusion would make separate consideration of what people said and how you and I reinterpret and transform those words impossible.
We privilege people's final statements in our culture; many others do as well, but the social importance that we put on final utterances of all kinds in America makes this of special importance to us, as we see a person's final utterance as the last page in their life, after which the metaphorical book may be closed. Final utterances in our culture are about closure, naturally, but are just as crucially about power, social normalization, and the belief that, in even the worst amongst us, there is something essentially human, some encapsulation of experience and knowledge and which will bubble to the surface at the last moments of a person's life that only those about to die can state clearly.

To that end, a rhetorical examination of final statements is, effectively, a rhetorical examination of what it means to end a life as a society. It is microcosmic in almost every way, reducing the entire idea of a capital offense to a person and a victim, the idea of justice to a judge and a warden, and the idea of proportional punishment to a single act. It defies typical rhetorical discourse models by refusing to deal with anything abstract, and instead simply focuses on what is, what was, and what those things mean.

Even if we set aside questions of justice, ethics, and process¹ to engage with the utterances of the condemned as simple statements, rhetoric is central to every aspect of the execution process. Execution is the ultimate way that a society can use to say that some behaviors cannot be tolerated, and to instill a corresponding set of ethical values to its citizenry.

¹ Questions of ethics, process, and justice are the terms upon which the larger political debate on capital punishment in America are held. In this case, there's really no sensible way to address final statements as rhetorical artifacts delivered in a real, physical context if we also draw politics into the picture because that political context is generally applied to the last words of the executed post facto, by observers and commentators and politicians. I do not, in other words, seek to consider these final statements in an entirely apolitical context—the political stances that the condemned take themselves are of enormous interest to me—but I do wish to look at them without the politics we bring to the room. Confusing the politics of the living with those of the condemned has been typical in almost every examination of last words to date, whether rhetorical or otherwise, and it is a trap I am trying to avoid.
Each particular execution is an exhibition which makes the process of punishment and justice clear and openly known to all. It is the social equivalent to a rattlesnake's tail: pass this point and die. The method of execution, be it electrocution, hanging, lethal injection, or any of the myriad other ways which humans have devised to end each other's lives, is itself a rhetorical statement that simply ending life is not sufficient; the condemned must suffer, as they do in even the most humane execution methods. Into this churning mix of rhetoric is injected the condemned's own opportunity to speak, which is offered without exception, which is usually recorded for posterity, and which occasionally surpasses the momentary context in which it is uttered and becomes transcendent, symbolic, and enduring.

The act of execution is rhetorical\(^2\) from top to bottom. One might argue that execution's most important function is rhetorical, that it is a statement of how a whole people value the lives of the innocent over those who have killed them. If this is the case, then a final statement is not only rhetorical by its very definition, it is a rhetorical response to several whole classes of sustained rhetoric. It is rhetoric at the extremes of human existence, where the only certainty is death and no word or argument can save the life of the rhetor. It is the rhetoric of impossibility, of defying insurmountable odds for the sheer act of defiance itself. It is the rhetoric of love and history, the last chance a person will ever have to change how he or she will be remembered. It is, in the end, the rhetoric of acceptance, of assent, of taking psychological, social, and personal control over the unstoppable, immutable, inexorable end of one's life. The final statement is a rhetorical utterance which allows men and women to, in their final moments, assume a level of

\(^2\) Given that there are many particular definitions of rhetoric and rhetorical utterance, allow me to clarify. I work primarily within Burkean and Bitzerian rhetorical contexts, with a strong influence from Miller—I'll explain in much more detail in Chapter 2—which privileges the practical, situational, functional understanding of a rhetorical utterance as that utterance is perceived by both rhetor and audience.
dignity and control over the end of their lives which they do not and cannot have in any way except with words. The only way to really understand such statements is through the lens of rhetoric.

Strictly speaking, an execution is never necessary; we can imprison an irredeemable felon for life, if we deem that she or he is an unconscionable danger to society, we can expel that person from our society entirely, or we can even just kill the offender, without ceremony or fanfare, as some societies around the world do. We don't, though. We kill the parts of ourselves we find to be intolerable, and we do so with great fanfare and solemn ceremony. We record, in some cases, every aspect of their last moments for posterity, and circulate their final utterances as perhaps the most significant statement that the condemned individual ever made.

The significance of this process is, at heart, the most severe rhetorical form invoked by our entire system of prosecuting and punishing criminals, which is itself essentially rhetorical. Law is nothing more than an entire society coming together and arguing to itself about what is and is not ethically tolerable if all are to coexist peaceably. The very concept of a governing body exacting punishment upon its citizenry is and should be alarming in any context except that of the criminal justice system. The whole point of a government is to protect and empower all of its citizenry alike; punishment and control ought to be the philosophical antithesis to this goal. However, by constraining behavior which damages the whole or hurts the group, a society is able to rise. A system of ceremonial judgment and punishment is the operative heart of any criminal

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3 The most severe punishment any person can suffer is death; hence, the most literally severe way for a society to say "this is unacceptable" is through execution.

4 In many ways, a courtroom is a deeply conservative, ceremonial chamber, in the same way that a church is. In it, you must speak in a certain way, act only at the appropriate moment, and so forth. The effect, in many ways, is to sanctify the verdict, to make it more than a simple statement of guilt or innocence, but rather an affirmation of the
justice system and is therefore a rhetorical symbol, under which all can be unified. Punishment, really, isn't rhetorically about harming an offender in turn for the offense that he or she has committed, or about improving them somehow, so that they won't harm others in the same way again—it's about endorsing a unifying code of conduct which a society can congeal around. Everything about the criminal justice system, and particularly the way we use it to end life, is rhetorical in nature.

In the end, the one belief I hold fervently in this whole rhetorical morass is that if we, as a society, decide to take a person's life, then we, as a society, owe it to that person to pay attention to what she or he has to say about it, at the end.

**Execution Before the Age of Print**

The vast majority of the work which we must do in this project, from the outset to our conclusion, is fundamentally bibliographical in nature. While rhetorical criticism of the documents and histories we will unearth is a critical and inseparable part of the project itself, it must nevertheless be said that the work itself demands an enormous amount of data before we can begin to draw conclusions in a balanced, nuanced, and accurate way. The goal of this work is to understand three things: the recurring rhetorical situation that inspires the last words of the values that that verdict represents. Compare, for instance, the rhetoric of a formal ruling to that of a sermon; the two have a very surprising amount in common.

5 I make very few claims about ethical obligation in this study, but I feel that this one matters. While we as a culture typically value the last words of the condemned above any other words they've spoken, we also often simply ignore large parts of those words for one reason or another. It seems to me that if we care enough to record those words in full, we ought to care enough to consider them in their entirety.

6 When I refer to execution statistics in this study, my dating ends on May 30, 2013. Executions have continued in the course of this work, which relies to a degree on statistical representation of data; it is simply impractical to update every figure in this work each time someone is executed. Unfortunately, this will occasionally have a noticeable impact when we address very small numbers of people within the overall sample size.
executed, the immediate rhetorical effect of those words, and how and when those words propagate through common culture. If we draw conclusions before our data is assembled and understood, those conclusions cannot help but be flawed—even if they are correct.

Our examination must begin in medieval, post-Roman England, as much of our modern legal code, political and cultural context, and sense of national identity can be traced through England. This is certainly not to say that other nationalities or cultures have not influenced American culture or thought on execution—that would be absurd—but it is equally without doubt that the central, essential core of our history does rest upon English shoulders.

While execution has been practiced in essentially every nation and culture at some point or another, English execution practices and philosophies in the middle ages grew out of and along with continental thought. English practice did not begin to meaningfully diverge until after the Renaissance and the English Reformation, when England became separated culturally and spiritually from the Roman Catholic Church. Before that point, however, execution had a major religious component.

In medieval times, a criminal might be condemned to die for any number of reasons; for our purposes, what those reasons might be are irrelevant. If the accused was a freeman or a noble, he would have been guaranteed a trial after the ratification of the Magna Carta in 1215, but the king could simply condemn a serf to death on a whim. Before 1215, all nobles and freemen were subject to that same reality. After condemnation, a prisoner would have only a short wait—usually a day or two—before his execution. Methods of execution were varied, but beheading by axe or sword was typical, as was hanging. More infamous practices, such as burning at the stake or drawing and quartering, were extremely rare.
Executions at this point in time were public. Rather, it would be more accurate to say that executions were cause for minor festivals, and were generally sponsored by the nobility. Depending on circumstances, serfs might even be given the day off from their regular labors, and expected to attend. People would come for miles to see a beheading or a hanging, and small construction projects—scaffolds, or raised seating—might be undertaken to accommodate all who came.

When the condemned was brought to the execution site, he would be presented with an excerpt from the Latin Bible. This was a litmus test to see if he had been educated as a priest or deacon, as the crown had no right to execute holy men; if the condemned could read the passage presented to him, he would be turned over to the Church, which would deal with him in their own way. If he could not, as was essentially always the case, the condemned would be shriven at the execution site by a local priest, and would then usually have the chance to speak one last time before he was executed.

At this point, the condemned would generally be expected to publicly confess to his or her crime or to affirm the right and power of the crown—preferably both. There were occasional deviations from this, however; gallows humor was always welcome, given that executions were a time for festivities, and a minority could be counted upon to publicly reject the opportunity to confess. Most executions, however, were fairly formulaic.

Unfortunately, record-keeping from this time period is very spotty, and what we have is unreliable at best. Simply put, paper and parchment were far too valuable to waste recording the last words of any but the holiest of martyrs or the most vile of miscreants. In either case, the recorder can safely be assumed to have a strong political motive in the preservation of those
words, which renders any serious examination of them a matter of literary\textsuperscript{7} endeavor, rather than rhetorical.

The spiritual justification for final statements in the middle ages, however, has survived. Rather, it persisted right through the Renaissance and into the early modern age, and shows remarkable stability given that timeframe. Perhaps our earliest and most well-known documentation of the Christian execution urge comes from Shakespeare's \textit{Measure for Measure}. In the third act, Duke Vincentio readies Barnardine for his execution, but finds the man raucous, drunk, and unwilling to shrive his soul in the face of his execution. The Duke, asked how he finds Barnardine, replies that he is "A creature unprepared, unmeet for death; / And to transport him in the mind he is / Were damnable." He then delays Barnardine's execution until he can "Persuade this rude wretch willingly to die."

If this seems surreal, it is only because the medieval Christian reason to hold an execution at all is so alien to us now. The whole point was to execute a reprobate sinner immediately after he had confessed his sins, and thereby to transport him directly to heaven. It was, by that perspective, the penultimate kindness, secondary to and reliant upon the infinite forgiveness of the Christian God, because it was the only way that the perpetually sinful would ever be saved.

This was why the opportunity for the condemned to deliver his last words was so important: confession must be willing and voluntary, or it is null. The exigence of impending death forced the moment of confession, but not the confession itself, and while an unkind ruler

\footnote{\textit{Ii.e.}, an investigation primarily of artistic value and technique, as opposed to the investigation of persuasion and its effect on the world.}
would end a criminal's life regardless of his confession, a kind one might grant an extension of the sentence in order for the condemned to find penance enough to be saved\(^8\).

Christian confession and absolution remains a fundamental and essential part of the execution process to this day.

**Execution in the Late Renaissance**

Beginning in the early eighteenth century, daily newspapers arose to report and meditate upon news as it occurred, and succeeded because they were affordable enough to be disposable. Before the rise of newspapers—and, indeed, serving as a prerequisite for their explosive arrival a century later—the increased availability and affordability of rag paper, largely imported from France, allowed the reproduction and dissemination of remarkable events. The last speech of Sir Walter Raleigh in 1618 was one of these.

As it is one of the only pre-1700 documentations of a final statement to which a modicum of authenticity\(^9\) can be attached, the Elms document recording of Sir Walter Raleigh’s last words is certainly worthy of examination. However, before any work begins, a certain level of caution is essential: while the authenticity of this document has been vetted extensively, the best proof that the scholarly community can offer is that it is authentic to the date, *not* to what Walter

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\(^8\) Classical historians will note that there are some striking parallels here between the medieval execution ritual and the much older culture of petition and redress which was a part of Roman law. This should be surprising to nobody, as most of the lands and cultures which eventually created the medieval execution ritual were part of the Roman empire, and had a shared tradition as such. By the same token, most of these cultures shared the last Roman religion, Christianity, as well, and used Latin as the *de facto* language of international communication, trade, and diplomacy. The bones of Roman law and culture are the bones of almost all European law and culture. While it would be certainly possible, as such, to trace the legal history of the execution ritual through Roman times (and even further), the entry of the Christian justification for execution in the medieval age was both profoundly new and has served to one degree or another as the central exigence for the practice in our study for nearly a thousand years.

\(^9\) I acknowledge that authenticity in rhetoric is itself problematic, but bear with me.
Raleigh actually said—a fact which has been equally well-documented by the scholarly community (Bowers 209-211 and Beer 19-20, respectively). The latter is, unfortunately, beyond our abilities. As such, we must assume that this document, while the best example of pre-periodical documentation of a final statement, has been editorialized to some unknown degree. It is better, then, to think of these words as representing what Raleigh's contemporaries thought Raleigh's final words were meant to be, rather than a proper transcription of what they actually were.¹⁰

After beginning with a brief commentary on his condition and thanking God that he would die outside of the Tower of London, to which he ascribed his failing health, Raleigh shatters all contemporary expectations and rejects the King's right to execute him in a lengthy and complex speech. He rejects the particulars of the case of treason which has been laid against him in detail, arguing that he "neuer had any practise either w⁰th the ffrench king, or his Ambassador, or his Agent," and that to bear witness in God's name, as he has, falsely "at the hower of ones death were the greatest madnes and sinne that would be possible" (Bowers 212-3). He continues in this vein, rejecting point-by-point every piece of the Crown's case against him and speaking about the events surrounding his death from his own perspective to an impressively large crowd. He finishes by begging the audience to pray for him; after a brief exchange with the executioner, in which he inspects the sharpness of the axe, he is beheaded in two strokes (Bowers 215).

¹⁰ One of the more important things to note here is that, to the medieval and early renaissance mind, paper documentation was always subordinate to the living memory of a thing, and was treated as suspect. This is of crucial importance in understanding the legal, political, and rhetorical contexts throughout early England, and is perhaps the main reason why almost nobody ever made written records of anything other than tax-coll ecting and property allocation—the Domesday Book is remarkable for precisely this reason.
A few things are immediately evident from this document. First, Raleigh's last words are very similar to modern protestations of innocence, in which many prisoners refute the evidence presented against them—sometimes in great detail. This defense of one's actions seems to be an essential part of the recurring rhetorical situation to which those who believe that they are being wrongly executed are responding. It reflects a need to be remembered "truly" or, at least, as the condemned would have us remember him or her.

The second thing that we can learn from Raleigh's final statement is how poorly documentation and popular perception align. The most famous part of Raleigh's supposed final words, his admonition to the executioner to "Strike, man, strike!" when the headsman hesitated, appears nowhere in the Elms document, nor in contemporary documentation of any kind. As the Elms document was penned by a nominal supporter of Raleigh, there is little reason that such charismatic statements would have been excluded. Yet, they are absent. We can't say whether these lines, and others popularly attributed to Raleigh at the time of his death, are in error or whether the Elms documentation is incomplete. Either way presents us with profound problems and, what's worse, we can't disambiguate the rhetorical situation which Raleigh himself faced and that which the author of the Elms document faced, which makes it very difficult to analyze either in any meaningful way.\(^1\) Moreover, it is almost certain that both the document and popular memory are in error, which compounds our difficulties.

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\(^1\) This is complicated further because we don't know who wrote the Elms document, or even when. There's a nominal date on the document itself, but it appears to have been added in a different hand and at a later date than the original text. We can date the paper of the document to the general timeframe of Raleigh's execution, but the difference between writing the Elms document a day after the execution and a year after the execution would have a major effect on its content.
Deficiencies of documentation are a constant and recurring problem in the cataloguing of final statements, and it should come as no surprise that this should be evident at the very earliest stages of the practice. The condemned never records his or her own final words and until the most recent of times, whoever the recorder was would have a radically different motive in their transcription than the condemned did when (s)he uttered his or her final words.\textsuperscript{12} Conflicting motives—disparate rhetorical exigencies—change the nature of rhetorical utterance in ways that we cannot ignore.

Even if we set aside rhetorical conflicts, practical ones in the world of documentation remain. Many final statements go unrecorded. Many more are not recorded by any supposedly neutral third party, such as a modern-style state observer, another quite new phenomenon. Finally, there are simply the gulfs of misunderstanding which exist between any two people who attempt to communicate; even the best-meaning recorder and most assiduous rhetor can never truly understand one another.

Errors in popular memory are, if it is possible, even worse for our purposes. The problem with culture and language is that each runs completely wild, conforming to nothing other than the collective desire for narrativistic satisfaction. We want a good story. When something splashy or bombastic occurs, we want it to happen in a way that we can talk about. We want rising action, climax, resolution. We want a hero, and a villain, and we want the hero to win, either in actuality or pyrrhically. The narrativistic urge is so deeply rooted in us that we bend

\textsuperscript{12} Given that our goal is to understand the whole rhetorical context in which final statements are given, this problem is a potential showstopper. The only way to do so without relying on documentation of one form or another is to be physically present at each and every execution conducted for years; aside from such a study being morbid, disturbing, and a near-logistical impossibility, it would be the work of a lifetime, at least. If we are to come to any conclusions about this rhetorical context which actually represent the realities which the condemned face in a reasonable period of time, we must rely on documentation to do so. If we want those conclusions to be representative of reality, then so too must be the recordings made of the last words of the condemned.
reality to suit it (Abbott 242, Butler 121-2, and Sternberg 121, for starters). Small wonder that
the words that we remember and relate to others often bear little resemblance to what actually
happens.

The obvious move might seem simple, then, to dismiss anything without firm
documentation, but doing so is equally erroneous. Culture is not created by bookkeeping.
Identity is not determined by records. We create ourselves and our social context with the
people and ideas we understand in the way that we understand them. We act not based on some
rational assessment of reality, but on our instinctive understanding of what we think we know
(Abbott 240-241). Misunderstanding, misremembering, and misrepresentation are as central and
essential to us all as are facts—and our narrativistic misremembering of others' final words is
how we teach ourselves to die with dignity, with nobility, and perhaps even as heroes. This
cannot possibly be a bad thing.

So, what can we do with Raleigh's purported, "Strike, man, strike!”? There is no
substantive evidence for it in the historical record, yet stoicism in the face of certain death is
essential to our current understanding of Raleigh and of how we ought to present ourselves in the
face of our own impending deaths. We could disregard it as folklore, cleaving instead to our
more well-documented sourcing and relying on that alone as a standard of authenticity. Down
this path, however, lies madness, for it obliges us to dismiss not only this statement, but a host of
others which have become culturally and socially essential to our collective identities. It
disregards the rhetorical impact of a vast number and variety of monolithic statements simply
because we cannot verify their authenticity; if bibliography were our primary aim here, that
might be a fair goal, but it is not. This project is attempting to understand how final statements
function and why they are so essential to us, and for both of those reasons, folkloric misrepresentations of a person's final words are just as important as that person's *actual* final words are.

It is equally important, however, that we separate those folkloric words from their well-documented cousins. There are a few reasons for this. First, one of the primary goals of this dissertation is to understand how rhetorical utterance in the death chamber itself works; if we cannot separate the words we know to have been uttered there from those we are less certain about, no meaningful work can be done at all in this regard. Understanding how people use rhetoric at this extreme of human existence is a worthwhile goal, and an achievable one.

The second is more abstract. This project also seeks to understand how the words of the executed affect others—those left behind, society, politics, and the larger context of our national identity. In this sense, what people remember, rightly or wrongly, a person to have said is far more important than what he or she *actually* said. Such an argument surely seems mad; after all, if a society invents imaginary final words that it feels were appropriate to an executed felon, and then shapes itself according to those words, all of reality becomes a hall of mirrors, reflecting itself endlessly. Yet, it is this very effect that allows for plurality, for dispute, for discussion and ferment and growth as a people. Interpretation begets action, in a Burkean sense, and the fact that society *is* endlessly reflecting upon itself cannot be escaped. This is a good thing.

My third reason for separating folkloric words from those that we know for a fact to have been uttered is fundamentally ethical in nature. As a matter of respect, I feel that it is only decent and human to remember the deceased as they actually were, without apology or praise,

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13 In essence, we need to disambiguate how the condemned respond to the exigence of execution from the exigence of how everybody else processes their death.
condemnation or admiration. These people were simply that—people. To attribute to them things that they did not say, or that we cannot know that they said, is to do them a deep and enduring injustice.

Execution in the Age of Print

In many ways, the printing press changed everything. It ushered in an age of literacy, radically reduced the cost of educating a largely impoverished populace, turned once-elitist artistic expression loose upon the masses—who did with it largely what they pleased, to the profound and ever-increasing annoyance of their socioeconomic betters—and created entire new genres of artistic and practical expression. One of these, in particular, is valuable to us: the birth of the newspaper.

The newspaper of eighteenth-century England would be largely unrecognizable to us today. Printed on relatively high-quality, generally French, paper, this large single sheet would usually be printed on both sides, to justify its expense, and was devoid of any advertisements or indeed of almost anything that might characterize a 'normal' newspaper today. Instead, it was a collection of essays, some of which did in fact chronicle the news of the day, but much of which was imagined or invented. There was no concept of journalistic neutrality in the early eighteenth century, and most newspapers of the day are blisteringly political. A few notable exceptions exist—Joseph Addison's work, for instance, rarely took any side on a political issue, but when he did, he almost universally lambasted both sides of the London political divide of the day. Addison's "Party Patches" essay, from Spectator No. 81 is probably the best-known example of this, but many others exist.
But newspapers also recorded executions, and they did so within a day or two of when that the execution occurred. As a result, print recordings of the final words of the condemned from this period represent the first reasonably well-documented examples of the typical final utterance of executed men and women for the era and, therefore, the first really good documents which we can rely upon.

Additionally, during this period the American colonies had grown to the point that it is worth our while to cross the ocean, and turn our attention to execution practices in America, rather than England. However, these practices, their cultural significance, and the way that they were reported and discussed did not become meaningfully unique until the nineteenth century, as is the case with many early American cultural artifacts. The American populace was, however, notably more religious and conservative than was England at the time. Thus, the religious justifications for execution which pervaded the late Renaissance were considered to be much more important than they were in England, where we can see a slow decline in the more traditional Medieval ideas about Christian execution. To be sure, the same pattern would recur in America, but it would not do so until the nineteenth century.

During this period, executions continued to be public events. More than that, in America they were often spectacular events to which people would journey for days. Influxes of tens of thousands for an execution were not unheard-of, and in one spectacular case where a young woman was sentenced to death for repeatedly killing her infant children, a church nearly collapsed from the weight of all of the spectators who came to watch her last confession. The ceremony had to be stopped and moved to a larger church and the spectators limited to only a few witnesses before she was taken to the gallows.
In many ways, this is deeply disturbing. Most people today have serious moral qualms at the idea of execution as a spectator event, and the image of enormous crowds—the best comparison to which I can think of is an unusually pious, but no less rowdy, stadium of soccer hooligans—who travel for miles and over the course of days to see a hanging is a deeply uncomfortable one. Nor am I the first to observe this and comment upon it; Jodi Schorb recently compiled a very well-documented annotated analysis of the many interpretations of this spectacular violence in a review of Wilf’s *Punishment’s Prisms*. I won't reproduce her labor in detail here, but a few of her notes are helpful.

Seay's *Hanging Between Heaven and Earth* focuses on the theological and philosophical aspects of American execution in the seventeenth and eighteenth centuries through about 1835. He focuses on execution sermons, which were an essential component of the execution process during this time period, and considers the entire execution process as a pseudo-religious ritual in and of itself. Seay bypassed many essential concerns of the execution process, however, in order to focus so exclusively, and can be fairly criticized for doing so, but it does go to great pains to demonstrate that, despite the fairly high per capita execution rates that were a fact of early American life, execution was nevertheless considered to be the option of last resort.

The first volume of Steven Hartnett's *Executing Democracy*, however, is a rather different text. It offers a penetrating and scathing critique of the nation’s obsession with spectacular violence and capital punishment, and focuses the bulk of its criticism on eighteenth century American execution practices. It is, and I must stress this, a social critique, and focuses on a variety of loci within that scope, from execution as a social control mechanism to execution as tool of racial discrimination. It is a well-documented study, but it is not one which seeks to
conceal its modern political bias, and it seems to me that Hartnett's need to see the death penalty done away with today interferes with his analysis of execution two centuries ago. His sourcing is exceptional, of course, and his analysis is compelling, but it relies on modern sensibilities which were either not extant or not compelling in the time period he's considering.

One of Hartnett's points, however, is indisputable: simply put, the availability of newspapers publicized executions, and particularly executions with a strong narrative subtext, in a way that they had never been before. With a few exceptions, such as Walter Raleigh's case, executions were public affairs which, while they were spectacles, were not engineered to be spectacular. Early American executions were. Larger crowds and heated emotions, heightened by religious fervor, gave Seay's preachers the exigence for some of the most remarkable gallows sermons ever delivered, but it was, as Hartnett observes, an unprecedented level of publicity which enabled them.

So, despite how valuable the reporting and recording of the entire execution process is to this project, we must never forget that the phenomenon that enables us came at a steep price. More importantly, we must also remember that, while these records are a huge leap forward in veracity and usefulness, they still cannot be considered to be truly reliable. Too much was at stake for publishers, and the execution of the sinner was far too strong a trope in this time period for newsmen to be truly free to print what they pleased. But they are useful—incredibly so, in point of fact.

I'd like to spend some time, to this end, examining the execution of Moses Paul in 1772, which was carried out in New Haven, Connecticut, which Ava Chamberlain has so marvelously chronicled from a diverse array of sources. Paul was a Native American who was convicted and
executed for the murder by beating of Moses Cook. Paul's trial and execution was affected—likely strongly—by racial prejudice, but neither his trial nor execution are of key interest to this project, except to note their presence as an influence on Paul's last words. What is key here is the Reverend Samson Occom, a Native American priest and friend of Paul's, who delivered the execution sermon at Paul's hanging. His sermon was so popular that, according to Chamberlain, it was rapidly reproduced and disseminated, appearing in no fewer than nineteen editions in both America and London by 1827 (415). It was even translated into Welsh.

The first advertisement of this sermon was issued in the *Connecticut Journal* on the 21st of August, eleven days before Paul's execution. Occam arrived in town a few days before Paul's hanging was scheduled, to hear Paul's confessions and to counsel him. Before this, Jonathan Edwards, Jr., who had himself long been famous for his fiery sermons, had been Paul's spiritual advisor, and had delivered several sermons before Occom arrived—sermons which it is fairly clear that Paul advised him on (Chamberlain 432). We cannot really consider these as part of Paul's final utterance, as Edwards was well-known for delivering sermons that suited his own spiritual goals. However, we can see that the old medieval tradition of earthly punishment to ensure divine reward is still very much in effect, as the theme was featured in two of Edwards' sermons.

Paul made a fairly traditional series of moves as his final hour approached. Increasingly concerned with his fate after death, he turned strongly to the Puritan brand of Christianity. Edwards aside, Paul also had Occom speak for him, which he did at some length on the morning of Paul's execution, to an enormous audience. This audience then passed with Paul and Moses to the gallows where, after a brief final prayer, Paul was finally allowed the opportunity to speak.
Unfortunately, the *Connecticut Journal* of September 4th, 1772, is the only record we have of Paul's final words, and it is a source which is severely lacking. It summarizes Paul's final statements heavily, reducing them in volume, for the most part, to only a few sentences. However, what remains is useful, as Paul exemplifies much which will be familiar in modern final statements. He says his farewells to those he knows. He exhorts others not to make his mistakes. He appeals to Scripture for salvation. He, in the end, challenges the circumstances of his own conviction, and asserts that, while he is guilty of killing Moses Cook, the crime he is guilty of is manslaughter.

The *Connecticut Journal*'s record of Paul's final moments is remarkable for a number of reasons. First, as it appeared almost immediately after Paul's execution, the account cannot be said to have been altered by popular memory, and is fairly representative of what actually happened. But not the entirety of what happened—and this is and has been a key problem in the reporting and dissemination of final statements ever since the advent of the newspaper. Newspapers are brief, by their nature, and seek to report the essence of an event, rather than its entire substance. They couldn't survive any other way, though a cynic might observe that they're failing to survive today, despite their brevity.

It is nevertheless true that, despite the remarkable opportunity which newspapers offer us to peek at the moment of execution, it is an opportunity which comes at a considerable cost in accuracy and comprehensiveness. The larger problem is that verifying the accuracy of these periodicals is essentially impossible where no other records exist, as is overwhelmingly the case. Now, if newspapers could really be relied upon to report the nature and character of the condemned's final words, my complaints here would be quibbling. Unfortunately, they cannot
be. Careful investigation today reveals major and persistent disconnects between state records and contemporary reports of what the condemned actually *said*.\textsuperscript{14} We cannot assume that this is a new phenomenon.

Regardless, these statements are of no small usefulness to us, as Paul's final utterance is typical not only of his day, but of the American genre of final statements generally.

**Execution in the Victorian Era**

The closing of the eighteenth century saw a marked decline in American religiosity and for support of capital punishment generally; this trend persisted throughout the nineteenth century and through the early twentieth—one could fairly say as late as the end of the gilded age. There are a variety of reasons for this, but the decline in religious fervor and the decline in support for execution seem to be fundamentally linked; as the Puritan and medieval Christian justifications for execution waned in rhetorical effectiveness, public fascination with and support for capital punishment waned in proportion. By the end of the century, "execution in America underwent a major transformation from a large and rowdy public spectacle to a hidden and tightly controlled ritual" (Linders 607). Linders focuses on the crowd itself, arguing that their rowdiness disrupted execution ceremonies even as those ceremonies brutalized them, and that it was this chain of events that moved execution out of the public sphere (608). Unfortunately, I do not think that this explanation is really holistic, as it is predicated in the fall of a medieval philosophy which would posit that a rowdy and celebratory crowd *would be a good thing*; these

\textsuperscript{14} This is observed in detail in Chapters 4 and 5.
men and women are celebrating the ascension of a soul to heaven. Why not cheer, if you believe such?

The reality of execution on the Victorian era was one of dwindling crowds and growing public disquiet. The causes for this disquiet were varied and idiosyncratic, but Wisconsin's story is not atypical.

John McCaffary was convicted of murdering his wife in May of 1851, and was hanged from a tree on August 21st of that year. A few thousand witnesses attended, and watched in horror as McCaffary struggled desperately as he dangled from the end of the rope, his execution badly botched. It took almost twenty minutes for his heart to finally stop beating. Two years later, after a political press by death penalty abolitionists, Wisconsin abolished the death penalty not for its inhumanity, but because they feared that gruesome execution spectacles would discourage juries from convicting clearly guilty criminals.

More common than this were decapitations during the hangings of the condemned. Perhaps the most famous historical example of this was the 1901 hanging of Tom Ketchum in territorial New Mexico, but the grisly occurrence was fairly typical, as hanging relies upon precise math in order to kill by snapping the neck of the condemned without either strangling them or decapitating them. The sheer violence associated with hanging has been the central reason for its abolition as a method of execution, but we must remember that it was the standard execution practice in all states throughout this period, far outstripping all other forms combined.

The only other execution method of note during the Victorian era was the one which was widely popularized in it: execution by firing squad. Considered to be more humane and immediate than the frequently botched practice of hanging and far easier to administer correctly,
given a modicum of training, the firing squad became the preferred method of execution for all branches of the military. It was, in point of fact, the default method of execution for both sides during the civil war for high crimes, such as desertion, treason, murder, and a handful of other offenses. However, its application is reliant upon a group of men competent with firearms and willing to kill for it to be carried out, and as such it never gained significant usage outside of the military.

Record-keeping did not meaningfully change in this era, even though public attitudes and practices did. The state kept few records, and most records that do exist are the product of periodical publications. As public opinion ebbed away from execution, states moved more and more to keep execution an intensely private, ritualized, and solemn affair, and offered little more than simple announcements of a prisoner’s demise by way of official acknowledgement of the act. This was not universal. It was, however, increasingly the norm.

In this way, the 1835 account of the deliberately anonymized author of “The Execution of a Deserter” in the December 1835 edition of the American Advocate of Peace is instructive. The author recalls the execution in 1814 of a deserter from the U.S. Army with an impressive degree of clarity—one might almost wonder how much of the account is truly accurate. Regardless, it is otherwise typical of a variety of problems in periodical reporting of the execution process as a whole, and for the condemned’s final words in particular.

The first and most obvious problem in “Execution” is its powerful political slant. The author overtly seeks the abolition of capital punishment and war, and makes no effort whatsoever to hide the fact. The condemned in this case is pathetically sympathetic, and is described repeatedly as “the poor fellow,” while the soldiers who carry out the sentence are deeply
reluctant, as “no soldier would volunteer for” execution duty (“Execution” 312-3). Nobody wants this to happen, in our flavored recollection of the deserter’s execution, yet it seems compelled by nearly glacial forces. By the same token, the execution itself is described in intense, gory detail. The eight soldiers who carry out the sentence stood intermingled with their brethren until the condemned’s eyes are covered, and all fire at once. Yet, the condemned lets loose “a horrid scream” and pitches around between his coffin and his grave until the sergeant of the guard steps forward to finish the execution with a round to his head (314). The muzzle of the musket was so close, the author notes, that it lights the hood which had blinded the prisoner aflame, and the author takes time to describe the mingled scent “of burning cotton and burning hair” (314).

The second problem with “Execution” is a familiar one, by now: the condemned’s final words have been lost. Again, as with the Connecticut Journal in Puritan times, the condemned’s words are themselves only important enough to merit summarization when faced with the urgency of the author’s own rhetorical needs. In “Execution’s” case, the prisoner’s exhortations against desertion do not serve the needs of the article’s author very well, and so they are dismissed as quickly as possible.

In short, the death of the condemned has been subsumed in its entirety to the rhetorical use of the anonymous rhetor. The condemned's last moments have been more completely snuffed out than they likely would have been had his execution passed unremarked upon, reduced to a simple series of legal documents moldering somewhere deep in the army's archives. Instead, we have an account which, while it purports to chronicle the death of a man who did not
really deserve execution, does that man's death no justice. The closing remarks of our rhetor make this all too clear:

Do scenes such as this which I have described, enter the minds of those who have the chief agency in involving their respective countries in a war? Do they ever flit across the imagination of the statesman while he is talking loudly of insult to his country's honor—of the splendor of military glory—of the necessity of warlike action to wipe off the imputations upon the national courage? Do they ever cast their dismal shade over the glowing picture of chivalry, which, in the ardor of passion, rises to his vision? Are they entertained in the conceptions of those who, without examination, reject as idle dreams, all plans for the adjustment of international difficulties without resort to war, and deride as visionary all specific action for introducing the principles of a better morality into the code of international law? Do the great mass of men, ever eager at the voice of their leaders to cause the standard of war to be up reared, know in reality WHAT War is? No—no.

The death of this man is not significant in the eyes of the rhetor for its injustice, for its inhumanity, or for its brutality. It is significant only because it exposes what the rhetor sees as a moral imperative—the abolition of war itself. It, in the end, has nothing to do with the man himself.

It would be easy to shrug this account off as unusual, or embedded in the rhetoric of advocacy. It would be easy to call it yellow journalism and be done. It would be easy to ignore. It would also be wrong. The exigencies of our anonymous rhetor have not faded with time, and his modes have not dissipated. The use of the execution process for political ends has only become more pointed with time; one needs only to recall the fervor with which the audience cheered in the 2012 Republican primary race when Texas governor Rick Perry staunchly defended the execution of 234 inmates during his tenure as governor to see this same force at work today. Far from dismissing the appropriation of execution as uncommon or unconscionable, we must embrace it as essentially human.
Execution is a social act. It is a political act. Thus, while we need to respect and understand the final words of those we execute, we must also do our best to understand how those words are used, are changed, are revived for entirely different ends. Mass media, and particularly the explosive growth of the internet, have supercharged the ways that political communication is conducted.

**Execution in the Modern Era**

In the early modern era, we find ourselves with an embarrassment of riches. Crime statistics, execution statistics, execution records, and all manner of state documents become suddenly and radically more thorough and more well-understood. There are many reasons for this, but the essential one is that, beginning in the early modern era, the death penalty abolition movement grew much more powerful and influential, both in America and in Europe. Serious ethical, practical, and social arguments begin to occur, and the result of these debates was first the abolition of many of the more severe methods of execution, such as hanging, and the rise of more humane methods of execution, beginning with electrocution and including the gas chamber and eventually lethal injection. Because of this debate, both death penalty abolitionists and the supporters of capital punishment have scoured and preserved records of all kinds, and have engaged in robust and thorough debate on the nature of, the administration of, and the very moral justifications for executing convicted felons.

As a result, we have a very robust understanding of many aspects of modern execution processes, both social and practical. Before we turn our attention to what we know about execution in modern America, however, there are a few fundamental truths about
communication—and therefore about political communication, and particularly the recording and transmission of records of what the condemned actually said—which bear mentioning.

The modern era is an era of new media. First the radio, then the television, and eventually the internet have allowed vastly more immediate and personal communication of ideas and philosophies than were ever possible before. Some argue that the Vietnam War was lost in the living rooms of middle-class America. None really dispute that the civil rights movement was won in primetime there, as King's dream was broadcast to millions of Americans with an immediacy and intimacy which is impossible to convey in text. The Nixon-Kennedy debate has become emblematic of the simple and remarkable power of the difference of sound alone and sound with images to accompany it. Perhaps the most remarkable modern example of this is the transformation of the gay rights movement, as the internet allowed gender and sexual minorities to transform a repressive backlash against them in 2004 into a supporting surge which helped reelect Barrack Obama only eight years later.

The most immediate result of this is that everything we’ve seen historically about the recording, reporting, and appropriation of final words for other rhetorical purposes has radically accelerated, both in terms of frequency and degree. Cheap and quick communication, as well as the democratization of content creation, has allowed the rise of rapidly fragmenting political subgroups which clash, interact, and merge in surprising and confusing ways. It also allows for the presentation and re-presentation of the last words of the condemned in a way which has never before been possible.

A truly remarkable example of this is the Texas Department of Corrections’ online database of those it has executed. It preserves and presents robust information about every
offender that the state has executed since 1982, shortly after Texas reinstated the death penalty, including full demographic data, a summary of the crime that each was convicted of, what the final meal that each offender ate and, finally, the last words each man or woman spoke before they died. The information is presented in a dry, matter-of-fact way and is preserved and presented by the state online for public consumption. What’s more, this database serves as a base of operations for several other online discussions on the death penalty, ranging from amateur blogs which present, in a very simple way, the last words of each executed individual to a robust, full-color archival by the New York Times of the final words and images of a selection of the first five hundred convicts which Texas executed since it resumed the practice. The existence of this database, and the rhetorical implications of its presence online, was the first inspiration for this project.

The second fact that we must acknowledge is that capital punishment has seen more upheaval in the last century than it has in its entire history, so far as I can trace. While the Victorian age saw a rapid rise in public distaste for execution, the surging churn of changing public opinions and social practices since the advent of the radio is simply astonishing. To summarize briefly, the early-to-mid twentieth century saw a surge in death penalty abolitionism. This activism focused first on methodology, abolishing hanging in all but a few states by the beginning of the second world war. There are several reasons for this. The first was the introduction and increasing usage of the electric chair as an execution method. Introduced in the early 1890s, the electric chair was widely viewed as more economical, humane, and efficient than hanging, though its use never really caught on in the western United States. Regardless,  

15 This is discussed in detail in chapter 5.
until the abolition of the death penalty in its entirety, the electric chair remained the most common way that states executed those who they have condemned to die.

The second reason for the decline or abolition of hanging is more visceral. Hanging is an essentially public execution method, and is not a terribly efficient or effective way to kill a person. Additionally, it is an obviously brutal method of execution—so brutal that several states outlawed its use long before this time period or, as we observed earlier in Wisconsin's case, abolished capital punishment in its entirety because of that same brutality. Given these two factors and the continuing pressure to move executions from the public sphere to the private, hanging has fallen rather thoroughly out of favor.\(^\text{16}\)

As the death penalty debate began to aggressively question execution methodologies, American citizens began to question in large numbers, for the first time, whether execution at all was ethically acceptable. On a state-by-state basis, abolitionists sought to end the practice of executing felons for either most or all offenses. Capital punishment was temporarily outlawed in a few states during the Victorian era, but until the turn of the century, only Wisconsin, Maine, and Michigan had a firm ban on execution in any comprehensive sense. The first twenty years of the twentieth century saw that number rise rapidly, but the Great Depression struck public opinion and state governments hard. By the beginning of the second world war, only Minnesota and North Dakota had joined Maine, Wisconsin, and Michigan in banning capital punishment. Afterwards, more states again banned capital punishment—many of those states renewing a ban which had been dismissed earlier. The Supreme Court's decision in *Furman v. Georgia* pre-

\(^{16}\) Rainey Bethea's execution in 1936 is widely cited as the last public hanging in America. Tens of thousands attended his death.
emptied much of this debate, but the court’s later reversal in *Gregg v. Georgia* restarted it. Now, eighteen states and the District of Columbia have abolished the death penalty.

A special place in our discussion needs to be reserved for the *Furman v. Georgia* and the *Gregg v. Georgia* Supreme Court decisions, because these two decisions have framed almost the entirety of modern death penalty discussion. The *Furman* ruling was a four-to-five decision which declared that the death penalty, *as it had been practiced* in 1972, was unconstitutional as it amounted to cruel and unusual punishment. This began a four-year nationwide moratorium which was rescinded in *Gregg v. Georgia*, in which the death penalty was found to be constitutional so long as certain procedural standards were met. States experimented for nearly a decade following the *Gregg* decision to determine what would be constitutional; mandatory death sentences were found to be unconstitutional, but separating the sentencing phase of the trial from the main phase was upheld.

The *Furman* decision firmly anchored the public debate on capital punishment in terms of whether or not execution constituted cruel and unusual punishment under the law, and it is on these terms which much of the continuing debate has been waged. Interestingly, even as a wealth of statistical information has come to light about the unjust and unequal implementation of the death penalty and the sentencing practices of different demographic subgroups, little of this data has entered the public sphere in a meaningful way.

Derrida examines all of this in some detail, but his analysis is quite broad, focusing on execution across western nations generally. It is also less than terrifically useful to us, as much of what he observes and argues does not readily apply in an American context, given the *Furman*

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17 Derrida is often preoccupied with execution and death in one way or another, but *The Death Penalty, Vol. I*, one of his more focused examinations, is therefore a very good place to start.
and Gregg decisions. As a result, while his insights are useful for understanding execution in the first half of the century, they are considerably less so as we try to understand execution today.

**Demographics of the Dead**

Perhaps the most thoroughly studied part of the scholarly discussion on capital punishment is the relative demographic cross-section of those who have been executed. Wolfgang and Riedel's seminal study in the May 1973 edition of the *Annals of the American Academy of Political and Social Science* demonstrated conclusively, for the first time, the degree to which capital punishment was disproportionately enforced upon minorities and the poor. Many of their numbers, which focus on pre-*Furman* executions, are startling: "of 147 blacks, only 11 percent had their sentences commuted to life imprisonment; whereas of 263 whites, 20 percent had their sentences commuted" (Wolfgang & Riedel 124). "The proportion of blacks and whites who had committed felony murder was not statistically different, yet 94 percent of black felony murders were executed compared to 83 percent of white felony murders" (Wolfgang & Riedel 124-5).

When we examine the race of the victim, however, the true magnitude of the issue is revealed. When a black defendant was found guilty of murdering a white victim, the convict was sentenced to die in 36% of all cases. In all other racial combinations of convict and victim put together, we see that only 2% were sentenced to die (Wolfgang & Riedel 129-30). If we expand our focus to include rape, which many states in this study period included as a capital offense, these numbers are just as chilling. 2% of all whites found guilty of rape were sentenced to die for their crime, while 13% of all African Americans were so sentenced.
Unfortunately, this demographic disconnect has persisted into the modern era. Since 1985, 43% of all men and women executed in America have been African American; given that African Americans constitute some 13% of the population, this means that an African American is more than three times as likely to be executed as he or she should be, statistically.

Race isn't the only dividing line in execution practice in the modern era. For instance, the sex of the defendant is a major and decisive determinant of whether or not a convict will be executed. Women in America commit about one in ten murders, according to the Centers for Disease Control, which makes a wealth of otherwise-obscure crime data publically available. Yet, of the 1,292 people executed since 1985, only eleven have been women, meaning that women are twelve times less likely to be executed as they statistically should be. Within that number, interestingly, nine of the eleven were white, which means that the overall sample of executed women in America was more or less racially representative of the nation as a whole, given the extremely small sample size. Regardless, the single most significant determiner of whether or not a person will be executed if convicted of murder is whether or not she is a woman.\(^{18}\) To my knowledge, no significant scholarship has been conducted on this phenomenon.

Awareness of the disparity between different demographic subgroups is far from new as well. While modern statistical tools like SPSS have allowed us to uncover sentencing and conviction disparities with startling degrees of clarity and quantify the degree to which those disparities are a predictable and, some would argue, intended outcome of our current code of

\(^{18}\) This is, of course, not to say that women aren't executed in America. I don't presume to second-guess the decisions of, likely, hundreds of juries with such scant data; I only mention it here as part of the demographic breakdown of the corpus.
laws, we had excellent evidence of the same reality in the early 1970s. The frequency with which black men were executed, often without due process, for purported crimes against whites was noted as early as the Victorian era, and the fact was regularly used by slavery abolitionists in their literature before the Civil War.

**Changing Methods of Execution**

The practice of execution has changed more in America in the last hundred years than it has in the entire history of execution to that point. Execution quickly and decisively moved out of the public sphere during the beginning of the twentieth century, and the old festival tradition that remained from medieval Christianity has finally, for the most part, been snuffed out. Several trappings remain—a chaplain, an audience (though much reduced), a metaphorically hooded executioner whose identity is hidden from all, and other small items—but the ritual of execution would be essentially unrecognizable by mid-century to a time-traveling medieval Christian. Even as late as the end of the Victorian age, the old traditions had held some reasonable sway, but they were swiftly done away with as public opinion shifted away from the practice of public execution. The killing of our criminals became a grim, unpleasant necessity, rather than a public exhibition.

Within the execution ritual, many changes are obvious. The death chamber was invented to contain the execution process, and its creation is rather rhetorically important. Death chambers are hidden rooms buried in state penitentiaries, walled off from the rest of the penitentiary, but the chamber itself is also walled off from the observation gallery. There's no objective reason for there to be a glass wall to separate viewers from the executed except to
create a rhetorically delineated section which says, simply, "the condemned goes here, and the innocent there." The old tradition of the masked, hooded, or robed executioner is kept, to a degree, in that the person who actually carries out the execution is hidden from all in another self-contained room. While a chaplain is generally present at the execution, (s)he has no formal duties; any ministration which the condemned receives is performed on death row before the execution.

The warden, however, has come to occupy a strange and prominent role in the execution of American convicts. As the person who ultimately gives the order for the execution to be carried out, the warden is visible both to the condemned and to the audience. He is the only one who speaks during the execution ceremony, and specifically prompts the condemned for his or her final words. When the a condemned man or woman speaks, whatever else is said, his or her actual final words are almost always some variation on "I'm ready, warden," which was the inspiration for this project's title.

In this strange situation, the warden has come to occupy the old rhetorical place which, in prior times, a representative of the crown or a priest would once have held sway. He—and wardens are almost always male—is the conductor of the ceremony, the axis upon which all action revolves. He is central to every aspect of the execution process, which ostensibly focuses on the condemned. It is the warden, ultimately, who most immediately orders the death of his prisoner.

However, the very rhetorical role which the warden must embrace pushes him into the background of the death chamber. He gives orders, but they are the orders of a color guard—open this curtain, speak your final words now, administer the chemicals or flip the switch—
orders which are given only because *someone* must give them. Practically speaking, an execution is a rather complicated, coordinated process, in which all must happen in an ordered, predictable way if public demands for humanity and solemnity, and legal demands for decorum, are to be satisfied.

In the same way that a prison's warden has been pushed into an unusual and unexpected place of prominence, so too have modern execution methodologies. Hanging had been the standard of execution since medieval times, and was considered to be an efficient, cheap, and suitably public way for the state to purge itself of those who act intolerably almost since time immemorial. However, as public opinion rapidly shifted away from public execution of felons, hanging became impractical. The very exhibitory aspects which make it perfect for a medieval festival day take up quite a lot of space, both vertically and horizontally. The potential for execution error which was essentially irrelevant in the Renaissance is decisively and utterly unacceptable to modern tastes. Beheadings, once the very heart of the execution ritual, are considered to be barbaric these days.

As hanging declined in early modern America, the electric chair became much more prominent, but mostly on the electrified East Coast. Considered by the public to be more humane, painless, and efficient at causing death, it also had one more advantage, which was rarely ever mentioned: the chair was far more compact than a gallows. It could be effectively and efficiently hidden away inside the penitentiary itself, and so satisfy mounting public demand for an end to public execution.

The reason that the electric chair was considered so much more humane than hanging was the method by which it kills. When administered properly, an execution by electrocution
will first jolt the brain and brainstem into immediate brain death. Thereafter, a second surge of electricity will destroy the heart; the first jolt actually kills the condemned, while the second simply ends the remaining biological functions of a body which would appear to onlookers to be alive.

The problem with the electric chair, in the public's eye, came to be the 'when administered properly' part. While it was originally considered to be a fundamentally humane way to end life, the electric chair saw its own fair share of botched execution attempts. Perhaps most famous amongst these was the botched first execution attempt of Willie Francis, who shrieked in agony and begged for his release once his electrocution began. Unfortunately, while Francis' case was not typical, neither was it uncommon, and persistent bad publicity in the 1980's and 1990's has seen the use of the electric chair largely cease, though seven states in the southern United States still allow execution by electrocution as a backup, in situations where lethal injection is not practical or available.

Much less infamous than the electric chair was the gas chamber, which saw extensive use along the western seaboard beginning in the mid-1920's. It may be that its comparative lack of infamy stems from its considerably more restricted use as a method of execution; since 1976, only eleven of the 1,294 executions carried out in America have employed the gas chamber to do so.

Execution by gas is a fairly simple process. The condemned is strapped to a fixed chair or gurney in an airtight chamber, inside of which hydrogen cyanide is produced by the reaction

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19 The Supreme Court ultimately had to rule that a failed execution did not attach the double jeopardy clause of the Constitution, and Francis was successfully executed on the State of Louisiana's second attempt.
of potassium cyanide pellets with sulfuric acid. The condemned is able to see, smell, and taste the gas before death, though unconsciousness typically comes quickly.²₀

To put it mildly, however, execution by gas chamber has several rather significant disadvantages. The first and most obvious is that the poison gas which kills the condemned must be reprocessed and rendered inert after the execution, a long, expensive, and laborious process which requires hazardous materials gear and special training. Further, the chemicals that are produced by cleaning the chamber are extremely toxic in their own right and must be disposed of in a process that is often even more laborious and expensive than the cleaning process itself. The second is that, even when the condemned dies as planned, he or she typically has a few minutes' worth of exposure to the gas, which can and does lead to a disturbing level of suffering that is readily apparent to onlookers.

A third reason for the gas chamber's relative scarcity is that the gas chamber has never really been well regarded as an execution technology by the general public, even from its' first days. By the time that gas chambers came into regular use, horror stories of death by gassing during the first world war were commonplace, and the international ban on lethal gas weapons had been a ratified part of the Geneva Conventions, depending on the interpretation of its legal terms, as early as 1899 and no later than 1925. Finally, as the second world war wound down, American GIs began to discover the unspeakable killing chambers which Nazi Germany used to execute almost six million Jews, African Germans, gender and sexual minorities, disabled individuals, interracial couples, political dissidents, and a host of other civilians. Using a

²₀ This is not always the case, as sometimes the condemned is able to survive in the poisonous atmosphere for surprising lengths of time. Two notable examples of this are Jimmy Lee Gray, who survived his gassing for eight minutes while desperately straining for air, and Donald Harding, who did the same for a staggering eleven minutes.
technology that is banned in wartime by international law, and that was employed by the most universally reviled mass-murderers in the history of the Earth is nearly impossible to justify to a public which has grown increasingly critical of unnecessary cruelty in execution. As a result no American state currently uses the gas chamber as its preferred method for execution.

Almost all modern executions are conducted by lethal injection which, while universally regarded as considerably more humane than any other previously practiced method of execution, is not without its own methodological controversies. First implemented in 1982 by the Texas Department of Corrections, standard lethal injection protocols were devised by Jay Chapman in 1977, and are carried out by injecting three drugs into the condemned in the following order. First, either sodium thiopental or pentobarbital is injected into the prisoner, which rapidly renders the condemned unconscious. Second, pancuronium bromide, a powerful paralytic, is injected into the condemned. Pancuronium bromide prevents the prisoner from thrashing or otherwise appearing to struggle as his or her body reacts to the administration of potassium chloride, the third drug in the cocktail, which stops the condemned prisoner's heart. Several states, however, have changed the drugs which they use to execute their prisoners in response to public criticism of several botched lethal injections, and instead rely only on a massive dose of sodium thiopental to execute the prisoner in what amounts to an opiate overdose. Regardless of the procedure used, each drug is potentially fatal in its own right, and each is administered in a high enough dose to be absolutely fatal. Lethal injection is currently the preferred execution technology in every state that executes its prisoners.

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21 Both are extremely powerful, fast-acting barbiturates. While their chemical compositions differ, their effects are, for our purposes, identical.
While lethal injection is certainly more humane than hanging, electrocution, the use of poison gas, or any other execution method previously practiced, it is not without its own ethical concerns. The first and foremost of these is that, as a sterile procedure, it must be administered by medically trained personnel, many of whom feel that their participation would be a violation of their Hippocratic oaths. While there are certainly some who feel otherwise, participation in an execution puts these professionals at risk of expulsion from professional organizations and can be hugely damaging for their careers. As a result, states that have statutes demanding the presence of trained medical personnel at executions frequently have great difficulty finding doctors to administer the procedure. At one point, an automated machine was even devised to administer the lethal injection process. Most states, however, have sidestepped the issue entirely by enacting legislation that defines lethal injections as non-medical procedures.

A secondary, but growing problem is the increasingly limited supply of sodium thiopental in America, as no company currently manufactures it; several had, previously, but each has succumbed to pressure from medical ethics boards both within America and internationally. This increased scrutiny has led to increased scrutiny of all components of the increasingly medicalized procedure, from which opponents of lethal injection have argued that the three-drug cocktail serves not to execute the prisoner painlessly, but rather to hide his or her suffering from the assembled gallery of onlookers. Some studies argue not only that it was possible, but that it was likely that a large cross-section of the condemned—perhaps even the majority—were awake and aware as they were executed by potassium chloride, which is excruciatingly painful without anesthesia.
These studies correspond to a series of botched executions by lethal injection which, while much less thoroughly publicized than corresponding examples of flawed executions by hanging, electrocution, or poison gas, are nevertheless far from rare. Haines observes this very well in some detail as he comments on larger trends in support for or opposition to capital punishment. He notes that 8% of all electrocutions between 1976 and 1990, one gassing in that timeframe, and five lethal injections have been seriously and demonstrably flawed in some way; several of his examples are referred to elsewhere in this chapter (Haines 128). Haines argues that these flawed executions, a term which he prefers to 'botched,' the more commonly used word, significantly impact public support. A recent and spectacularly failed execution fuels public opposition to execution, while a long series of stately and uneventful procedures cools it.

Haines' argument from this point becomes somewhat arcane, if nevertheless perceptive. Most people, he feels, find execution to be distasteful. Most people are generally opposed to the state killing its own citizens, whatever the reason. However, most people consider the procedure to be a necessary evil; in essence, while they oppose execution in principle, they see it as a necessary part of the criminal justice system. Haines argues that when an execution is flawed, for a time, the public's tolerance is overwhelmed and the underlying grievance which each person has with the principle of execution is suddenly realized, and becomes a controlling influence (131). For this reason, Haines observes, death penalty abolitionists have used flawed executions to try to move public opinion on the matter for some time, with some, albeit limited, success.

It's an interesting idea, certainly, but Haines' thesis seems too simplistic in principle and too arcane in its execution to me. Certainly, botched executions are hugely important to the
politics of capital punishment, and certainly there is significant public backlash against executions in general when a given execution goes badly. Given that his study lacks any significant rhetorical component, though, it's really not surprising that he's missed something essential: the entire conversation about the death penalty in general, as we observed earlier, centers around the idea of cruel and unusual punishment, and has ever since the 1972 Furman verdict.

It isn't, as Haines argues, that the general populace is intolerant of executions in general, it's that the populace's support for capital punishment is conditional upon their understanding that the condemned will not suffer in death. The execution itself is enough; we are, we like to believe, an intelligent, civilized, sophisticated people, and while we cannot do away with capital punishment in its entirety, we will see the condemned out with dignity, respect, and even a measure of kindness. This is why we tend to their physical needs before the execution, why we supply them with often-extravagant last meals, why we, of all things, swab their arms with alcohol before inserting the needle which will deliver lethal poison into their bloodstream in a matter of moments. Much of the ceremony of modern execution, we tell ourselves, is about executing a man or women with dignity.

A botched execution is a titanic breach of that trust, that collective self-image that we share. The state promises us that the condemned will die painlessly. She or he will be treated well before the execution itself. Each prisoner will have a chance to speak one last time, and for their words to be heard—not just listened to, but heard, and treated with a measure of reverence.

22 Consider, for contrast, recent public executions conducted by groups such as the Islamic State in the middle east. Such spectacles are meant to horrify, to offend—hence, their taping and broadcast—and as such are as brutal and gory as possible. In many ways, the differing rhetorical contexts between execution in the West and the middle east cannot be made more clear.
The condemned will be, in that last moment, rehabilitated as completely as we consider ourselves able to, and they will be treated with, if not a measure of forgiveness which we cannot give, then at least every kindness we can.

When the state fails to live up to that basic trust, we are outraged, because the state is acting in our name. We did not know the condemned, and while few of us might have wished to befriend him or her, none of us wished that person harm. We're not interested in some awful bloody dismemberment or a slow murder-by-inches. The fact that we have to execute a person, whether we support the death penalty or not, is a deep sadness to us, and so, we tell ourselves, we expect the state to comport itself in a way which validates our trust in its fairness and human decency, because in a very real way, we are the state itself.

Despite all this, the rhetorical goal of opposition to lethal injection, regardless of its form, is fairly clear: to stop execution altogether. Death penalty abolitionists today make no bones about their opposition both to lethal injection in specific and to execution at large, but when it comes time for an argument to be made, it is almost always made on the grounds of cruel and unusual punishment. Now, without condoning or condemning anyone, I feel that this reality invites a question: if we are going to execute a subsection of our felons in America by some method, what is there which could be more humane than lethal injection as it is practiced today? In particular, the one-drug method has no real potential for physical suffering, yet if lethal injection is rendered impossible by legal decree or impracticable by unavailability of key drugs, we may very well find ourselves facing a serious sociological conundrum. Our society, for

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23 I refer to the typical member of society. There is a vocal minority which views execution as an act of revenge which should be horrific and excruciatingly painful. While those people tend to be heard to a disproportionate degree because of how bombastic their positions are, they are not representative of the typical citizen.
better or worse, executes those it finds to be in outrageous violation of our code of laws. As I've noted before, this is more than a simple legal reality, it is a part of our ideological composition as a people. Shortstopping the process, rather than engaging in real, sustained, and human debate on capital punishment serves none, as it fails to resolve, or attempt to resolve, even, the core issues which create all of the other ancillary arguments which surround capital punishment in general.

The Politics of Death

We have to this point skirted an issue which can be avoided no longer. Support for capital punishment in America is sharply divided, and has been a hotly contentious issue for the better part of a century now. While this project has no interest in the political vagaries of the death penalty debate per se, the politics of capital punishment appear regularly and repeatedly in the final statements of the condemned. To avoid the politics of the topic altogether in the idea that it will keep our investigation intellectually pure or neutral would be mistaken and wrongheaded. Thus, while I intend to cover the following material in some brevity—enough to keep us conversant in the terms of the debate, so that they are recognizable in the words of the condemned—I offer neither support or condemnation of any position which follows. Where I criticize, my complaints are methodological in nature only.

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24 I intend to engage fully with the political reality of the death penalty debate, but I think that doing so after we examine the last words of the condemned in situ, rather than before, will lead to a more representative and illuminating understanding of that debate.

25 The obvious question, naturally, is whether I support capital punishment or not, and whether this study has changed my stance. I began this project deeply ambivalent, neither in support of execution nor adamantly against it; at the end, I find myself even more firmly entrenched in that position, as every answer I've come across to the question of what we should do with the most horrific, recalcitrant, unrepentant subset of our population is, in one
Stack offers an interesting combined critique and defense for the role of philosophical orientation in death penalty support in his review of *Authoritarianism and Support for the Death Penalty: A Multivariate Analysis*. Authoritarianism, he observes, has been "a leading predictor of death penalty support" since the two were first linked in 1960 (Stack 348). Other sociological orientations are similarly predictive of support for the death penalty, but none approach the degree to which authoritarianism is a predictor. Nevertheless, other predictors for support for capital punishment are political conservatism, punitiveness, fundamentalism, and authoritarianism, but the strength of these links are still the subject of considerable sociological debate, and should not be taken as gospel (347-8). Even reliance upon authoritarianism, which is well-settled, should be treated with caution, as the association may be more definitional than predictive (349). Support for the death penalty may skew toward certain philosophical orientations in general, but it transcends traditional political and ideological boundaries, and should not be considered as a liberal/conservative site of contention, as it often has been.

In a similar vein, Mitchell offers a fascinating study of the state and national implementation or non-implementation of the death penalty on a macro level as an extension of previous sociological work which focused on individual levels of support for the death penalty from a sociological social dominance perspective. In layman's terms, an urge for social dominance is what we see when one social bloc within a society seeks to dominate another social bloc; an excellent example of successfully implemented (though profoundly unethical) social way or another, a bad one. What do you do with someone who simply likes to kill others? Killing him in turn is ethically reprehensible, but incarcerating him for the remainder of his life is different only in that it allows us to lie to ourselves about the fact that we've condemned someone to death. Moreover, even in prison, he can continue to kill. None of this, naturally, even begins to consider the logistical and practical problems which attach to either situation—many of which are deeply problematic as well.
dominance is early 20th century Jim Crow segregation. Social dominance was tested against a variety of other predictors for death penalty implementation, such as political conservatism, income levels, population density, education, and race, amongst others. On a state, national, and international level, social dominance was the only factor which predicted the implementation of the death penalty to a statistically significant degree (Mitchell 603-4). Mitchell found no statistically significant support for deterrence, which is consistent with several other very well-regarded sociological studies over the last few decades. Similarly, support or opposition for capital punishment cuts across racial and class lines. Mitchell, however, notes that this theory is still fairly cutting-edge, and is not robustly supported by a broad consensus of statistical data (604).

Kahan offers a fascinating study on deterrence, which has been a driver for some time for death penalty support, and which is now diminishing. Like Mitchell, Kahan found no evidence to support this effect per se; however, he found fairly strong, but not statistically demonstrated, support for deterrence, but not as a function of severity. In other words, deterrence works, but not if it is considered in terms of how severely a convict is punished; Kahan argues, "increasingly severe prison sentences are not only more expensive and less effective than" more robust law-enforcement policies which prioritize the capture of criminals over their severe punishment, they may actually encourage crime (Kahan 393-4). Deterrence, he argues, works well when the potential criminal perceives that (s)he is certain to be caught. While his theory is certainly interesting, and perhaps novel, it has yet to be demonstrated robustly as anything but anecdotal, and seems to call for a rather invasive level of state scrutiny on our day-to-day lives.
Wolfgang and Reidel's work on race and capital punishment has been enormously influential and is generally now accepted as fact by all but a few. To summarize, Wolfgang and Reidel found strong, statistically significant evidence that African-American men and women were sentenced to death far more frequently than were white men and women. Moreover, they found that race was not only a factor where the defendant was concerned, but where the victim was concerned; a white man who killed a black man was unlikely to be executed for it, while a black man who killed a white man would probably be sentenced to death (Wolfgang and Reidel 133). While their work is now somewhat dated, as it focuses firmly on pre-Furman America, a variety of other scholars have upheld the continuing influence of race on sentencing at all levels of the criminal justice system. Given the disproportionate number of African Americans on death row and the statistical evidence of Mitchell’s social dominance analysis, Wolfgang and Reidel's work, as well as that of their disciples, may imply that racism has not disappeared in America—that it has simply traded a white hood for a black robe. The thought is profoundly disturbing, and I think that a combined multivariate study would be revealing. Whether we would want to see and accept the results of such a study might be quite another matter entirely, however.

Tyler and Weber's 1982 study on death penalty support is nearly as influential and important as Wolfgang and Reidel's, and demonstrates that support for the death penalty is associated not with pragmatic concerns, but with the symbolic attitudes of death penalty proponents. Resting on a sociological body of work, and a methodology, which successfully demonstrated the same with regards to bussing as a component of desegregation and support for the Vietnam war, Tyler and Weber demonstrate that support for the death penalty is quite
emphatically a matter of philosophy, not pragmatism (42-3). While Tyler and Weber hang their collective hat on symbolic political conservatism as the specific predictor of death penalty support, this analysis has not held over time, as we can see from Mitchell’s and Stack’s work. However, it must be noted in fairness that Tyler and Weber opened up the conversation in this regard, and that their general findings—that support for capital punishment is a matter of philosophy, not pragmatism—have become sociological and legal gospel.

In general, we can say a few things with certainty about capital punishment. It is not administered equally; analysis of race, class, and gender will all reveal that in sentencing, appeals and, eventually, executions we tend to pardon white women and punish black men. We can also say that support for the death penalty is philosophically linked to the idea that a strong in-group of mostly-white, mostly-rich, mostly-influential, and theoretically noble men and women can and should suppress with great force those who commit crime. Support for this idea cuts across all traditional lines of race, class, and political ideology, and is not respondent to or influenced by any practical concerns, regardless of what those who support or oppose the death penalty might say to the contrary.

All this is the context and the history of the rhetorical situation which final statements respond to. The soul\textsuperscript{26} of ancient medieval execution practices have become the animating force behind the ritual of execution today, even as the spiritual core for those practices has been lost entirely. The trappings, the contexts, the justifications for, and the realities of execution have all changed radically—particularly within the last century—yet the way that the condemned speak

\textsuperscript{26} Given its religious backdrop, I mean this both literally and figuratively.
in their final moments has remained remarkably stable. In every way save phraseologically, the last words that Sir Walter Raleigh delivered almost five hundred years ago would be perfectly at home in a modern death chamber. This is both remarkable and revealing. It demonstrates that the exigence that execution presents is recurring, stable, and important. It demonstrates that the larger cultural context in which these executions take place has very little effect on the last words that the condemned choose in their final moments. It demonstrates that we're dealing with a matter of rhetoric here, because everything else but the act of persuasion itself has changed over the last five hundred years, yet the way that the condemned express themselves has not. Thus, it is rhetorical theory which we must rely upon if we really want to understand any part of the issue.

Which, as historical linguists of various stripes have demonstrated, is always idiosyncratic to time and place.
CHAPTER TWO: THEORETICAL APPROACHES

"I hope that others learn from my mistakes."

The goal of this project is to provide an answer to a seemingly straightforward question: what place do the final words of the men and women that are executed in contemporary America have in our culture? Any answer to that question, however, is not nearly so straightforward; in truth, such an answer must by its very nature be arcane, interconnected, and self-complicating. Execution is not the simple ending of a life—it is the culmination of a host of other cultural practices, and as a result executions are enormously significant, whether we're speaking in a scholarly context or not. This much is obvious to even an untrained observer; for instance, when Kimberly Lagayle McCarthy was executed on June 26th, 2013, it was a matter for international headlines, helped in no small part because she was both a woman and the 500th person that the State of Texas has executed since executions resumed in 1976. The murder for which Ms. McCarthy was executed, however, was a matter of purely local news.

The reporting on McCarthy's case is unsurprising. Even though the murder rate in America has been falling dramatically in the past few decades, 16,259 people were murdered in 2010 (CDC NP). That means that a man, woman, or child was murdered somewhere in America about every 32 minutes in 2010—it is hard to imagine a more tragically everyday occurrence. By contrast, only 55 people were executed in the same year. All of them were executed for murder.
Formal, ritual executions are a rhetorically significant moment in a variety of ways, but the last utterances of those whom we execute are imbued with special importance. The reasons for this are complex, and will be the subject of much of the work of this project as it proceeds, but it is accurate enough to say that the final statement of an executed person is of special significance to American society for the same reasons that the final statement of a grandfather is of special significance to his family. The character of the person in question, his or her history, philosophy, spiritual beliefs, or indeed the mode of his or her death is essentially irrelevant—what matters is their relationship to those around them. The last words of the executed, in point of fact, have a great deal of philosophical commonality with the last words of those who die of other means.

I said a moment ago that final statements are of rhetorical significance, and I would like to pause for a moment to refine that argument: all final statements are rhetorical. They are charged with meaning and desire, the need to alter the world in a meaningful and lasting way, as they represent the very last moment, the last action, the last chance that a person has to change the world—or, at least, a small corner of it—before the end comes. Even nonsense statements are parsed for meaning as best they can be. That should come as no surprise, because not only are all final statements rhetorical, but we have come to instinctively view them as such. As members of the audience, we have needs as clear and essential as do the men and women who speak. Understanding the nature of this rhetoric, understanding the moments which inspire utterance and, ultimately, understanding how it is that we compose our final words helps us to understand rhetorical utterance in extreme moments, and trace how significant utterance mutates and diffuses through culture.
The Death Chamber as Recurring Rhetorical Situation

Lloyd Bitzer speaks at great length about the rhetorical situation in his landmark essay of the same title. The rhetorical situation, he argues, is an aggregation of all social, physical, philosophical, and linguistic factors that constrain an utterance and its creation (Bitzer 5). Let me unpack this a bit. Bitzer argues that all rhetoric is situational (3), and that rhetoric exists to change the world in some way (4). Because a speaker needs to change the world in some way, they seek to choose the best, most sensible way to do so from a wide variety of options\textsuperscript{28}. Some options are clearly not very good—the speaker can see that using them would not change the world in any way that they want. In this way, rhetorical utterance is constrained. Instead, a speaker chooses the argument that they think will be most likely to change the world in the way that they want it to be changed, and make that argument in the best time and place that they can manage.

Bitzer also argues that rhetoric must be pragmatic, or it isn’t rhetorical at all (6). By this, he means that if a person wants a hole dug, a speaker has to use language that can actually cause that hole to be dug; shouting at the ground will never change a thing, but if the speaker offers payment for someone else to dig a hole, the hole will very shortly be dug. Pragmatism is the very heart of Bitzer’s thinking about rhetorical situations. His core example of this comes from a tribe of fishermen in the Trobarian islands, and he analyzes the rhetoric of their commands and

\textsuperscript{28} A rhetor rarely \textit{finds} the best response, in any objective sense; this is why Bitzer prefers the term 'fitting.'
actions carefully (Bitzer 4-5). For Bitzer, this is really the apex of rhetorical discourse: a person speaks, an action is taken, and the world is made a little bit better.29

Rhetoric springs into existence to address an exigence (Bitzer 5). An exigence is, according to Bitzer, “an imperfection marked by urgency;” put another way, an exigence is something in the world that is wrong, and which the speaker feels an urgent need to fix. Rhetorical speech is the speaker’s attempt to actualize that fix (Bitzer 6). This last bit is extremely important. Bitzer has been criticized for arguing here that perfection exists and can be moved toward when human conception of perfection is impossible; therefore, even recognizing imperfection is moot (Vatz 156, is the most vocal proponent of this view). Exigencies—the rhetorical situation in general, for that matter—are not inspired by absolute perfection or imperfection. Bitzer isn’t speaking about perfection and imperfection in the classical, Platonic sense. While he cites Aristotle and other classical thinkers, Bitzer’s own theory is so fundamentally neo-Aristotelian30 to the point that Aristotle himself might accuse Bitzer of being a Sophist.31 He’s talking about perfection in the perceptual sense. He’s talking about the gut feeling that a person gets that something is not as it should be. He’s talking about the urge that a

29 Bitzer comes from a rich theoretical history of rhetorical pragmatism which traces through Pierce to Aristotle and which was a rejection of Enlightenment and Victorian theories of rationalistic and empirical rhetoric, respectively. This philosophical positioning is an important part of understanding the primacy of pragmatism in Bitzer, but that same philosophy has often been taken hand-in-glove as part of Bitzer’s theory of the rhetorical situation itself.

30 While neo-Aristotelian theorists trace their philosophical orientation to Aristotle, neo-Aristotelian rejection of the metaphysical and often philosophical aspects of classical Aristotelian thinking would be repugnant to Aristotle himself. This is necessary for modern adherents to sidestep Bertrand Russel’s brutal mid-century criticism of classical Aristotelianism and has led to a rather odd marriage, in the postmodern era, of Aristotle to pragmatism.

31 While Bitzer would probably take this as an insult, I find that to be a little sad. The Sophists have had an insultingly bad reputation for a very long time, given that what they believed has been largely vindicated in our modern understanding of kairotical rhetoric and situational utterance, and given also that what they did professionally—trade rhetoric for money—is not very different than what we do. Pragmatists tend to be ill-remembered, regardless of how right they were.
person gets to make the world around them a little better, *whatever that means to them.*

Perfection and imperfection, to Bitzer, are utterly idiosyncratic. Bitzer’s example of a man who acts in injurious ways to others is a key illustration of this, because it relies upon the personal, ethical, subjective perspectives of the man and those who want to change his behavior (Bitzer 7). Even that man’s changed behavior is nothing like perfect—it’s just less objectionable, and even then, only to his current companions. Others might think him worse.

Before I move on, though, I think that I should address Bitzer’s philosophy, as we can see it in "The Rhetorical Situation," because it has grown far beyond his rhetorical theory in general. As I have repeatedly noted, Bitzer is a pragmatist; for him, rhetoric is best when it gets something done, and everyday rhetoric is the best of all because it represents people at their most genuine. This is why the Trobriand fishermen are such a perfect example for him. It has also been either the root or the most prominent example—it’s hard to say for sure which—of a modern rift in rhetorical theory, with one side believing in the importance of pragmatic, everyday speech, as Bitzer did, and with the other believing in the importance of artistic, monumental speech.

Bitzer’s privileging of the everyday is not and should not be taken as a criticism of artistry or inventiveness. He speaks of pragmatic things because he prefers them, but he also speaks of moments of artistry and magnificence. There is nothing that keeps us from using Bitzer’s work with artistic speech but our own prejudices; I think that a reconciliation between

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32 In many ways, it is the standard neo-Aristotelian move in speech communication where the aesthetic, artistic aspects of an utterance are considered as literature and the pragmatic, utilitarian aspects are considered as rhetorical. It is a productive move which I myself am making in a very large scale through Chapters 3 and 4 of this project, but I think it not only useful, but essential, that the artistic and rhetorical aspects of an utterance be considered *together* as well as separate, once those disparate aspects are well understood.
the more artistic, Romantic thinkers amongst us and the pragmatists might show that a lot of our theory is very much the same in every way except how we describe it—but that is work for another day.

There is one last hurdle for us to clear as we examine this strange juxtaposition: Bitzer argues that a rhetorical situation is objective, that anyone can observe and analyze it (11). How can this possibly fit with our understanding of perfection, imperfection, and exigencies as wholly subjective? Burke will help us in a little while, but the short version is that while a situation itself may be objective, the speaker’s perception of it is not, and cannot possibly be. Bitzer acknowledges this himself in the sentence which follows—that “exigence, audience, and constraints may all be the imaginary objects of a mind at play” (11). It naturally follows that differences in perception of a rhetorical situation are the reason why, as we can see on any level of rhetoric from personal disagreements to national political debates, two equally well-meaning people can look at the same situation and come to radically different conclusions as to how it ought to be modified. This observation is often missed in criticisms of Bitzer.

All of this is groundwork for this project, because Bitzer also acknowledges something essential: that a particular situation can be recurring (Bitzer 13). In essence, Bitzer argues that two different utterances can each be a response to the same rhetorical situation, even though those utterances seem to be responding to completely different exigencies. As an example, Bitzer considers a court of law; while the specifics of any given case inspire different responses, and while those specifics change from case to case, the fundamental rhetorical situation is the same. A judge, jury, lawyers, and a gallery are all present. All involved must behave in certain ways, as demanded by the law and custom.
This is valuable because the situation which invites final utterances is also a recurring rhetorical situation. People change from one execution to another—in point of fact, it can be very fairly said that it's impossible, given the nature of an execution, to reproduce a particular final statement exactly. On the other hand, despite the change of faces, much remains the same. A warden oversees the execution. A few guards—virtually all male—oversee the technical aspects of the process. The condemned is strapped to a gurney or an electric chair. They speak to an audience in another room. The audience reacts, but in a subdued way. A physician administers the lethal chemicals or a guard completes a circuit. The condemned dies.

Even the trappings of these rooms are fundamentally the same. The physician is never seen by either the condemned or the audience, and their identity is usually a tightly guarded secret of the state. The rooms are somber—usually simple concrete. The condemned and the audience are separated by a glass wall, which is curtained off before and after the execution. To move a step further, everyone who finds themselves strapped to that gurney or chair has been convicted of murder. In many ways, the situation recurs so strongly that there are only four variables remaining in the situation which can affect a condemned person's utterance: their history (including the entirety of their lives, but particularly the history of their legal battles), the audience (be it populated by friends and family of the condemned, the victim, or both), where the execution takes place, and when it takes place. One might wonder how the condemned become aware of the generic constraints of the death chamber, but the question answers itself: a rhetorical awareness of the execution process is so universal in American culture that it is a part of the stories we tell to our children. Superman and the Looney Toons have both dealt with execution in cartoon form, as have movies for nearly all age ranges. It is essentially impossible
to become an adult in America without having a sense, even in a general sense, of the generic constraints of the death chamber.

Before we move on to a few problems in Bitzer's work, I need to note a fifth factor, which I will not be able to deal with until the very end of this work: the preservation and propagation of the condemned's final statement. While this does not affect the statement itself, very few people will ever know what the person said unless that statement is recorded and reported. There are huge problems in this area that stretch across entire states; even the states with the best, most comprehensive records have deeply problematic sections in this regard.

When those records are created accurately and preserved properly, the final statements of the executed are the victims of some of the most aggressive rhetorical cherry-picking and rhetorical manipulation by second- and third-parties that I have ever seen.

But that is for later. The rhetorical situation is an extremely useful tool for the investigation of these statements, but one of the largest problems with Bitzer's work is that he does not give clear, concrete instructions for how to apply his work. Dozens of articles have been penned by brilliant scholars attempting to adapt his theory to more practical ends, and I will take advantage of their wisdom. Even so, rhetorical situations are necessarily complicated when we move out of the abstract and into the real world.

This is the cornerstone problem in working with situational rhetoric: Bitzer's theories categorize known quantities exceptionally well, and make the interaction between different parts of the rhetorical situation very clear. However, as it stands, Bitzer's work is much better at describing than it is at investigating. To illustrate, take the case of a man who is about to be executed. He has the opportunity to give his final words, and knows that there will be no
commutation of his sentence. There is an exigence here, an opportunity to speak that cries out for response, but to what degree is that opportunity itself a constraint? After all, while there would be no reason for the man to speak except for his impending execution, that same impending execution imposes severe restrictions on what he can and cannot say.

Bitzer offers no real guidance for disambiguation here. At best, I could consider this hypothetical man's statement first as an exigence, and then as a constraint, but that would necessarily strip it of a fair amount of its meaning, and would simplify a complex rhetorical situation in a way that does not represent reality. Grant-Davie observes this problem in considerable detail in "Rhetorical Situations and Their Constituents," but is able to offer no more concrete guidance than Bitzer can (Grant-Davie 275-277). In the end, he must step back and simply acknowledge the intensely "interlace[d]" nature of the constituents of the rhetorical situation he examined, unable to forge further forward (277).

What the rhetorical situation needs is a way to turn it into an investigative tool—and this need is so keenly felt that a great deal of work has been done to expand the scope of the rhetorical situation in exactly this way. Mountford has successfully adapted Bitzer to consider rhetorical space, Arthur B. Miller was able to explicate rhetorical exigence in far more detail than Bitzer did, and Garret et al. even did their best to overhaul the whole of the rhetorical situation in order to make it more investigative.

On the other hand, the most successful adaptations of the rhetorical situation for investigation have not generally followed these lines. Killingsworth is a good example of a strain of pragmatic adaptation that comes and goes now and again, in which a theorist will bridge the rhetorical situation to another well-known and thoroughly vetted set of rhetorical theories in
an attempt to describe the rhetorical effect of something specific—in Killingsworth's situation, it was rhetorical modes and genre, with a focus on the composition classroom (Killingsworth 262). The advantage of this approach is that it allows us to use the descriptive tools that are suited to a specific task and examine our results in a rhetorical light. It's a smart strategy, and one I will emulate.

As a result, I will be using a few other interpretive theories within the framework of the rhetorical situation, so that I can examine those four aspects that constitute the variables of the execution situation more completely.

**Final Statements as Genre**

Before we get any further, I need to acknowledge one of the most important parts of the creation and understanding of final statements—that they are a part of a clearly defined and well-understood genre. This awareness of genre extends through every participant in the execution process, and is an essential part of the composition process for the condemned. Some of them even reference the fact in their final statements. More telling, however, is the degree to which the final statements of the condemned fall into one of a few clearly defined categories of utterance, and how rarely any statement diverges from these categories.
But, again, I am getting ahead of myself. Derrida, Devitt, and especially Carolyn Miller33 are central to our understanding of genre, and their theories, as well as those of their philosophical descendants, allow us to see the rhetorical situation that the condemned see when they compose their final utterances. As Derrida notes, genre is utterly arbitrary, and has no objective meaning; any attempt to force a truly objective standard of generic division is "mad" (Derrida 81). That's fine. Better, it's useful, because objective standards of what is and isn't appropriate for a final utterance would be absolutely stifling to the compositional process, a millstone which would weigh down any real effort at art.

To return to my point, which Derrida shares, genre is subjective, and its subjectivity breaks into two parts: the rhetor's idea of what a particular genre means, and what their audience thinks it means. The rhetor and the audience may agree on what is included in a given genre in some ways, but any two individuals, regardless of their background, will differ on some points when they try to examine any genre, even the most well-defined. Because genre is plastic in this way, it allows a huge array of responses to any given rhetorical exigence.

But what about the audience? A simple argument might be that the degree to which an audience shares its rhetor's idea of the genre that is being invoked is a major determiner of a statement's success or failure. This is not entirely wrong, but neither is it entirely right; after all, if it were accurate, books like The Lord of the Rings or periodicals like The Spectator, which utterly redefined their respective genres, would have been failures. Genre is more complex than a simple categorization of types of utterance.

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33 Miller's work on genre is not only definitional, it is essential to our understanding of genre itself in broad terms. While I primarily reference Devitt as a resource, her indebtedness to Miller is without question; I use Devitt simply because the language she uses dovetails with my broader investigation more naturally than does Miller's.
Devitt argues wisely that genre is a matter of both readers and writers, obviously, but also of "texts and contexts" in which both the rhetor and the audience must cast themselves into "common social roles" which necessarily distort who they are, but which allow for artistic and rhetorical interaction between the rhetor and the audience (Integrating Rhetorical and Literary Theories of Genre 715). I'd like to localize this tremendously complex piece of thinking a bit. When condemned prisoners speak from the death chamber, they are not really themselves. Instead, they are playing a part, like an agent on stage; like that agent, their lines must be appropriate to the play. Now, and this is the important part, the best agents will find ways to personalize their roles in deep and meaningful ways—so too with the condemned. In the same way, the audience of an execution is assuming a very different social role. They are not really themselves, but are members of an abstract, collective audience, and are playing a role. A capital punishment advocate might want to cheer at the execution of a person convicted of committing heinous crimes, but they cannot. By the same token, an opponent of capital punishment who attends to honor the final moments of the condemned may want to stand and shout and disrupt the execution in a desperate attempt to save their life, but they will not.

I can hear already objections to this: aren't death penalty abolitionists notorious for occasional, wild, protests of that exact sort? What about callously cruel statements by their opponents? Of course. Such things happen—but, I would ask in turn, what happens when they do? Those people are removed from the death chamber or are quickly ushered out of the public context which allows them to speak. The violation of essential social roles puts them outside the realm of generic appropriateness and, in turn, keeps them from being a part of the genre at all.
The same happens when a condemned prisoner violates the role that they are expected to play; often, in such cases, no true record of their final utterance is ever made.

This is where Devitt's understanding of context is important, because what she's really describing is a component of Bitzer's rhetorical situation which has had its rhetor, audience, and utterance separated out for convenience's sake. As Bitzer argues, situation constrains possible appropriate responses; in Devitt's terms, when a rhetor or audience member rejects the rhetorical constraints (or fails to recognize them) of a situation, their response, whatever its actual rhetorical value, falls outside of what fits the situation.

There is a specification within Devitt, moreover, which is crucial to our continuing understanding of final statements as generic. Relying on Miller's definition of genre as "typified rhetorical actions based in recurrent [rhetorical] situations," Miller links the use of genre as strongly linked to recurring situations, because those situations focus, clarify, and direct rhetorical expression (Miller 159; Devitt 576-7). Miller's implication here and elsewhere is that rhetorical situation begets genre, but notes later that things are not so precise, and concludes that, "genre [is] a semiotic and functional concept" (577). In other words, while the use of a genre by a rhetor is definitional, the use of genre by audience is ultimately descriptive, rather than prescriptive.

The simplest reading of final statements is to consider all as a single genre with many subgeneric categories and even more modes of expression. Miller, after all, argues that rhetorical situations are definitional, rather than perceptual, and Bitzer would agree with her. However, Miller later notes that as part of the composition process, writers select genre based on as part of their response to a given rhetorical situation, and that different writers faced with the
same situation can, and often do, choose different genres (578). This variability in response troubles our simple reading of final statements as a single genre, and begs a question: if rhetors can respond to a single recurring situation using different responses, does the variability of those responses imply imperfect responses by most of the rhetors, or something else? While using genre badly is common, as Miller notes, I think it's dismissive and glib to do so here; as even casual reading of final statements demonstrates clearly different formal features and rhetorical goals which self-organize quite readily. The fact that such varied responses exist is proof of something subtly different, but which dovetails with the way we've been looking at Bitzer and Burke so far: while a situation is objective, perception of that situation is not, and leads to varied (in this case, generic) responses. I want to note here that I do not dispute Miller's stance that situations are not the result of perception; however, a rhetor's perception must have some role in the creation of his or her response to a situation, or all responses to a given recurring situation would be functionally identical. It is self-evident that they are not.

Let's illustrate the point. Say a politician gives a speech proposing a plan to do something very ambitious—perhaps establishing a permanent base on the moon. In her audience are three reporters, identical in every way except that one sees the proposal as laudable, one sees it as wasteful, and a third likes the idea but thinks it impractical. After the speech, each writes an article. The first writes a robust endorsement of our politician's vision, a classical epidictic praise of her. The second attacks the plan itself, ignoring the politician, in an Aristotelian deliberative mode. The third ignores civic rhetoric entirely and instead writes about the plan satirically. Given these small differences in the perception of a concrete situation, large differences in rhetoric can occur, and the same happens in the death chamber.
So, if genre in general is a concept which is based on the idiosyncratic perception of the rhetor and of the audience, and if the genre of modern final statements is fairly constant and universally agreed-upon, we have a fairly obvious question: what do audience members and the condemned perceive the genre of a final statement to be?

Most importantly, both the condemned and the audience understand that final statements are just that—the last things which a person says. A final statement is analogous to a conclusion statement in an essay or a novel, and I use this metaphor deliberately, because it is a controlling metaphor which is almost universally felt and responded to. The condemned's life, in this situation, is a metaphorical book, and the audience has come at the final page of this text to find out how the end comes; they've 'read' enough of the book to have a pretty good idea of what shape it's going to take but, as when those same audience members read a book, the particular way that the ending is phrased is important. Writers of all sorts create twist endings and unexpected surprises, even if the regular and expected forms are aroused and fulfilled far more frequently. In the case of the condemned, the generally expected forms are those of confession, remembrance, and of hope for salvation after their death.

In our understanding of this genre, either ending is important. If the condemned chooses to speak conventionally, it affirms the audience's expectations. It centers them socially in the same way that the death of a villain in a book re-affirms common social norms; the villainous are punished, but only after they realize at least some of the error of their ways. Enough, at least, to put the fear of God foremost in their minds, to beg and hope for the loving memory of their friends and family members, to acknowledge the heinous act that has brought them to the death chamber, or at best to move them to a feeling of genuine repentance for their actions. Any of
these serves as a valediction for the audience, because it says that even the worst amongst us are salvageable, and that human beings can get a little bit better.

If the condemned chooses to defy convention, either with a gross rejection of the entire rhetorical situation—say, for instance, that the condemned curses wildly, in a rage at their impending death—or with an assertion that the situation is unjust, or with a coherent but defiant rejection of the very social mores which the audience is here to have affirmed, the ending is still dramatic, exciting, and arousing of another set of desires, which are then fulfilled. If that defiance is coherent, if it conforms to the generic expectations for a last declaration of spite in the tradition of Ahab's hateful declaration, "from Hell's heart I stab at thee," then such a statement can become just as remarkable and centering for the audience as a conventional statement. Take, for instance, John Wayne Gacy's final words: "kiss my ass," a statement of defiance so concise and generically impressive that they have literally invaded the last words of many others. A prisoner condemns themselves in the view of the audience this way, by confirming their evilness and inhumanity. After all, with nothing left to lose, what person couldn't at least apologize for killing someone?

So, the audience expects last words at an execution which will either affirm their social mores or justify the execution itself. This essential demand constrains the rhetor's options dramatically, but it is also generative; after all, even the most spontaneous statements fall into one of these common categories, which means that the demands of the final statement's genre must by their nature be as clear to the audience and the condemned as they are to the scholar. It

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34 I do not mean for this discussion to be, itself, a justification for the use of genre theory to investigate final statements; however, I cannot demonstrate in detail the formal features which characterize final statement subgenres without a major digression here. Given that all of the work it would take to do so is duplicated in Chapter 3, it makes little sense to begin a lengthy and detailed discussion of formal features here.
might be for this reason that another common response—when a prisoner protests their innocence from the gurney—is so little remarked-upon, in general. It is definitely why the single most common type of final statement—none whatsoever—is not even thought of by the lay person in these situations. They simply do not conform to what the audience expects and demands of an utterance in this context.

But there is more at stake here than a simple definition of what goes into the creation of a final statement, generally speaking, or of how that statement is understood after it is made. What I am trying to demonstrate here is that Bitzer's rhetorical situation is a fundamentally open-ended theory which is compatible with a wide array of other theoretical models. Bitzer describes a phenomenon and suggests how it works, in most contexts. However, he does not give us a crystal clear tool or formula which we could use to describe every single situation; he gives us only three constituents, which must be described to understand it: exigence, audience, and constraints. What Devitt demonstrates here is that other theories can use Bitzer's conceptual framework as a focusing lens which will expose certain facets of a specific rhetorical situation. After all, addressing final statements as generic definitely does not describe them completely, but doing so helps us to understand their situation better. I understand some of what is important to the audience, a small bit about the exigence itself, and quite a lot about rhetorical constraints here, but much more remains—and this is only looking at final statements as a class. If I were to apply theory to a specific statement, a specific instance of the recurring situation, I would need

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35 A perceived imperfection, marked by urgency.

36 A perceived group of people who might be persuaded by the rhetor.

37 Anything which limits, focuses, or directs a rhetor's ability to choose the nature of his or her utterance.
several other theoretical lenses with fundamentally different functions, goals, and philosophical orientations to expose the intricacies of what is happening in the death chamber.

This is exactly what I intend to do.

Burke, Bitzer, and Rhetorical Artistry

It would be fair to say that Burke and Bitzer represent two radically different ends of the rhetorical philosophical spectrum, and as a result, my intention to use Burke in a Bitzerian context may raise a few eyebrows. Before I continue, then, I intend to offer a little resolution to this divide and to explain how I intend to meld the two.

Bitzer does not reject the artistic. It has become an implicit touchstone in modern Bitzerian criticism—I could fairly say simply modern rhetorical criticism here, if I wanted—that everyday discourse is what is most worth our attention. Describing how we communicate typically is far more informative and far more just than describing how rich, dead, white men spoke once upon a time, when they had a great deal of time to plan out their utterances. It is, our wisdom holds, a choice between the real and the artificial, and the field of Literature is far more well-equipped to study artificial utterance.

Burke, by contrast, is interested in art, and in considering rhetorical utterance in an artistic context. He says as much in stark terms in *A Grammar of Motives*, where he defines all of human action, including speech, as productive of art,38 and defines its operation in terms from

38 Thus, the classic question: If everything is art, what is really art? Burke has a tendency to use the term freely, but I support a broad, inclusive definition because it captures the essence of what makes art vital to humanity: art lets us grasp ideas and philosophies which elude more direct consideration, and in this it has deep value. If the value in art is the way it allows us to think, taking art where we find it, rather than by narrower definitional terms, is the only practical way to consider it.
classical drama (Burke xvii). The roots of his definition are not in objective reality, but in the perceived reality of the agent; a thrown rock is a thing unto itself, but the act of throwing it and at what is inseparably attached to the perspective of the thrower (xxv).

Burke's philosophy in this can be found just as clearly in Counter-Statement, though in that book he spends his time tackling the rhetorical reality of art in a much more specific way than his all-encompassing definition in A Grammar of Motives. Embedded into his discussion of art in Counter-Statement is a resounding rejection of industry, capitalism, and the whole spectrum of practicality. It argues that inefficiency, impracticality, and a fervent frothing creativeness represents the highest achievements of human society. It is, in this way, deeply political and representative of its age—an acknowledgement Burke himself makes deep in his Program (Burke 121). When we read Burke, we must remember the time and place it came from, a time when socialism, communism, and fascism were the next big thing, and when American democracy seemed on its way out. Burke railed against this, and married to each of his political opponents was the concept of efficiency as a paramount virtue. No wonder he rejected it so soundly.

But what does Burke actually say, on a functional level? First, that art is situational (72, 121). He did not mean this in the Bitzerian sense, but he did mean that art had to represent its own time and place in history, and that art's value changed as those two factors changed. Second, that art is neither good nor bad, neither effective nor ineffective, in and of itself (90). The degree to which it responds to and conforms with its context determines its effectiveness—itself a deeply subjective evaluation—and popularity and reception are independent of any of
these factors (91). Third, that art can encompass anything, so long as it causes people to react and reflect (123).

These three essential standards have quite a lot in common with Bitzer's later work with the rhetorical situation;³⁹ so much that, in fact, if we were to substitute 'rhetoric' for 'art' in any of these statements, they would become immediately and obviously Bitzerian. Many of Bitzer's own arguments about rhetoric mirror Burke's own about art, and it seems to me that the single greatest reason that the two have been thought to oppose each other is that Bitzer and Burke have radically different philosophical stances, while their practical stances are not only fairly similar, but fundamentally compatible in several ways.

Bitzer, too, seems to have a clearly defined place for art within his discussion of pragmatic matters. Now, it is clear that rhetoric must do work in some way for Bitzer, but that does not mean that art has no place—Bitzer repeatedly cites examples where art and artistry in speech⁴⁰ are essential to good rhetoric. A presidential inauguration, for instance, ought to speak of the nation's need, Bitzer correctly asserts, but it must also be artistic, because artistry in language is fitting for the office of the President (Bitzer 12).

But we don't need such a roundabout example. Bitzer himself proposes a "rhetorical literature" populated by "the Gettysburg Address, Burke's Speech to the Electors of Bristol, [and] Socrates' Apology," which are rhetorically remarkable because they speak directly to the beating heart and the living soul of human experience across ages, races, times, and places (Bitzer 13).

³⁹ This shouldn't be surprising. Bitzer and Burke are both philosophical descendents of Aristotle, though the two have rather different interpretations of his work; as a result, their theories must have common threads.

⁴⁰ As with many things, Bitzer seems to prefer a more limited, pragmatic definition which boils down, at its core, to stylistics and delivery.
What finer definition could we possibly have for art itself? Human universality is the medium of art, and it is also Bitzer's justification for the literaturization of some rhetorical situations. The part that he doesn't note is that if rhetorical literature exists, then rhetorical art must also exist, because literature is art that is written or spoken.

As this project will be dealing repeatedly with the ephemera of artistry as well as the concrete constituents of the rhetorical situation, a formal definition is in order. When I discuss art in this text, I always use Burke's definition from *A Grammar of Motives*, as discussed and defined there; it is an expansive definition, but deliberately so. If it makes us pause and reflect, if it makes us consider our collective place in the universe from a new and, hopefully, frightening perspective, then it is art. Anything at all can be art, so long as it does these things, because art is the medium by which human beings explore the things which we cannot understand. Rhetorical art is thus a subtype of art in the same way that musical art or visual art is—a medium we use to express otherwise-inexpressible ideas. It has a great deal in common with performance art, as it relies not only on the art as artifact, but on the artist as the actualizer, independent from whom the art could not exist. Considering final statements as artistic, as more than simply rhetorical, exposes the deep power of language; rhetoric can shape our actions, but art can shape our souls. Tremble when the two are one.

I don't claim that Burke and Bitzer would agree with each other, and I don't claim that what each argues works perfectly or seamlessly with what the other argues. I think that the fact that one likes to think of rhetoric as an artistic exercise while the other prefers to think of it as a pragmatic one should not blind us to the places where their theories *do* work together. When I examine the final statements of the condemned, I examine them as works of rhetorical art—that
phrase being indivisible, because any examination of statements like this will be incomplete if I ignore either part.

   Allow me to explain. In the first part, the final statements of the condemned must be rhetorical; even casual examination by a layperson reveals the rhetorical nature of utterances like:

   "I didn't shoot the trooper. This is injustice, but I forgive everybody and stay strong."
   "May tomorrow see the courts shaped by more wisdom and less politics."
   "A life for a life. May it be done and justice will be served."
   "I deserve this. Tell everyone I said goodbye."

Clearly, these four men all perceived a rhetorical exigence and responded to it. I do not claim that they are representative; I chose brief statements here so as to not overload the page in the demonstration of a fairly simple point. The better challenge here would be that they might not be representative in a different way—that these men perceived a rhetorical exigence where there was none, as the situation could not be modified (Bitzer 12). Let's try a hard case, then:

   "I'm ready, Warden."

If we set aside the fact that it's the title of this dissertation, what we have here certainly seems to be a statement without much in the way of rhetoric. It carries no obvious appeals for affection, forgiveness, or in denial of the crime he is being executed for. Aside from a certain pithiness, you could say that it is even artless in its brevity.

   This is where we must expand our scope a bit. This utterance came from Lawrence Lee Buxton, executed February 26th, 1991, for murder during the commission of a grocery-store robbery in 1980. Buxton was arrested for and convicted of an unrelated crime, and while he was serving that sentence, he was convicted of murder. He repeatedly and ineffectively appealed his conviction on several grounds, never arguing after trial that he wasn't the perpetrator, but instead
attempting to have his death sentence commuted to life imprisonment. All of this is fairly mundane, except for one thing: Buxton had two accomplices, who were equally culpable for murder under the law. He never revealed their identities.

Buxton's brief statement takes on a completely different character in this light. Even after his conviction, it is all but certain that Buxton would have been able to get his sentence reduced to life imprisonment in exchange for the identity of even one of his two accomplices. He held the power to commute his own sentence from the very beginning of his own trial, and he never used it. He kept silent, and denied the state the ability to prosecute two others for the same crime, and likely send each of them to the death chamber that Buxton would have avoided. He was strapped to his deathbed, needle in his arm, and even in the face of immediate death his absolute silence had the effect of absolute defiance. In its proper context, even silence may be rhetorical.\textsuperscript{41}

So, when I argue that all final statements are rhetorical,\textsuperscript{42} it is on these grounds. While a statement might not seem to be rhetorical at first glance, it usually opens up like a flower at dawn when placed in its full context. For this reason, I will be exploring a few final statements in their totality later—but what of artistry? It seems morbid, to say the least, to call such statements as much art as rhetoric.

Well, artistry is as clear here as is rhetoric, even if fewer condemned men and women are really equipped to make a final statement on the scale of the Gettysburg Address—but, then again, how many of us really would be? More than a few condemned men and women choose to

\textsuperscript{41} Cheryl Glenn's \textit{Unspoken: A Rhetoric of Silence} is a fascinating exploration of this.

\textsuperscript{42} Again, I consider rhetoric on pragmatic, perceptual grounds in this text.
end their lives by quoting Scripture of one kind or another, or by quoting poetry, or even by quoting popular culture where their own words are insufficient to the task of their own death. A half dozen men, for instance, have quoted some version of the Klingon credo, "Today is a good day to die" from Star Trek on their deathbeds.

But some are ready and able to speak to the exigence their own death affords with words that are clearly artistic. Take Charles Wesley Roache's final words, for instance:

Dying is only the last page of time and the first of eternity. My last page of time ends showing the people I hurt and caused so much pain. You do not deserve what I caused you. Only God can give you the strength to forgive me. He is a restorer. My first page of eternity starts with God's love and forgiveness. His forgiveness in time starts with His love in eternity. I can only hope and pray the pain and hurt I caused you will be healed as I give my life as a key to forgiveness. May God's love shine on you.

We have here sustained metaphorical language, clear—if abstract—imagery, and classic pulpit-rhetoric. This is art, undeniably, though I am at the risk of invoking Justice Stewart's axiom, "I know it when I see it," in inverse. You might argue that it is art of less value than high art or literature, but Burke clearly and neatly shuts down that line of disputation: art is art, and bickering over its relative effectiveness is a mad waste of time, as that debate is utterly subjective (Counter-Statement 91).

Even less florid statements are classically artistic. George Bernard Harris' last words are an example of this:

"Somebody needs to kill my trial attorney."

Irony. Pithiness. Legitimate wit, with a joke about murder at an execution for murder, and with all this it still responds well enough to the situation to keep itself free of profanity, which is

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43 To be a bit less pithy, I rely on Burkean definitions of art when I speak of artistry in this text.
inappropriate in such a performative context. It is as much art as Swift, and is only funny *because* of its rhetorical situation. At any other point in time, this would be bare bitterness.

So we have here our rhetorical art. And, when it comes to rhetorical art, few are as useful as Burke.

**The Burkean Pentad as Situation**

Burke's pentad is one of his more straightforward theories. The pentad offers us an important tool in Bitzerian criticism: a systematized structure which allows us to actually *describe* the rhetorical situation which Bitzer argues is constituted of exigence, constraints, and audience (Bitzer 8). Previously, most have simply attempted a cataloguing of each constituent, but this strategy is troublesome because it leads to abstraction, summarization, and simplistic thinking. Such an approach would leave us stuck with the basic Bitzerian problem I described earlier: our three constituents are much better at categorizing things we have found than they are at actually finding them.

So the pentad, as a descriptive investigative tool, gives us language to describe the granular components of Bitzer's constituents. In simpler terms, it lets us break down exigence, constraints, and audience to more manageable, specific, concrete bits.44 These terms are "Act, Scene, Agent, Agency, [and] Purpose," as Burke prefers to call them, and refer to the basic building blocks of drama (*Rhetoric of Motives* xvii). Burke goes on to explore these terms at great length, are not arbitrary or prescriptive, but reflect the way that people view themselves as

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44 Burke was, himself, far more interested in rhetorical motives (hence, *A Grammar of Motives* and *A Rhetoric of Motives*), but I will be using his framework in a somewhat different way. Hence, I have a somewhat different focus here.
they move through the production of their lives (xxiv-xxv, amongst many others). This observation was decades ahead of its time, and has been explored as the central concept in theorization on personal narrative by a wide array of scholars. The arrangement of human experience by a narrator into conventional story structures reflects the neurological structures of our brains. It is in the creation of a story or statement about yourself that "the production of memories... encourages an arranging of events into a state of coherence, consecution, and consequence—features of what constitute a narrative" (Young & Saver 79).

Better yet, a smartly crafted narrative is often rhetorical by its nature, even if its creation wasn't (Rodden 169). Stories teach as much as they entertain, philosophize as much as they affirm, and question that which cannot be questioned in any other way. Rhetorically crafted narratives—stories designed in response to an exigence and with the aim of convincing an audience as their core aim—take advantage of the generally rhetorical nature of narrative and sharpen its focus to demonstrate a single essential point. The best of these change the world.


And all this is not confined to the speaker. "The experience of following [another's narrative] can give rise to affectively encouraging states of mind or flows of thought" which allow the audience to experience another's personal narrative by proxy (Braid 5). The experience of the audience and the speaker parallel each other psychologically—this is the whole point of narrative, the reason that story structures are essential to human culture and society, the way that one person is able to connect with another on a fundamental level. To paraphrase Ong a bit inappropriately, narrative structure restructures consciousness.
So, when we talk about Burke, we need to keep in mind that his labeling is not just the humanitarian ego-salve of an incorrigible intellect that loves art and artistry. His pentad represents the most practical, useful labeling extant for an enormously complex set of neurological and cognitive interactions which are not easily subdivisible. There is a poetic sort of appropriateness to his labeling too—and here I find myself captured by the very phenomenon I'm trying to describe—because he uses storytelling terminology to describe how people tell the stories of their lives. Moving forward, I will simply discuss Burke's pentad as fact, and will sidestep into its cognitive and neurological underpinnings only where specific description is needed.

The first of Burke's five terms, act, is also his most complicated. It encompasses the entire galaxy of all that can or might be done, and is subdivided into what is done and what is not done. While this might seem simple at first, Burke observes immediately that an act is never and can never be isolated. All acts are contained by their scenes, sparked by their actors, respondent to other acts, characterized by their associated agencies, and justified by their purposes. Change any of these and the act itself changes. We can look at action, then, as the glue that holds the pentad together, the motion and the energy that causes these disparate parts to have meaning and vitality. It is action that this dissertation is mostly concerned with, but it is equally obvious that action cannot be understood out of its context.

The scene is the most important component of that context, and is the second of Burke's five terms. It contains the act and the actors, and give context to their agencies and purposes (Grammar 3). It describes where and when things occur, and as such it is a very broad but relatively shallow category. A scene can be understood by looking carefully at who inhabits it,
what characterizes it, and what happens in it; however, scenes on their own are quite static. This is good. Aside from the obvious—it is easier to understand things that don't change radically or quickly—scenes generally represent a fixed point for us to navigate from, metaphorically speaking.

The key components of the scene in modern American executions is, as anyone could imagine, very stable. The condemned is alone in a room, strapped to a chair or bed. They face a small audience, from whom they are generally separated by a glass wall. A guard or two will often remain in the death chamber while the condemned is executed. The actual executioner, be it prison staff in the case of electrocution or a medical professional in the case of lethal injection, is always hidden, and their identity protected. It is always the warden who prompts the final statement, and as a result they have a strange place in the final statements themselves, as the warden is almost always addressed when a statement is made.

Unlike scenes, agents change constantly and, in this case, for fairly obvious reasons. Agents are the funnel through which agency and purpose are converted into action, and as such lie at the very heart of the pentad. However, agents tend to fall into a few fairly easily identifiable categories, as described by their varying personal philosophies (*Grammar* 171). Agents are not so widely varied as the action that they take; you could say in this case that specific scenes fracture philosophy into action—or, in simpler terms, that whichever specific action an agent takes depends on that agent's setting. Scene and agent interact in a sort of dance, then, where an agent tries to impress their philosophy upon a scene, but where that scene has already had a controlling influence on what way that philosophy will be expressed.
Agency—how an act is carried out—is often very complicated, because humans are capable of incredibly varied behaviors, depending on what they want to do in a given time and place. Agency is often the most widely variable of the pentad except for action itself, and is only contained in its complexity by the necessary limitation of being totally dependent upon the act. Now, I'm not trying to say here that agency is subordinate to act, as action is limited by the pragmatics which agency represents, but the how of an action always follows the desire and the decision to act. It would be better to say that it is consequential to action, in that it follows thereafter and is a shaping influence on the specific method of action.

The final statements of the condemned are not typical in this regard. Agency is severely restricted in executions because the condemned are bound hand and foot to a chair or bed; they may not, for instance, perform an interpretive dance to express their final wishes. They may not accompany their final statement with significant body language. They may not use a powerpoint presentation to illustrate their points. They may speak. They may write. They may remain silent. That is all.

Purpose is a touch trickier, because it is incredibly idiosyncratic. It is multifaceted, subtle, and prone to dissolution (Grammar 289). It is the implicit motivator behind all that agency motivates agents to do, but it does not and cannot extend beyond the individual actor (Grammar 289). It is founded in the philosophy of the agent, but it is not necessarily respondent to it—in other words, what a person does and why they do it may have nothing to do with each other. Or they may have everything. It may have far more to do with pragmatics than ethics. It is almost impossible to tell the difference between one and the others. This is the essential problem of purpose.
Let’s get a little more concrete. When I say that purpose is multifaceted and subtle, I mean in reality that one apparent purpose can push an agent in more than one way. Sometimes those multiple ways are in opposition to each other. Sometimes an agent’s real purpose is not their apparent or claimed purpose. For instance, if a sexist man were to claim that women should not work, and claim that the reason for his stance was religious in nature, it is very likely that the real reason for his action was his sexist contempt for women, not his religion. If you challenged the man on this point, he would almost certainly deny it. What’s more, he would believe it, heart and soul.

When I say that purpose is personal and philosophical, I mean that it is grounded in a person’s code of ethics, their sense of what should and shouldn’t be. Like anything else that is based in ethics, people often act in a way counter to their stated belief for reasons that they won’t acknowledge. Alternately, they may act precisely in accordance with that code of beliefs. In any case, an actor’s purpose acts on several levels at once most of which, if not all, the actor is consciously unaware of. Any result of Purpose is necessarily complicated, and is almost always far more complicated, in terms of production, motivation, function, philosophy, and result than can be perceived or understood (Grammar 319). The ways we work to understand purpose have to be just as specialized and situational. In a Bitzerian sense, not only is purpose extremely situational, our understanding of it is as well.

So, it’s time to return to the heart of the work again: action, in the context of an execution. Given the theoretical tools we’ve looked at so far, there’s a little work to do right away. Generically speaking, a final statement is a linguistic act. It is an act in the context of many non-linguistic rhetorical factors, from the gurney to the execution cocktail itself, but the
final statement itself responds to a specific rhetorical exigence—the condemned’s final moments, and the presence of an audience—and which is sharply limited by many physical and rhetorical constraints on that situation. Often, these constraints are also part of the rhetorical exigence itself, and their function as both exigence and constraint is crucial in the production of utterance. Finally, the audience is limited and controlled, and is, as often as not, overlapping with exigence and constraint. Who has come to see the condemned die often has a commanding influence on what the condemned says.

One of the most important of these dual exigency- and constraint-forming factors is the gurney, in the case of lethal injections, or the electric chair, in the case of electrocutions. A second is the warden, who literally offers the condemned the chance to speak and by the same token has the power, the right, and in some cases the legal obligation to forcibly end the final utterance. By the same token, having a family member in the audience almost always inspires the condemned to speak while constraining what they might say. A marvelous, if extremely simple, example of this, comes from the final words of Jeffrey Motley:

“I love you, Mom. Goodbye.”

The presence of Motley’s mother in the audience clearly serves as his exigence; had she not been present, he would have had no reason to say these words. Her presence also constrained what he could possibly have said; given his love for her, whatever he said would have had to acknowledge that love, or he would have felt the utterance to be inappropriate. The simple presence of Motley’s mother served as a controlling factor on all aspects of his final statement—not the only factor, to be sure, but one whose importance can hardly be understated. Bitzer’s rhetorical situation isn’t really adequate to describe this multimodal rhetorical functionality,
though. We could look at her as an exigence, or as an audience, or a constraint, but all three at once is problematic because of the deeply interlaced nature of the three in an active situation. In other words, if we don't disambiguate Bitzer's constituents (as is the common method for situational criticism), we have to describe all three constituents simultaneously if we are to accurately represent reality. Things get messy very quickly.

This is where Burke rides to the rescue. Motley is our actor, and his overt purpose is to say his farewells to his mother, who he loves. A secondary purpose is to see that he’s remembered as the sort of person who said this, at his last opportunity. Yet another was to comfort her, at the moment of his death. Far more probably exist, but this is mostly a demonstration of how Burke is able to deal with the interlaced nature of rhetorical situations in ways that Bitzer struggles with. Motley's agency was clear and simple, in one sense: he spoke with his voice in Standard American English, and emphasized his words with facial expressions. In another, it is hopelessly lost to us because his final statement was written down, rather than recorded by video. His setting was also equally clear: the cement room of the death chamber at the Ellis Unit north of Huntsville, Texas. His act was speech.

His mother’s role in this moment can be described in the same terms. Her act was to be present, for her son, at the moment of his execution. Her purposes were as complex as Motley’s: to offer him comfort, to be the sort of woman who goes to her son’s execution, to hear what he had to say to her at the end—these are only a few, and there are many more. We don’t know whether she spoke to her son in turn, or even whether she was able to do so; the situation in any case constrained what she could have said if she had the opportunity, and silence may have been all she could manage. That, itself, is a statement of rhetorical importance.
Burke susses out meaning that Bitzer cannot, while Bitzer provides a concrete and robust framework to give context to that meaning where Burke offers only conditionals. At the same moment, though, this interaction has exposed a critical problem which has no clear answer: at the moment of Motley’s final statement, he says that he loves his mother. What does he mean by that? Why did he feel compelled to make those words his last ones, and why did he direct his only statement to her? What was the significance of his final statement, in short?

**Terministic Screens**

I now turn to terministic screens, perhaps Burke’s most notoriously complicated theoretical concept. There are several problems that are inextricably attached to discussions of terministic screens because the concept is so inextricably tied to the way we perceive and act upon the world around us that explicating what’s going on is like trying to understand, using nothing but your own eyesight as you look out at the world, the difference between how a cone and a rod in your eyeball change the appearance of something that you’re looking at. You’re trying to perceive the thing you perceive everything with; it’s a filter that we’re so used to, which is so essentially a part of how we understand everything around us, that it is, in a very real way, the way we actually perceive reality.

The etymology of the term here is useful in understanding its function. The word 'screen' here refers to a filter, or a net, which skims every part of the metaphoric river of reality that a person can observe or experience. It catches and collects some things, affects others without capturing them, and still others pass though it, unnoticed. Burke prefers the terms deflection, reflection, and selection here, and there's nothing wrong with those (*Language* 45). The crucial
meaning inside these metaphors is simple: two people can see the same objective thing completely differently. The thing itself is a thing—a tire, an apple, a salad, what have you—but the way that someone looks at it changes its perceived nature. A green apple can mean an underripe one or a perfectly ripe one, depending on what the person about to eat it prefers.

This little example is far more complicated than it seems. First, the quality of greenness in our apple, as it appears to our eater, is symbolic because the color of an apple's skin has nothing to do with its flavor in reality. Certain varieties of red apple—a crabapple, for instance—are much more tart than, for instance, a Mutsu, which is a very sweet green apple indeed. Regardless, almost everyone automatically takes the green skin of an apple as an undeniable signifier of tart flavor. The eater looks at a green-skinned apple and perceives that it will be tart. The greenness of its skin is symbolic, to this person, of tartness. The effect is that, as a result of symbolic focus and awareness, the observations and actions that the eater will take are substantially changed (Burke 49). If they like tart apples, they will eat this apple. If they don't, they won't. The actual flavor of the apple has nothing to do with this decision.

The really interesting part about this situation is that it demonstrates that terministic screens not only change the way we perceive reality, but the way we affect (and effect) it. Our actions are just as symbolic as the color of the apple's skin, if not moreso. Let's say that the apple-eater likes tart apples, and chooses to eat the green apple because its skin is green. Because of the sampling of a specific symbol, they act, taking a bite out of the apple. That act is a correspondingly symbolic representation of the eater's enjoyment of tart apples, regardless of the flavor of this apple. Anyone observing the apple-eater who shares their symbolic association of green apples and tartness would take this action to mean that the eater likes to eat tart apples.
Neatly, this segues into a second quality—that symbolic action falls into two categories: identification and dissociation (Burke 49). A person observing the eater will either feel akin to the eater (if they too like tart apples) or different from them (if they do not). This kinship or division from the eater will inspire symbolic action in turn. Maybe the observer will comment that the apple looks good, or will ask how the eater can stand to eat such a tart fruit. An entire array of assumptions and actions are made in this case by several people based on nothing more than the color of an apple's skin as signifier of a quality which neither the eater or observer know anything about. The more eaters and observers you have, the more possible actions, reactions, interpretations, and understanding you will have, no two the same. Perhaps a second eater dislikes tart apples, while a third only likes them in pies. A fourth likes tart apples in the fall only, a fifth likes them but doesn't eat them anymore because doing so reminds them of a deceased loved one, with whom they used to eat green apples. The possible permutations are endless, because "there are as many different world views in human history as there are people" (Language 52). And still, none of these have anything to do with the real flavor of the apple itself, or the fact that the same thing can taste different to different people!

What's really happening here in all cases is that our eater's terministic screen has selected a particular symbolic association—that of green apple skin and tart flavor—and deflected another possible meaning—that green apples are sometimes sweet—and the eater's actions reflect an array of further symbolic meaning out into the world, where others, as well as the eater him- or herself, will take their action to mean something. Nowhere in this discussion is any sense of objective reality. Nor can there be. Terministic screens demand that we admit that all reality is subjective because it can only be perceived, considered, and acted upon subjectively. There may
be, in a Platonic sense, an actual, physical green apple which is indeed tart that really exists in the real world. It might as well exist in the world of Platonic ideals, however, because we are all trapped in the cave of shadows, as it is not humanly possible to experience reality in an objective sense. Perception and consciousness restructure reality, in every way that matters.

Any sense of "objective" reality fractures endlessly when you acknowledge the function of terministic screens on discourse. My previous example of apples and eaters is an incredibly simplistic one, and I covered its possible symbolic permutations only in the briefest possible way; magnify the possible meanings, interpretations, actions, and reactions vastly now, because I turn to language. Language is symbolic. This is a given; there's no reason that the word "apple" needs to signify a fruit any more than it needs to signify a small furred mammal or a burning ball of gas in space. It signifies fruit because, in English, we have collectively and implicitly agreed that the particular sound and appearance of the word "apple" means "fruit" by speaking the language.

The problem here is that language is a symbol only tenuously tethered to reality—even subjective reality. When I say "apple," what do you think of? Green or red? Large or small? Sweet or tart? A particular variety or a kind of apple in general? I think of the Fuji apple, which can be large or small, green or red, but is always sweet. Few of you would have done the same. Perform the same exercise with "apple-eater," from earlier. Is your image male or female? Tall or short? Fat or thin? How about "observer?" "Pie?" "Tree?" The symbolic association that each person has for each and every word in each and every language that they speak is idiosyncratic, its meaning is only known to a single person. It's a miracle that we can understand each other at all.
And yet, we can. If I say "Go eat an apple," and you go and eat an apple, we have understood each other. You have done what I wanted, and understood that I wanted it. If what Burke says about the incredible ambiguity of human perception is true, how can it be that human interaction is so easy, so natural, so straightforward? In one sense, you could say that it isn't; misunderstandings are common—constant—and a large part of language use is clarifying the intended meaning of previous language use. Burke would agree with you; such disconnects are why he sought out terministic screens in the first place (Language 45). On the other hand, you could also say that human interaction is so natural because our terministic screens are not immutable, and because human cognition allows for symbolic flexibility. Burke would agree with you here as well; certain things, or the perception of them, prime you to see and understand one idea rather than another (Burke 45).

Imagine I said, "Go eat that apple over there," while pointing at a small pile of different apples. The natural conversational response would be, "Which one?" to which I would reply, "The green one on the top." You could then go and eat the apple I indicated, because you and I have similar symbolic associations for what 'green' and 'top' mean in this context. The symbolic significance of any of these words, or even all of them, are dependent on context. If you and I were both soldiers in a battle, "The green one at the top" could easily refer to a new recruit at the front of a column of infantry. If we were bibliophiles, I might be referring to a book listed in green text at the beginning of a list.

Burke argues that terministic screens direct a person's attention, and it's a fair argument (Language 45). I think, though, that it would be just as accurate and perhaps more useful to say that a person's terministic screen is at least partially situational, in the Bitzerian sense. The
context that a person perceives, real or imagined, affects the way that their terministic screen reflects, deflects, and selects parts of reality. In essence, I think what Burke thinks—that terministic perception is inherently recursive, in that one perception/interpretation begets more, which branch outward from it and incite symbolic action in turn—only I find it especially useful to anchor that recursion in perceived reality. A soccer hooligan behaves differently at a pub than he or she does at a game. A scholar argues for and defends his or her arguments differently in person than they do on paper. An apple-eater eats different apples based on whether he or she wants a sweet or tart apple. All action, all language, is symbolic and contextual.

**Terministic Screens and Final Utterance**

When we turn this understanding to the last words of the condemned, I think that we have to acknowledge that perception, in the Burkean terministic sense, is crucially important to the composition process. When a person is strapped to a gurney and an I.V. inserted into their arm, and asked if they wish to say any last words, how they perceive the symbolic array of their entire lives to that point—from their trial, to their conviction and appeals, to the people they see in the audience and the opinions that they hold (and think that the audience members hold) — everything contributes to that moment of speaking. By the same token, however, it is the condemned's symbolic perception of these things, as filtered through their terministic screens, that are what actually matter, not any supposedly 'objective' reality.

Terministic screens are an essential addendum to a real and functioning understanding of Bitzerian situational rhetoric, because any reading of Bitzer that does not acknowledge human subjectivity and its essential role in the perception of imperfection in the world is a misreading of
Bitzer. Humans are subjective. Hence, their perceptions cannot be anything but subjective. When we talk about situational rhetoric, we have to talk about our differing perceptions of a rhetorical situation. This is why, as so often happens in contemporary politics, two equally well-meaning people can look at the same problem and argue vehemently for radically different, sometimes opposing, remedies.

Therefore, when a condemned man or woman enters the death chamber, what they perceive in that time and place is strongly—maybe essentially—influenced by what they perceive to be the most important or urgent part of their lives, and of the lives of others. Their personal philosophy or religion may prime them for certain perceptions of reality. The presence or absence of a particular person, such as a priest, in the audience may emphasize this perception even more sharply. The presence of the victim's family may emphasize the condemned's desire to apologize for their actions—if they recognize the family of the victim, and if they are genuinely guilty of the crime they've been condemned for. Any of these may inspire an opposite reaction for the same reasons.

Bitzer discusses the perception and misperception of the rhetorical situation—particularly exigence—"by the rhetor or other persons in the situation," and claims that the nature of that perception, be it accurate of erroneous, trivial or important, and even real or unreal, is central to the formulation of utterance (Bitzer 7). It can even preclude utterance. I don't think that Bitzer is wrong here, but at the same time I think that he's missed something important. A rhetor's perception of a given rhetorical situation is embedded in the nature and idiosyncrasies of their perception. Their terministic screen selects certain meanings, and it deflects others, and what it
selects keys to their perception of the exigence itself. Take, for instance, Ricky Lee Sanderson's final utterance:

    Yeah, about the last meal I do. I didn't take that because I have very strong convictions about abortion and with 33 million babies that have been aborted in this country, died for no reason, I'm dying for a deed I did and I deserve death for it and I'm glad Christ forgave me. Those babies never got a first meal and that's why I didn't take the last in their memory. I'm just thankful God has been gracious to me. That's it.

In a Bitzerian sense, Sanderson has wildly misinterpreted the exigence of his final statement. While the subject of abortion is certainly not trivial, it is also not appropriate to the objective exigence that Sanderson was faced with. Burke explains why: Sanderson's interpretation of his own execution symbolically linked, in his mind, his death to the abortion of millions of fetuses. To someone of Sanderson's political ideology, there is a sort of like-to-like metaphorical comparison here, and Sanderson attempts to emphasize it through his refusal of a final meal.

    The reason that Sanderson's statement seems so odd, in its place, is that it is a rhetorical non sequiter, an argument without a referent. Sanderson felt passionately that abortion ought to be illegal, and so overwhelming was his perception that every exigence became an exigence to speak on it. In a Bitzerian sense, his ability to respond to the real exigence he faced was constrained by his political ideology. In a Burkean sense, his symbolic association of abortion with death was so strong that it overwhelmed any other symbolic association. Both descriptions are correct; Bitzer comments on Sanderson's statement from a macro, top-down perspective, while Burke's examines it from a micro, bottom-up perspective. Used carefully, the two theories are complementary.

45 In another sense, the situation that Sanderson perceived was vastly different from the one everyone else perceived, and so his response seems inappropriate to everyone but him.
This odd marriage of Burke to Bitzer allows us to examine several factors in intimate detail in a way that simple Bitzerian criticism does not. As I demonstrated above, terministic screens help uncover what a rhetor's perceived exigence was, after the fact. It allows us to explain and understand rhetorical misperception in a systematic way. It emphasizes the recursive interaction so frequent and inherent in a deep examination of exigence, audience, and constraints. It allows us to describe that recursive interaction without attempting to disentangle its component parts, thereby distorting them.

But Burke benefits as much from Bitzer and Bitzer does from Burke. Burke's first theorization on terministic screens in *Language as Symbolic Action* ends with a fizzle and a poem; he offers a gloomy and a happy route of interpretation for how his terministic screens direct human motivation, but is unable, it seems, to conclude his theory in any way but with ambiguity. He's become lost in the depths and extents of his own theory, and fairly so—if we can't understand human symbolic action in a systematic way, much less language, how can we possibly understand human motivation (*Language* 54-5)? Burke retreats from this question, and investigates language more broadly for the remainder of the book.

Bitzer, however, provides a systematic answer by anchoring the whole mess in context. The rhetorical situation is shared, and its perception, misperception, and modification is a cooperative act. What the rhetor perceives the situation to be shapes their continuing perceptions, as well as their rhetorical action. Better, Burke supplements Bitzer by expanding the scope of rhetoric, and therefore the scope of possible rhetorical action, to encompass all symbolic action, not just speech, because speaking is simply one kind of symbolic act. *Any*
symbolic act can be rhetorical.\textsuperscript{46} The choice to speak, or to remain silent, is itself a symbolic act. A defiant silence is as rhetorical as an impassioned speech; this is of particular importance here, as at least 164 men and women have refused to issue a final statement since 1985.

**Conclusions**

I use bits and pieces of others' theories where they are important, but always in the context of Bitzer, Burke, and Devitt, and always with the understanding that the rhetoric that we're examining is fundamentally and essentially situational\textsuperscript{47} in its nature. I acknowledge that I am pushing the boundaries of Bitzerian situation by marrying him to Burke, and that I am recasting Burke's ideas in a far more pragmatic light than he probably would have been comfortable with. Nevertheless, the two work together in important ways.

I also think that there is probably more work to be done here, by reconciling some disparate modern theories of rhetoric. As a discipline, we've been fragmenting theoretically for some time now, and it seems to me that there are many more fundamental similarities than there are fundamental differences between the many theoretical models that have been robustly vetted at this point. That is work for another day, however, and another project.

\textsuperscript{46} Many have made this argument by increments. Visual rhetoric has been a settled subfield for some time, and digital rhetoric has become the darling child which enchants many, as two prime examples. Many smaller examples are obvious, for those who look: we have generic rhetoric, the rhetoric of silence, and even the rhetoric idiosyncratic to video games.

\textsuperscript{47} And therefore pragmatic.
"You m------ f------ haven't paid attention to what I've said over the past twenty-two and a half years. Why are you going to pay attention now?"

Richard Wade Cooey II, executed by lethal injection on November 11\textsuperscript{th}, 2008, at the Mansfield Correctional Institution.

Probably the most fundamental problem when one embarks upon a project of this nature is that it rests wholly upon work done by others. I was not present at any of the executions which I will discuss, and nor would I wish to have been. As a result, the quality of this work relies upon the quality of the work which others—generally, state employees and private reporters—have done. As such, before I proceed any further, I want to discuss in detail the modern manifestation of something I've mentioned before several times.

The integrity of records is incredibly important to researchers, but they are also hugely important in the shape, development, and context of public discourse on the death penalty. What is known, in short, is what is spoken of. The problem here is that what is spoken of often has no relationship whatsoever to what actually occurred; to demonstrate this fact, I'd like to examine the last statement of Earl Richmond, Jr., executed in North Carolina on May 6\textsuperscript{th}, 2006.

The execution was not remarkable, and was reported by several news organizations. The \textit{Philadelphia Inquirer} declined to reproduce his final statement in any form, instead characterizing Richmond through his trial defense, where they note "He contended he was legally insane at the time he killed Nadeau [the first victim], and he contended he was too drunk and high to bear responsibility for the Hayes killings" (Avril NP). The \textit{Free Republic}, a

\footnote{48 I have preserved Cooey’s last words as they are recorded by the State.}
conservative online news aggregator, reported that Richmond's final words were "'I am a new man, not in the eyes of man, but in the eyes of our creator,' Richmond said in a handwritten statement distributed after his death. 'I am free'" (Holmes NP). A CNN retrospective of several executions in 2007 noted Richmond's final words as being, "I lived as if I were going to be executed. That left me well-prepared. I took four people's lives; I'm man enough to give mine" (CNN NP). The *Independent Weekly*, a local weekly newspaper which also distributes its work online, had more to say than most: "'My actions have crushed the dreams and hearts of many families,' Richmond said. 'My heart cries out to heal your pain and suffering. It is my wish and prayer that my death will release you from the torment and pain that has accompanied you since the time of your losses. I understand why you hate me. It is not my wish to ask you to forgive because that would be selfish. God is well aware of my sins and shortcomings and how much of a hurdle they have been in my life. I realized that I have caused pain and suffering to those I love. God has changed my heart, my mind and my spirit which has multiplied my contrition. May God comfort you all'" (O'Neill NP). Unless there have been as many Earl Richmond, Juniors executed in North Carolina as there are accounts of his final statements, we have a rather clear problem with the provenance of his last words.

While the *Independent Weekly* is far truer to reality than the vast majority of those who reported on Richmond's final statements, it is by no means either comprehensive or truly representative. Depending on which news source you prefer, Richmond may have been speaking from a position of deep regret and spiritual absolution (in the case of the *Independent Weekly*), practical regret (in CNN's case), fundamentally religious fervor (from the *New Republic*'s perspective), or simply as an evil, unrepentant monster (according to the *Philadelphia Inquirer*).
In reality, none of these is an accurate representation of Earl Richmond, Jr.'s final words, which I have reproduced here in their entirety:

**SPOKEN:** At this time, I'd like to extend my deepest sympathy to all the victims' families and their loved ones. I'd like to say that I'm not a man that shies away from his responsibilities. I'd like to say that I hope that now, through my death, that y'all can move forward with your lives. Thank you and God bless.

**WRITTEN:** I would like to extend my deepest apologies to the Hayes, Stewart, and Nadeau, Family's (sp)! My actions have crushed the dreams and hearts of many family's (sp). I am not a man of irresponsibility; and my heart cries out to heal your pain and suffering. It is my wish and prayer, that my death will release you from the torment and pain that has accompanied you since the time of your losses. Carnality has lead me to believe that your hearts hold hatred in regards to me. I am an understanding man; and I understand your position. It is not my wishes (sp) to ask you to forgive me; for that would only demonstrate selfishness; however, my prayer for you is that you are able to overcome your bitterness, and move forward with your lives. God is well aware of my sins and shortcomings, and how much of a hurdle they have been in my life. I have not been idle in the pain and suffering I have brought upon myself and thows (sp) I love. God has changed my heart, mind, and spirit, which has multiplied my contrition as it pertains to what I've done. I have decided not to die in this state. I have asked for the one who loves me unconditionally (Jesus) to remove all the impurities from my heart; and that transaction has taken form. I am a new man, not in the eyes of man; but in the eyes of our creator. I am free! It is my prayer for any, as well as everyone, that I have caused discord and anger to be able to be free as well; free of pain; free of longsuffering; free of the void caused by the loss of your loved ones absents (sp). May God comfort you all, till the time of your rest.

In many ways, Richmond's last words are all of the things that the various reporting agencies represented them to be, with the exception of the *Philadelphia Inquirer,* but none of them fairly represent of what Richmond actually said and did. Richmond instructed his attorneys to withdraw all of his remaining appeals, and instructed both them and his family to not make any statements to any news organizations in the months leading up to his execution, because he decided that these actions would hurt the families of his victims even more than he'd

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49 The reasons for these discrepancies are complex, often political, and are in part the subject of Chapter 5.
hurt them already. He specifically instructed both his lawyers and his family not to take any action which could be construed to be building sympathy for him in any way, moreover, because he neither wanted a commutation nor thought that one would be appropriate. The context of Richmond's last words is rather more nuanced than the reporting on it would lead a reasonable person to believe. Now, I take no issue here with the fact that reporting, by its nature, presents an excerpted version of events. I am concerned, however, that the version which is typically presented bears so little resemblance to what actually happened.

While Richmond's final words are spiritual in places, pragmatic in others, deeply regretful in many, they are ultimately surprisingly kind. He spares few words for himself, and overtly rejects the possibility that he might be seeking forgiveness. Instead, he takes explicit responsibility for his actions and does what he can, rhetorically, to repair some small part of the damage he caused. Such a rhetorical move is remarkable, nuanced, and does not fit neatly into the way that the public thinks that final statements ought to be categorized; it is neither a simple acceptance of his fate nor a rejection of social mores, but a full-throated embracing thereof. If we accept Richmond's final words, we cannot consider him to be the monster that Gacy's last words exemplify, certainly, but he's even more sympathetic than a simple confession or apology would make a typical condemned man or woman out to be. He is exemplary in his last moments, the sort of person whose example a typical person would want to live up to. The idea of a condemned murderer becoming a paragon of virtue, well beyond the level which we might expect of even the best men and women, is jarring. It violates our generic, situational expectations, because no condemned person should be nobler than those executing him. Richmond's words do not fit, as they were delivered. Little wonder that they were parted out.
On the other hand, given how aggressively his statement was cherry-picked by various news organizations eager for a pithy bit of single-sentence validation for their and their readers' political views, it's quite clear that we can't possibly rely on modern newspaper reporting if this project is to represent reality in any meaningful way. News organizations seek out bombast and pith in their reporting; this should come as no surprise to anyone. The result, as we have seen for as long as we have newspaper records, is a persistent misrepresentation of the final words of the condemned in the interest of brevity, circulation, and politics. I do not condemn this editorialization—far from it, as the bulk of my final chapter is devoted to examining how all this happens—but we need to examine the final statements of the condemned in as close a form to the actual moment of utterance as is possible if we want to understand them as they truly are. The space between original utterance and representation is itself rhetorical, and without a separation of terms, we cannot examine it. And the nature of these misrepresentations? They are as varied as the news outlets themselves. Sometimes the story of an execution is made into a human interest piece, sometimes a political smear, sometimes a pity play, and these are only a few examples. The simple truth is that the rhetorical situation which reporters address is substantially different than is the rhetorical situation which the man or woman they're writing about faced; as a result, their rhetoric will certainly be different.

Thus, what remains is governmental records—where they exist, and where they are accessible.\textsuperscript{50}

\textsuperscript{50}While governmental records are by no means perfect—I could point to dozens of clearly incomplete or edited final statements in official recordkeeping here—they err less frequently and to much smaller degrees than do any other record available to us. As long as we're trying to understand the words in the chamber, so to speak, governmental records are by a fair margin the best resource we have.
The Grim Reality of Government Records

From January 1st, 1985 to January 16th, 2013, 1,292 men and women were executed in America. Of these, by law, only newspaper records of the condemned's final statements exist for 14 of these cases, 3 are restricted by court order, the distribution of 6 are restricted by law, 238 are from states which refused my repeated attempts to obtain official records, thus effectively removing them from any possibility of consideration, and no official record whatsoever—by law—exists for 323 of these cases. This includes the federal government, which maintains no records whatsoever of the final words of the men and women it's executed; an odd stance, given as that only represents three people in twenty-eight years. In short, in 584 cases—nearly half of all executions in this time period—official records of final statements are utterly unobtainable.

Many of the refusals came from the most frequent executors, such as Florida, Arkansas, Georgia, Missouri, Louisiana, South Carolina, and Oklahoma, which is by far the highest per capita executor in the United States. Even my home state of Illinois refused to even acknowledge repeated requests for information.

In total, 22 states and the federal government maintain no official records of the final words of those they execute; several states, such as Indiana, maintain occasional official records, but not thorough or complete ones. Only 34 states have performed an execution in our time period; as a result, records of the last words of the executed are obtainable in only about a third of the states that have conducted an execution. A formal, statistical examination of the data, paying attention to type of utterance, demographic data, is therefore impossible, as any resultant analysis would have an extreme geographic skew because of Texas' 488 executions among the 708 total final statements which are obtainable. While this skew is not unexpected, analyzing
data formally on the present set would exaggerate Texas' presence in the whole from 37.77% of all executions to 68.93% of all obtainable statements. Clearly, nothing useful could come from such a formal, traditional examination in this case. On the other hand, what we have and do not have can tell us quite a lot about the states themselves, and can illuminate the reasons for such a paucity of basic record-keeping.

Nebraska maintains records of the final statements of the three men it's executed since 1985 but, by law, restricts their distribution. The state requires a court order for the release of such records out of respect for both the victim's and the condemned's family. In this way, I am informed, the state seeks to allow the condemned to die with dignity, and allows them to communicate with relevant parties in an open and free manner, and thereby say what they really want to say.

Tennessee, too, maintains records of the final statements of the seven men it's executed, but those records are not considered public record in that state, and are therefore not eligible for general distribution. I was given no reason for this policy.

Indiana, by contrast, relies upon the news media to record, preserve, and report on the final statements of the fifteen men it has executed. The state considers news reporting—and by this, it generally means newspaper reporting—to be a sufficient archive of the last words of those it executes.

In total, therefore, only twenty-five men come from these three states; as a result of their small population and infrequent executions, it seems that Indiana, Tennessee, and Nebraska find it untroubling to maintain idiosyncratic data archival policies regarding last words. Truthfully,
those policies are not terribly significant in the larger scheme of our examination, as they collectively represent less than two percent of all American executions in this time period.

In the vast majority of those cases, the state simply maintains no official records whatsoever of the last words of those it executes, and does not consider the collection or preservation of that data to be a relevant concern. The states which do so, moreover, represent no small portion of total American executions; in total, these thirteen states comprise a quarter of all executions in America at this time, and they resist general categorization.

One group of states which maintain no record of final statements by law can be collectively characterized in a fairly unsurprising way: they are mid-sized states in the southern United States, are very conservative, and are fairly high per capita executors. These states, Alabama, Oklahoma, and Virginia, constitute the vast majority of the 323 cases where no official records are kept, totaling 265 executions between them. The remaining states which maintain no records are a fairly eclectic bunch, ranging in geographical location and political ideology from Delaware to Missouri to Washington. In general, though, these are not states which execute very many people; each of the ten which fall into this group is responsible for an average of only 5.2 executions over the nearly thirty years in question. Were we to exempt Missouri—the highest per capita executor in this subgroup, if still not a particularly frequent executor—and claim it as part of the group with Alabama, Oklahoma, and Virginia, that average would fall to a little less than four. While the United States federal government is not formally figured into these numbers, as it has only executed three people since 1985, it can comfortably be considered as part of the group too.
In general, where a state which does not keep records of the final words of those it executes, it does so for one of two reasons. In the first case, the state feels no political pressure to do so as a result of widespread state-level support for capital punishment. There is no particular need for anyone to defend the practice or to prove to any of their constituencies that the condemned are treated in a humane or dignified way, so no effort is made. In the other case, executions are so infrequent that the issue simply has not become ripe. If you only execute a person once every five to seven years, on average, there is no particularly compelling need to have a law regarding the preservation of their final statements, given the cost and effort which would be involved in the crafting and implementation of such a law. In either case, there is no exigence which a political rhetor perceives as compelling, in a Bitzerian sense. This may change, or not.

The final 257 executions of which this project has no record are represented by a fairly small group of states which are, for the most part, strikingly similar. Arizona, Arkansas, Florida, Georgia, Illinois, and South Carolina are all states with moderate populations in which capital punishment has been a matter of contention. Illinois, for example, is a strongly liberal state with fairly substantial cross-party support for the death penalty. Governors have struggled with it for almost two decades now, and a gubernatorial moratorium now stands on the death penalty—though it remains on the books.

Florida, Georgia, and South Carolina are so-called "purple" states, politically, but the political divide in those states is extraordinarily sharp, with large, generally rural, sections of each state strongly in favor of capital punishment, and equally large, generally urban, sections of each strongly opposed to it.
While we have two general categories of states which do not respond to records requests—those which keep no records as a matter of public policy and those which do their best to avoid controversy of any sort in the matter—there remain two states which don't neatly fit into either group: Louisiana and Oregon. Oregon is a very liberal state, and it has only executed two people in the last twenty-eight years. I don't imagine that the state gets frequent requests for these records, and as a result I suspect that Oregon may in fact simply be a part of the previously described group of states which keep no execution records largely as a result of extremely infrequent implementation of the death penalty. Perhaps some state employees wouldn't be sure how to respond to formal records request—or, even, who to forward such a request to. By the same token, I suspect that Louisiana also does not retain records of the last words of those it executes, because politicians there see no particularly pressing need to create records of a practice which is overwhelmingly popular, and which their opponents might use against them. If this is the case, it's likely that state employees there simply elected to ignore a records request that they could not fulfill rather than waste state resources drafting and mailing a formal response.

What all of these gaps boil down to is political expediency. The records are not collected or maintained because there is no pressing need, in almost all of these cases, for the state to defend its execution practices. Those few that simply refuse to disclose avoid the question for the opposite reason; any movement on capital punishment, even tiny and largely irrelevant movement, has the potential to torpedo a politician's or an official's career.
Obtaining the Corpus

The statements that this project has been able to access, while not demographically or geographically diverse enough to sustain a proper data analysis, are rich in human experience which reflects their origins; as such, there is quite a lot to learn.

Of the 709 statements, 488 come from Texas, a state truly remarkable for its documentation and presentation of the final statements of those it executes. The State Department of Criminal Justice maintains a searchable, comprehensive online database of not only the final statements of every man and woman it's executed since Texas resumed executions in 1982, but also those individuals' full demographic, biographical, and biological information, and even historical data about the convict and the crime(s) that (s)he was convicted of. This database represents, by far, the most complete and accessible archive of its kind in the nation. For the most part, this information is presented in a straightforward, matter-of-fact way. Convicts' final statements are sectioned off from their biographical data and are generally presented in an extraordinarily neutral manner. These days, the state employs translators to capture the meaning of statements not made in English though, historically, there have been some notable problems in the state with regards to this.

The mere existence of this website has been the inspiration for a variety of derivative works, many of which are political or sensationalistic. While a proper discussion of these

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51 I could say a lot about why, specifically, performing a traditional quantitative data analysis on the corpus would be unproductive, touching on regional culture, minority composition, the varying state-level legal landscape, and so forth, but in the end it all boils down to Texas. Because we have the largest executor by volume included in the corpus, but not the largest per capita, because the states we do have are not representationally distributed across the nation, and because of many of the things, like regional culture and a high Latino population, which make Texas unique, a strong data analysis would give a deeply biased picture of the corpus as a whole. Basic statistical analysis, focusing on proportions, distribution, and change over time, will help us understand what data is available to us without implying more than there is.
derivatives is premature here, it's worth noting that they run the gamut from anonymous blogs to full-color archivals, portraiture included, by the *New York Times*. To say the very least, the rhetorical impact of the Texas DOCJ’s website is fascinating.

What the Texas' Department of Criminal Justice (TDoCJ) archival site does right is simple but profound: it is accessible. The website can be quickly found by those looking for the data it preserves. It presents that data in a straightforward way. The data is archived simply, and can be accessed readily by people with developmental, visual, or mobility disabilities. It presents the data in a visual context which is somber and respectful, and which thereby reinforces the rhetorical impact of the page at large. It makes no attempt to hide or disguise what the website is about, or what the TDoCJ does.

Those with little experience in technical or professional writing might assume all this; after all, good writing ought to be the goal of publicly accessible government records. In reality, readily accessible recordkeeping on this subject is as rare as hen's teeth in America; were it not for the TDoCJ website, such records would be functionally nonexistent. The scope of that reality merits a moment's consideration, given the number of people we execute every year and how thoroughly inaccessible most records of this nature are.

Despite the Department's laudable accomplishments with this website, serious problems remain with the website and the way that it presents information about the convicts it archives. Of greatest concern to this project, the TDoCJ seems to have had significant and pervasive issues in the past obtaining accurate and complete translations of the final statements which its convicts have given. Consider Patrick Rogers' last words, given in 1997:

Yes, I would like to praise Allah and I am praying to Allah. Allah is most gracious. I will ask Allah for forgiveness because he created me and he will forgive me. All of the
brothers on the row stay strong. (Some words about Allah that I couldn’t understand.) I love my family, my mother. I will see her sooner or later. Life goes on. Don’t let these people break (couldn’t understand) you. Keep true to nature. You do not have to act like them. Rise above it. (couldn’t understand) Praise Allah – (some more Allah mumbling).

Emphasis mine. Aside from the rather disturbing lack of basic respect that the archivist in this case has given to the largest religion in the world, it seems that the TDoCJ made no real effort in this case to obtain either an archivist who understood Arabic, or a translator who could have assisted the archivist on duty. What’s worse, this was not the only time that this occurred.

Contrast the treatment of Patrick Rogers’ words with Delbert Teague, Jr.’s final statement, given a year later:

I have come here today to die, not make speeches. Today is a good day for dying. Est Sularus Oth Mithas (My Honor Is My Life).

Again, emphasis mine. If you do not recognize the language in the bolded section here, you shouldn’t be surprised, because it’s fictional, a non-existent language invented piecemeal in the mid-1980’s for the Dragonlance series of fantasy novels. In short, the TDoCJ, in the mid-1990s, went to the trouble of finding a translation for an entirely fictional language, but not for a statement delivered in Arabic by a Muslim convict.

By the same token, the biographical and criminological statements archived in the TDoCJ website are clearly invested in defending the rhetorical ethos and political legitimacy of the Department, as well as the practice of execution in general, as all biographical and historical statements assume the guilt of the condemned in as dire and aggressive terms as possible. Delbert Teague, Jr.’s biographical note on the TDoCJ website is as good an illustration of this as any:
Convicted in the April 1985 robbery-slaying of 21-year-old Kevin Leroy Allen at a park near Fort Worth. Allen, a Fort Worth resident, was one of three men shot at Marion Sansom Park after Teague and accomplice Robin Scott Partine robbed Thomas Emmitt Cox (DOB: 4-12-63) and his date, an 18-year-old white female, at gunpoint. Cox had run over to the men's vehicle to ask for help when Teague and Partine robbed the couple of about $80 and then started to leave the park overlooking Lake Worth with the woman. At this point, Teague pulled up behind the men in the stolen pickup he was driving and shot each in the head with a .22 caliber pistol. Allen died at a local hospital of two gunshot wounds to the head. David Suson (DOB: 1-7-53) and James Bell (DOB: 10-20-54) recovered from head and facial wounds. Following the shootings, Cox's date (DOB: 12-20-66) was kidnapped and sexually assaulted by Teague and Partine. The two were arrested the following day after the woman was able to leave a note asking for help in a service station restroom near Ramah, Louisiana.

Thus, while the site is mostly fair and straightforward in its representation of most aspects of the lives and deaths of its convicts, it still responds to a clear rhetorical need to defend execution practices of the TDoCJ, despite the fact that Texas supports capital punishment overwhelmingly.

Given the sheer number of people which Texas executes, we should not be terribly surprised by this response to the rhetorical exigence which Texas faces. As the leading executor in the nation, Texas faces criticism of its practices which may not be entirely proportional to its conduct. One of the more recent, yet well-known, criticisms of the TDoCJ was made recently as a joke by Ron White, a comedian who has gained widespread notoriety of late. His summation of Texas' policy is pithy and, damningly, fairly reflective of what most people think of when they think of executions in Texas:

Other states are trying to abolish the death penalty. [Texas is] putting in an express lane.

Texas is a rhetorical lightning rod for general criticism of capital punishment, based simply on the sheer number of people it executes, even though this totally discounts the fact that Texas is one of the largest and most populous states in the union, and moreover it ignores the fact that Delaware and Virginia's execution rates are very similar to Texas'. In particular, it misses the
fact that Oklahoma's per capita execution rate is almost double Texas'. Gross numbers, though, much like White's criticism of Texas' execution practices, are simply pithier, so the public tends to focus its attention there instead.

Records were obtainable for ten states other than Texas, and constitute a total of 219 executions after 1985. Proceeding alphabetically, California represents thirteen of these, Connecticut one, Delaware sixteen, Indiana nineteen, Missouri seventy-one, Montana three, North Carolina forty-one, Ohio forty-nine, Pennsylvania three, and South Dakota a final three. As should be immediately and obviously apparent, the rates at which these states execute felons does not correlate in any way to their population at large; were this so, California would lead the nation with around seven hundred executions. Instead, the state has put only thirteen to death. There is a notable correlation to race and sex amongst these states, as amongst all; minorities—particularly African and Latin Americans—and men are many times more likely to be executed than Caucasian Americans and women, respectively. While we looked at this in some detail earlier, it bears repeating here because one would expect peoples' final statements to reflect the region, culture, and social groups with which they identify.52

The records supplied by these states, however, have widely varying origins. California, for instance, maintains an online database filled with information about the men it has executed which is not unlike Texas', despite the two states' massive difference in scale and need. This information, however, is not easy to find on the California Department of Justice's website; it is not well indexed for access through a search engine, and the page is thoroughly buried in the CDoJ website, which would make it essentially impossible for most to find. By contrast, the

52 Interestingly, though, they generally don't.
Texas Department of Criminal Justice's website is so well-indexed that it presents as the first search result in many searches for California's archive.

All other states which maintain records and made them available at the time of writing do so by an old-fashioned system in which those records are provided only in writing, and only when directly requested by mail in a formal documents release request. There are a few fairly clear reasons for this, and many of them are innocuous; the simplest, for instance, is that the law restricts the ability of state employees to do otherwise. Other reasons run the gamut, from budgetary restrictions which preclude or delay necessary upgrades in information storage technology to antiquated archival techniques. The retention of such outmoded means of public records access in an age of inexpensive and readily accessible digital data storage is interesting, when the digitization of state documents would pay for itself in significantly improved productivity in fairly short order, but it is an issue which is fairly complex in its own right, and is tangential to our aim besides.

**Technical Documentation and the Ethics of Public Records**

So, we can obtain the records for the final statements given by executed felons for only a bare majority of executions performed since 1985—and only that as a result of Texas' impressive and uncommon archival efforts—and for a strict minority of states which have performed executions in this timeframe. Before we proceed further, the obvious question really ought to be asked: *how can this be?* The practice of execution in America has been a very hotly controversial practice for over a century, yet relatively few states make the public records of their executions available to the public.
Let's set aside the cases where the state relies, by law, on the news media to report on what happens in the death chamber, and let's also set aside those few states which maintain records but which restrict their distribution by law, as protected First Amendment speech\(^{53}\). We are left with a large number of states which keep records by law but which seem to simply ignore any request for their distribution. We also have a majority of cooperating states which maintain records and make them available upon receipt of a written request, but which do not make those records publically available in any other way. And, finally, we have the odd counterpoints which Texas and California present us with: two fundamentally identical in theory, but axially different in practice. One can be readily found, searched, and interacted with. The other is a virtual ghost.

Such deliberate obfuscation is certainly within the scope of traditional rhetorical criticism, but technical communication has something of a sharper focus when we consider this problem. One of the more important ideas in the crafting of technical documentation is the concept of compliance; the term simply indicates that a given presentation of information results in a user's obedience to instructions, warnings, or what have you. Strict compliance is a parallel concept of essential importance here, as it describes not the user's compliance to a documented instruction or warning, but of a writer's compliance to only the most strict, legalistically interpreted version of what a given instruction could be. In essence, a technical writer who is complying strictly with his or her instructions is fulfilling the contractual terms of what

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\(^{53}\) Statements that are restricted in this way are still rhetorical, in a limited way, but considering them on their own is both difficult and unproductive. Because they are not reported to or propagated amongst the public, restricted final statements have functionally no rhetorical impact beyond the condemned's immediate audience. We can, as such, understand them in our primary quantitative and qualitative examination just like any other final statement, without any need for special treatment.
absolutely must be present in a given document for that document to be in compliance with the law and nothing more whatsoever.

It is at this point that a discussion of ethics must intrude upon an otherwise-quantitative section of the work, because an ethical quandary is presented to us. Best practices in technical writing—and all writing done by the government for public consumption is a form of technical writing—dictate that a writer's foremost concern must always be his or her users, and that any documentation should be designed in such a way that the information it presents is easily accessible, readily usable and, where applicable, any warnings or risks are clearly and unambiguously understood. We've all opened some new gewgaw, be it a bookcase, a computer, a smartphone, or a whiteboard marker, and have seen a tissue-thin sheet of cramped black-and-white block writing flutter out of the box, its text so small as to be nigh-unreadable and, in those cases where the text can be read, the writing is so deliberately ambiguous that it's entirely unhelpful. Such documentation is an example of strict compliance in technical writing, and it is utterly and totally ethically bankrupt. It should be looked upon as an effort of nothing more than an attempt to shield a person or organization from the legal ramifications of their actions.

54 I confess that this is problematic in the context of a Burkean or Bitzerian reading of final statements, as each theorist is more interested in describing than characterizing rhetorical discourse (Burke, in point of fact, condemns such characterization explicitly!). The final statements of the condemned do not exist in a vacuum, however, and a thorough consideration of their whole context must inevitably touch on ethics. Better to simply do so from the beginning.

55 Stephen H. Unger's Controlling Technology is an older but excellent examination of how engineers ought to communicate technical issues ethically, which has seen use in the field of technical writing of late. In particular, he speaks in depth about the ethical responsibilities which governmental organizations, and their technical communicators, in the context of legal requirements is of considerable value to our records problem here. To paraphrase from his discussion of the communication problems which led up to the Challenger disaster, small communication problems sometimes have large consequences; hence, it is the duty of an ethical communicator in public service to protect the public's potential needs, rather than bow to the political concerns of his or her superiors, because it protects us from those edge cases where everything goes wrong at once.
That said, why, does it seem, that the vast majority of states in question are creating, archiving, and disseminating records in only the strictest compliance with the law? It would be paranoid to assume that hundreds of state employees spread across about two dozen states are collectively acting in a deliberately malicious way, forming some kind of bizarre patchwork conspiracy which stretches from the ranks of the wardens to simple records clerks. No, the fault here is not and cannot be malicious in nature—at least, not generally so. Rather, it seems likely that state employees are acting in self-defense, as capital punishment is a politically charged issue in many states—sharply so, in many of those states that failed to provide their extant records—and that state employees recognize that one of the surest ways for them to lose their jobs is to go above and beyond the strictest requirements of the law. It's not hard to imagine that a political activist might request controversial records of any variety in a technically incorrect way and have that request be received by a state employee who recognized the intent behind the request and provided the records requested, instead of denying it on technical grounds. Then, predictably, the political activist starts some sort of political kerfuffle with the records (s)he now has, which embarrasses a politician, who uses the state employee's technical error to fire that employee. The necessary price of working for the state is proximity to state politics, and it shouldn't surprise us when people act to insulate themselves from the risks that come with such proximity.

So, in many ways, we've taken a circuitous route to arrive at the obvious destination: records problems in this case are largely political in nature. While this is thoroughly inconvenient, and precludes a serious quantitative study of the typologies of the final statements
of those who've been executed, those states which *have* responded allow us to explore the data we have in other ways.

But this begs an obvious question: why perform a quantitative analysis of rhetoric at all? After all, rhetorical discourse is qualitative by its very nature, as the central aim of any rhetoric is to change human perception of objective reality, in Bitzerian and Burkean terms. Quantitative analysis of the sort which I am about to begin is essential in a corpus of this size and scope for a few reasons. First, it is definitional; without an overview of what everybody actually said, generalization (of the sort that good qualitative work relies upon) must be entirely anchored in the perceptions of the examiner. If I am more interested in statements of affection than any other type, for instance, an unsupported qualitative analysis will tend toward focusing on that interest, regardless of its relationship to the whole. Second, quantitative analysis is directional; by identifying groups and relationships, or the lack thereof, it reveals where it is productive for us to spend time and effort on sustained analysis. Edge cases are often fascinating, but my aim here is to be representative. Without context, fair representation is impossible. Finally, quantitative analysis allows is constraining; it serves as a reality check against more outlandish or politically minded work, and forces focus on our continuing work.

**Those Who Say Nothing**

Before we discuss what the condemned say, it must be acknowledged that not all of them opt to give statements. Of the 706 final statements available to us in the corpus, 188 statements are effectively null—by this, I mean that the condemned remained silent when asked if (s)he had any last words. Generally, this is because the condemned refused either verbally or nonverbally
to give a statement; in a few others, the records of those statements have been lost, and either only news media records exist or, in a very few cases, no records exist whatsoever. If we exclude those outliers and focus only on those cases where we know affirmatively that a condemned man or woman had the opportunity to give a final statement, and that (s)he elected not to, our total corpus shrinks to 690, of which 172 are null. About one in four condemned men and women choose not to give a final statement. Two of these 172 were women, which roughly corresponds to their overall demographic cross section, given the very small sample size available here.

If we look at null statements as a factor of time, however, we get a fairly interesting result: as a trend, from 1985 to now, a higher percentage of executed felons are giving final statements, rather than remaining silent. Now, there are a few obvious skews to the data which might very well influence this: first, the late 1980's saw fewer people executed than would be condemned to die in later years. 1988, for instance, is a significant outlier, in that nobody executed that year gave a final statement. However, given a sample size of six for that year, this shouldn't be too surprising. If we were to excise 1985-1988 from the data sample, however, the same trend would remain, if slightly less pronounced.

The second skew to this data is the disproportionate representation of Texas therein. Simply put, the sociopolitical idiosyncrasies of any general dataset we derive here will be powerfully affected by the gravitational pull of Texas' several hundred entries. A set which considers Texas alone illustrates this fairly clearly, despite the relatively small difference between the main corpus and Texas alone. We can learn a few things from the disambiguation of these data points. First, it is fairly clear that geographical location has some small influence
on the likelihood of whether a given person will give a final statement. People executed in Texas are noticeably more likely, at any point in time in our dataset, to give a final statement than is the norm. The difference between that norm and Texas' rates is lowest in the late 1990's; the reason for this is that at that time, Texas comprised the substantial majority of all executions in the dataset. Despite this, the data reveals that Texas is still acting as a downward-pulling force on the overall set.

The other, and perhaps more significant, thing that we can learn from this data is that more and more people in all regions of America are giving final statements as time progresses; in the late 1980's, somewhere between 40-60% of the dataset gave no statement, depending on how one corrects for the small sample size skew at the beginning. In 2012, that rate was between 10-15%. This decline is substantial; Texas leads the drop in the rates of silence, but the dataset as a whole does not trail far behind. In any case, the obvious conclusion is inevitable: people executed today are many times more likely to give a final statement than were people executed two or three decades ago. Unfortunately, the nature of the data is such that it resists standard tests of statistical significance, as Fisher's perfect test requires a data-grid composition which is incompatible with the data, and the otherwise-standard Chi-square test is incompatible with the binary coding system which the data demands.

We can only speculate as to the causes of the decline in null statements, as we do not have the data we need to explain the increasing talkativeness of those in the death chamber. The likely candidate is our increasingly mediated and interconnected society; with the rise of the internet in the mid-1990s, people became more able to communicate in unconventional ways independent of the traditional gatekeepers of information. Similarly, the rise of the twenty-four
hour news network at the same time significantly increased the average person's access to current information. It would be fair to suppose that a condemned man or woman, aware of the increasingly mediated world around him- or herself, feels more confident that whatever final statement (s)he gives will be likely to be heard. On the other hand, this increase could also be explained by any number of other factors, such as shifting ethnic and cultural demographics, refinements in death chamber practice by execution crews, or simply by the ongoing nature of the debate on capital punishment. There's simply no way, given our current data, to say anything other than that people are speaking out more often at their own executions.

As the Texas data here demonstrates, there is likely a relationship between geographical region and likelihood of utterance, given the notability of Texas' difference to the mean, but that relationship is nowhere near significant given our dataset. To put things simply, once you start breaking out cases on a state-by-state basis, the numbers get too small for any quantitative analysis to give meaningful results; how could we say whether or not being executed Connecticut increases the likelihood that a person would give a final statement if only one person has been executed there in the last thirty years? Or Indiana, at five? Or, if we examine the data on a per capita basis, California, which has a rock-bottom low per-capita execution rate? And how could a meaningful comparison be made to Texas? The data's too dissimilar on a state-to-state basis for these comparisons to have meaning, and the dissimilarity I mentioned hinges on a host of other social, legal, and political factors which I cannot begin to disambiguate. Is there a relationship here? I think so. Can I say what that relationship is with any greater level of specificity? No. Can it be proven? Absolutely not.
One might expect there to be a correlation between age and a person's likelihood of making a final statement, but one does not, surprisingly, appear to exist. Now, this is not to say that there is not a correlation between age and the likelihood of a condemned man or woman speaking; unfortunately, there is a very strong cluster in the execution pool in which the young (those under thirty years of age) and the old (those over sixty) appear with considerable rarity. Within even that window, most of those who are executed are between forty and fifty years of age when the sentence is carried out; the result is a dataset which is too tightly clustered and with too few outliers for useful conclusions to be drawn between the age of the condemned and any statements that they might make.

Finally, it is certainly feasible that socioeconomic groupings, such as ethnicity or pre-incarceration income, might have some relationship to the likelihood with which a person speaks. Ethnicity—many use the word 'race' here—seems to have some relationship to the likelihood of utterance, but here we encounter the classic sociological statistics problem: humans are hard to predict, and finding strong relationships which predict their behavior with a reasonable degree of confidence are rare. Other studies have indicated that ethnicity plays little role in type of utterance, and given that those studies have been conducted in a way which has demonstrated statistical significance, albeit with a much smaller corpus and one which was geographically constrained, their evidence appears substantive.

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56 Johnson, Kanewske, and Barak have done some excellent new work based on the several extant studies in the scholarly domain in *Death Row Confinement and the Meaning of Last Words*. Of particular interest to us is, summarized there, Lester and Gunn's work, which Johnson et al. note that "researchers found that the similarities in last statements outweighed the differences," and, minor differences between groups aside, that "similarities across ethnic groups may speak to the equalizing influence of death row" (Jonson, Kanewske, and Barak, 143). Other work, in particular that done on one hand by Eaton and Theuer; and on the other by Rice, Dirks, and Exline, demonstrates the same, with slightly altered particular focuses. All of these studies, given their focused natures, were suitable for statistical analysis and have been found to be significant, to varying degrees of certainty.
I would expect also that pre-incarceration income would show a fairly similar relationship between a person's likelihood to speak and that person's ethnicity, given how strong the statistical correlation between ethnicity and socioeconomic class is in America generally. Unfortunately, no state maintains records of the pre-incarceration socioeconomic status of its condemned felons, which makes examination of this relationship impossible.

The Genres of Final Utterance

Final statements fall into a few genres, as responses to a recurring exigence which includes every final statement that a condemned rhetor knows that anyone else has ever made. Given the corpus available to us, we can make an attempt to understand what condemned men and women perceive to be their rhetorical exigence when they are about to die. First, however, we ought to discuss our terminology.

Final statements fall into genres. This is somewhat of a departure from previous considerations of final statements within the realm of rhetoric, English, or Speech Communication, which have mostly categorized all final statements as one genre with several subgenres. As it is important both to understand the terminology I will use for the rest of this project and to identify what makes each genre of final utterance distinct from any other, I will take a little time to illustrate my point.

57 Interestingly, scholars outside of those fields seem to declare different types of final utterance to be generically distinct immediately and almost without exception. Death Row Confinement and the Meaning of Last Words; Eaton and Theuer; and Rice, Dirks, and Exline all declare different final statement types to be distinct genres, for instance, though I do not agree with the genres that they identify.

58 I discuss the full features of each genre and subgenre in regular use by the condemned in much greater detail in a few pages.
Perhaps the most succinct definition of genre boundaries comes from Hartley, who claims that "genres are the agents of ideological closure - they limit the meaning-potential of a given text" (O'Sullivan et al., 128). In other words, a genre defines its audience and rhetorical potential in its own foundation; a romance novel and a sonnet are both meant to seduce, for instance, but major differences in audience, form, and execution between the two make each fundamentally distinct. With that in mind, the four primary genres I identify for this project are: *statements of affection*, where a condemned man or woman speaks to his or her friends and family in personal, loving terms; *statements of defiance*, in which the condemned rejects the state's right to execute for one reason or another; *statements of repentance*, in which the condemned apologizes for his or her actions, generally to the victim(s) of his crime; and *statements of spirituality*, in which the condemned invokes a divine presence—almost always Christian or Islamic in nature—in the hope of an afterlife.

It's easy to see why many see these categories as subgenres of a single, overarching genre of final utterance, as each is delivered by a rhetor in a very similar situation to the next, and because genre is itself a fuzzy concept, with no "rigid rules of inclusion or exclusion" (Gledhill 60). However, the differences between the four are much more fundamental, and center around Hartley's limitation of meaning-potential; when the rhetor declares his or her audience and rhetorical intent upon the gurney, (s)he fences off whole segments of the world as outside his or her purview.

Let's be a bit more concrete, though. A statement of affection is, at its most basic level, an attempt to reach out to friends and family and establish a human connection. Sometimes the rhetor comforts, and sometimes (s)he seeks comfort. Regardless, audience and rhetorical
function are clear. Compare that to statements of defiance, where the condemned rails against his or her execution, and declares to the public and to the state apparatus that the execution is illegitimate for one reason or another. Consider Rudy Esquivel's last words, a statement of affection, against those of Frank B. McFarland, who gave a statement of defiance:

"Goodbye to all my friends; be cool. Thank you for being my friends. Give my love to everybody," -Rudy Esquivel
"I owe no apologies for a crime I did not commit. Those who lied and fabricated evidence against me will have to answer for what they have done. I know in my heart what I did and I call upon the spirit of my ancestors and all of my people and I swear to them and now I am coming home," -Frank B. McFarland

The rhetorical function of each is not only clearly distinct, but so is the audience. McFarland, or any condemned man or woman who is making a defiant utterance is not speaking to his or her family, nor is Esquivel, or anyone making an affectionate utterance, speaking to the state. They lack many common formal features, in terms of modes of address, rhetorical function, They are as utterly different as a sonnet and a romance novel, to use our earlier example. They only look similar at a casual glance.

A rhetor may use one, several, or even all four possible genres, and may reject them all and give a much more idiosyncratic response. The theoretical underpinnings of this behavior were discussed in substantial detail earlier; to summarize that information in a somewhat pragmatic way, the invocation of a genre in a final statement generally helps the rhetor to focus his or her thoughts and appeal more directly to his or her audience, which is also aware of these generic categories and expects the condemned to speak using them. A rhetor's final statement generally goes awry when one of a few things happens: (s)he invokes an inappropriate genre, invokes no accepted genre, or attempts to fuse genres in an odd or unexpected way. Statements tend toward effectiveness—I use this term in a strictly evaluative way, hinging on the degree to
which the utterance has survived and propagated in the public mind—when a particularly appropriate genre is invoked, and when the rhetor's utterance speaks directly to his or her audience's expectations. John Wayne Gacy's last words, which are, ironically, not formally included in this study, are a prime example of this. The public saw him as a heartless, monstrous serial murderer who had no regard for the law, for other people, or for the sanctity of life itself. Thus, his last words—"Kiss my ass"—found a perfect rhetorical home in the expectations of his audience. We wanted him to be every bit the monster we all thought him to be when he was executed, and he delivered on that expectation.

Outliers, by which I mean non-generic statements, constitute about four percent of the total sample size; however, fully a third of those outliers are statements which are simple farewells and are, in a Bitzerian sense, clearly arhetorical. Another seven are direct quotations of media, be it television or poetry, and a further two are statements which are partially recognized in one of the four generic categories. In short, only eleven statements of 692, constituting 1.5% of the total corpus, are rhetorical utterances which speak outside of the standard modes.

The four genres are not mutually exclusive; in fact, some genres are almost always coupled to another genre. Statements of spirituality are a fine example of this; in 179 cases, a prisoner chose to invoke spirituality in his or her final moments, but 142 of those instances were coupled with another of the four genres. Other types seem to prohibit pairing except in very specific ways; only about half of all statements of defiance invoke another genre, the overwhelming majority of which are coupled with statements of affection. In essence, while there are four simple genres of utterance, these genres can interact to form, potentially, twenty-four subgenres. It is revealing that only six of these possible subgenres are invoked more than a
handful of times in nearly thirty years. Fully half of all possible combinations have *never* been invoked.

To be clear, for a statement to fall into one of these generic categories, it has to use that genre as a clear, unambiguous, significant focus of its rhetorical intent.\(^5^9\) A statement like "God, this is scary," would not be counted as a statement of spirituality, nor would "executions are bull," be considered a statement of defiance. Rather, a version of the former which read "God, protect me from this terror and protect my family from my loss," a clear prayer, would be the level of significance which I consider appropriate for generic categorization. The most important reason for this is that the people that the condemned knows and loves are almost always mentioned at the moment of execution; if I didn't exclude passing statements, there would be such a confusion of utterance that the data would be meaningless. While I observe these genres, I will refrain from analyzing them for now, as they form the foundation for our later work. We must first observe before we dissect.

**Statements of Affection**

Statements of affection are by far the most common sort of statement in the death chamber, and their rhetoric the simplest to understand. One of the 266 statements of affection examined in this study reflects to the speaker's understanding that (s)he will shortly be dead, and that this is the very last time that (s)he will have to speak to his or her family, and therefore influence the memory which they will carry of the condemned for the rest of their lives. The

\(^5^9\) There is no small amount of cross-pollination between the four genres of utterance, but that has more to do with genre's nature as a set of fuzzy categories and the fact that very few of these men and women have enough compositional expertise to be savvy invokers of specific, clear-cut genres than anything else.
exigence is at once deeply selfish and utterly selfless, and the two cannot be meaningfully disambiguated. On one hand, the rhetor is speaking because (s)he will soon be dead, and (s)he doesn't want his or her loved ones to focus their memories of him or her on that single awful moment in the death chamber. Regardless of how each condemned man or woman came to be in the death chamber, it is almost universally certain that that man or woman hurt those (s)he loves in the process, if only as a result of his or her absence. Often, the pain is much more deep-seated, the result of years of inescapable questions which each member of the family must have asked themselves hundreds of times: is the person I love a murderer? A bad person? So awful that (s)he deserves nothing less than death? What does that say about me?

The condemned speaks here in part because (s)he doesn't want to be remembered as the person who ruined the lives of everyone (s)he loves, and it's an understandable urge. At the same time, however, the intended effect is not only to affect how (s)he will be remembered, but to also give comfort to loved ones when the gift of comfort is no longer possible. A small kindness in the midst of intolerable pain is an often-incomparable gift, and it is the last gift which the condemned can give. It is an incredibly selfless act: even as I lay here dying, I give you the last inch of myself to use to dry your tears. Thus, when I say that the selfishness and selflessness of a statement of affection cannot be disambiguated, this is what I really mean: exigence, utterance, and response are fundamentally enmeshed with each other. The result is often profoundly poignant, if straightforward. Jeffrey Motley's last words are a near-perfect example of the invocation of this genre: "I love you, Mom. Goodbye."

Such statements are fairly universal, and I've found no noticeable correlation between the likelihood with which they appear and any factor other than date. Statements of affection are
correlated with the date they are given, and are the primary beneficiary, it seems, of the overall
decline in null statements. Statements of affection have become more common than any other
type of statement at the moment of execution, and the frequency with which they are made has
increased rapidly and consistently since 1985.

**Statements of Defiance**

Statements of defiance are by a wide margin the least common of the four central genres,
constituting only 102 utterances in the twenty-eight year timespan of the study. Despite their
relative rarity, statements of defiance come in many different forms. Each stems from a central,
rhetorical exigence: that the state, for whatever reason, has no legitimate right to execute the
condemned. Often, a statement of defiance will take the form of a protestation of innocence—
that the condemned did not commit the crime that (s)he was accused of, and that nobody has paid
any heed to that fact. Often, a statement of defiance will take the form of a complaint against the
way that same system works, that, in short, the criminal justice system made a gross error in
some way, and that that error is the sole reason that the condemned is about to be executed.
Such complaints will often cite specific moments or actions within the system which the
condemned perceives as having doomed him or her to die. Interestingly, this sort of defiance
does not necessarily entail that the condemned claims to be innocent, merely that (s)he does not
deserve death, specifically.

When a condemned man or woman makes a statement of defiance, the most common
version that statement will take is often a protest against the death penalty itself. The condemned
will argue that state-sanctioned execution is illegitimate, unlawful, or simply morally bankrupt.
Again, this sort of utterance often has little to do with guilt or innocence, and instead speaks directly to the act of execution itself. Kermit Smith, Jr.'s last words are among the clearest examples of this:

How long can I talk? My death sentence has been unlawfully imposed. This has been determined in two federal courts that the death sentence was unlawful and therefore that my execution is unlawful, but this is not the first time that the laws have been broken. People that have done it have gotten away before and are getting away with it now. And the only thing that I'm going to say now is what the judge imposed on me, Lord have mercy on your souls.

The last form which a statement of defiance can take is that of utter contempt. In this version, the condemned will generally simply lash out at any and all in or around the death chamber. This form is the rarest of all the forms which a statement of defiance can take, given that the emotional attack is what many would expect out of a person convicted of murder. Roy Roberts' last words are an excellent example of this: "You're killing an innocent man and you can all kiss my ass," an utterance which was fairly clearly influenced by John Wayne Gacy's invocation of the same genre some years earlier. These statements can become incoherent, but this is actually quite rare—it has happened only twice in the entire corpus.

The rhetorical aims of a statement of defiance probably seem simplistic: to somehow avoid death by convincing the audience at the execution that the execution itself is somehow wrong. However, this interpretation is overly simple and doesn't actually represent the real motives of the condemned. Nobody actually expects to receive a last-minute reprieve once they've been strapped to the gurney. They hope, certainly, but they don't really expect it. No, the men and women who invoke this genre do so with an entirely different rhetorical motive: to delegitimize the execution process. These people hope that they are about to become martyrs,
people who have died in the fight against something which they perceive to be intolerable. Moreover, their audience isn't actually anyone in the death chamber, but the news media itself and, by extension, the public, who they hope to sway against executions in the future. While such a statement might seem odd to many a rhetor's appeal in a statement of defiance is fundamentally ethical.

The nature of these statements make them very fertile grounds for appropriation and retransmission. After all, if a man protests that he is innocent as he is being executed, anyone who believes his claim to be true and who has an ounce of ethical integrity ought to be outraged—the idea that the criminal justice system has condemned even one innocent person to death is repugnant to our cultural sense of right and wrong. So deep does this sentiment run that almost everyone in the nation knows Benjamin Franklin's variation on Blackstone's formulation, which was itself a classic pillar of English jurisprudence: "It is better that one hundred guilty persons escape than that one innocent party suffer." How much more magnified must the ratio become for us to tolerate the upgrading of "suffer" to "die"? This cultural idea is what all statements of defiance ultimately appeal to. Because this sentiment is so universal and because it runs so deep in our sense of right and wrong, the most common terms—by far—upon which the abolition of capital punishment is debated is whether or not innocent persons are or have been condemned to die, and with what frequency this is permissible.

Statements of defiance have become somewhat more common with time, but the degree to which defiant utterances have increased is much less dramatic or strongly correlated than any other genre save statements of spirituality; there has been a spike in recent years, but it remains to be seen whether this is real or whether it is simple statistical noise.
Statements of Repentance

Statements of repentance are both interesting and unusual in the scope of this examination. Once amongst the rarest of all types of statements—in 1987, 1988, 1991, and 1992 there was not a single statement of repentance in the entire corpus—repentant statements are now quite common. Present in 173 of the 692 samples, statements of repentance represent, along with statements of spirituality, median responses to the exigence of the death chamber.

The intrusion of statements of spirituality into a discussion of statements of repentance is both typical and expected. As people who are not in the moment of execution, who do not feel the cold prick of the needle, or the cold growing terror of the end of life, it is very easy for us to conflate spirituality and repentance as outsiders, especially in such a strongly Judeo-Christian culture as ours. However, statements of repentance and statements of spirituality are only very weakly correlated; the correlation is so weak, in fact, that I would consider what little correlation there is to be statistical noise.

The distinction ought to be fleshed out, however, because it's essential to understanding both repentant statements and spiritual ones. A repentant statement is made by the condemned specifically to an audience of those (s)he has wronged. It is an apology, obviously, but rhetorically speaking the act of apologizing in this rhetorical situation is far more complicated than a simple "I'm sorry" in any other. The condemned is strapped to a gurney and about to die. (S)he is using his or her last opportunity to speak—ever—to apologize for what (s)he has done. The context, in short, of such a statement is everything. Because of the extremity of the rhetorical situation, the condemned's attempt to reach out to another human being and make right is a fundamentally human act, grounded in place and time at the one shining moment before
death. A statement of repentance is quintessentially human, in it seeks to repair a fractured relationship, even when that relationship has no further function.

It would seem natural for statements of repentance to be retransmitted the same way statements of defiance are. After all, if the rhetorical essence of a defiant statement is that the execution is unjustified and unjustifiable, shouldn't statements of repentance, given that their rhetorical essence is the precise opposite, be usable in the same way, but by supporters of capital punishment? It seems not; so rare is the reuse or retransmission of a statement of repentance in third-party rhetoric that I have, to this date, been unable to find a single example of such from advocacy groups. The retransmission of such statements is not uncommon in news organizations, and particularly newspapers or local news programs, but the realm of active debate on the death penalty nearly excludes statements of repentance.

And it makes sense that it does. A statement of defiance typically places a fundamental emphasis on the subject in each case: "my execution is unjustified. I committed no crime." Less frequently, a defiant statement is more general: "executions are unjustified." Either way, a statement of defiance attempts to make the case that this execution is unjustified, for whatever reason. By contrast, the typical repentant statement, working in the opposite rhetorical manner, places its emphasis in the exact same way: "I did it. My execution is justified." Alternately, a statement of repentance will not comment on the execution in any way, and acts as a reparative apology: "I'm sorry for what I've done." Either version functions as an either tacit or explicit endorsement of the execution itself, but the rhetorical focus of these statements carries baggage. Whatever the form a statement of repentance takes, its emphasis is, like a statement of defiance,
on the moment when, and the place where, the execution is about to be carried out. "This is justified." Not all executions. This one.

If we lived in a society which tolerated the punishment of innocents to ensure the punishment of the guilty, we would have a sense of balance between the mirrored rhetorical effect that we get from statements of repentance and defiance. The old British common-law axiom which Benjamin Franklin so famously brought into the public mind has become a central pillar not only of the practice of execution, but of the criminal justice system and in the public consciousness at large. If it was known with certainty that one innocent person was executed for every hundred guilty people executed, support for capital punishment would evaporate quickly; in the public mind, ending an innocent person's life is murder, full stop. If an innocent person's life is ended by the state, we all have a share in the guilt of that execution; thus, we won't tolerate it. In many ways, this urge is similar to the move to abolish grisly and inhumane executions in the last hundred and fifty years—if killing is to be done in our collective name, let it be clean, humane, and painless. We find weapons of mass destruction similarly repugnant, and for the same reasons.

Given the rhetorical emphasis which statements of repentance and defiance place on the moment, it's easy to understand why statements of repentance are largely unsuitable for re-use. The affirmative argument that this execution was right and decent has no relevance to the larger debate on capital punishment. Nobody's interested in the executions that go well, which are humane, and which are undoubtedly justified. It is the questionable ones that concern us all, the inhumane ones, the ones where the possibility that the condemned was innocent, that respond to the secondary rhetorical exigency of the larger debate on the death penalty. In many ways, while
a statement of repentance is enormously rhetorical in the moment it's delivered, that rhetorical exigency passes with the condemned, never to return. There is no second chance.

Statements of repentance have become increasingly frequent amongst the condemned. In the late 1980's, less than a tenth of all statements made in a given year could be expected to be repentant; now, over a third can be, and the growth in popularity has been amongst the most consistent in this very volatile dataset. This growth, moreover, is solidly correlated with time.

By contrast, a statement of spirituality seeks, at a fundamental level, to supersede the moment of utterance. It is focuses on what comes after, and oftentimes the condemned's perceived audience isn't actually the people observing the death chamber at all—it's God, in whatever version they imagine him or her to be. A statement of spirituality is a last-moment attempt to reach out and touch the divine, to escape an incomprehensibly terrible and terrifying moment, and to find salvation, hope, and peace. Many statements of spirituality don't even refer to the people in or around the death chamber; they are prayers. Some—almost all of them Christian—are, in every functional way, evangelical witnessing to those in the room, a deathbed commandment to get right with God or to keep the faith. The effect, however, is the same, given that one's place in heaven, to an evangelical, hinges in part upon the degree to which one successfully acts as a witness for the faith. Thus, even when the audience for a statement of spirituality seems to be the people observing the execution, it generally isn't.

**Statements of Spirituality**

Examining the rhetoric of faith is profoundly difficult in the best of times. The reasons for this are complex because the factors involved are complex. Each sect has its own take on
what piety means, on what it means to be in God's good graces, on what it means to live a good life, and each of these and a vast array of other subtle differences combine to make it hellaciously difficult to generalize about statements of spirituality. Even the subtle differences in each person’s perceived audience can make a substantial difference in how a person composes his or her final words; after all, some Christian sects, for instance, place spiritual primacy on the act of witnessing God's word on earth as the essential indicator or task of salvation, while others demand only wholehearted submission to God's will. Despite the fact that the audience is technically the same in both of these situations, what the condemned feels that (s)he must to in order to successfully address that audience is different; moreover, the audience’s spirituality is essentially irrelevant to the rhetor’s utterance here.

Unfortunately, though, it would be equally erroneous to take the opposite tack, and claim that statements of spirituality are inherently idiosyncratic, as are statements of affection. After all, in a statement of affection, the essential audience—the condemned's friends and family—are constantly variable. Even if two identical twins were executed at the same time in the same place for the same crime, each of the two would perceive his or her audience to be subtly different, because the two have not lived the same life.

There are, by contrast, differences in spiritual faith. If I speak of a Baptist, most would know, in general, the subtle shades of difference between that group and, say, a Methodist. Certainly, we understand the difference between either (or both, collectively) and Catholics. Each sect has its own take on what constitutes spiritual propriety, and each member of a given sect will share, generally, quite a lot of the spiritual beliefs that others of that same sect have. Metaphorically speaking, instead of a spectrum of infinite shades and tints, which we get with
statements of affection, statements of spirituality provide us with a rainbow of graded color. While each of these two genres taken as a whole may constitute the same metaphorical white light—a vast array of responses which covers the entirety of human perception—the granular differences between the two make a world of difference.

In generalizing about statements of spirituality, then, I speak strictly from the perception of the condemned; examination of other genres may allow us a little more flexibility in speaking about the audience as a component of the rhetor's utterance, but spiritual statements do not allow us the same luxury, for each statement addresses God in ways which may *not* be generalized. On the other hand, the sect itself need not be identified or considered, only the rhetorical motivation which that sect inspires in the condemned. If the Baptist and the Methodist from our prior example both bear witness to God's saving grace as their final act, the difference between the sects is irrelevant for our purposes. In the Bitzerian sense, what matters here is not any objective account about a given religious sect itself, but how the condemned's perception of that sect's beliefs constrains his or her perceived exigence. To recall another example from Chapter 2, this is exactly the same as the green apple-eater from our discussion of Burke; this time, however, he is mirrored on both sides, so that his terministic screen not only affects how he perceives his world, it also constrains his ability to respond to and influence it. Nowhere is the Ouroboros of terministic screens and rhetorical situation more indivisible than in this moment.

So, to generalize, statements of spirituality fall into a few groups. The first, and most obvious, is the prayer, where the rhetor's exclusive audience is God, and the condemned's rhetorical ends are to convince God to take the condemned into heaven. The second group consists of those who witness to a human audience; God may be a tangential audience, but God's
approval or disapproval does not hinge directly upon submission to God's will, but of an effective communication of it to others. The third group is a smaller one, consisting of those who preach; those who preach on their deathbed occupy a rhetorical middle ground between those who pray and those who witness, as they simultaneously speak of God's will while seeking guidance from it themselves. To illustrate the differences between these groups from a Catholic perspective, given that that sect finds all three responses to be appropriate, a condemned man may **pray** the Our Father, may **witness** on the importance of reconciliation with the Church to his atheist son in the audience, and may **preach** on the iniquity of an impious life. I use traditionally Christian terminology here because, frankly, it is the spiritual terminology which I am most familiar with; I make no attempt to deemphasize non-Christian spiritual utterances, but I am equally unsure of the contextually proper Muslim or Jewish equivalencies.

Statements of spirituality have always been a substantial and relevant portion of all final statements given in America, but the frequency with which a spiritual statement is made has not changed much over the years. Of the four genres, its invocation has increased the least, swelling from about a fifth of all statements in the late 1980's to about a quarter now. Of all four, its growth is the most weakly correlated with time.

**Subgenres**

Given that each of these four essential genres of utterance does not preclude the invocation of a second, some condemned men and women will choose to make statements which use more than a single genre. With four genres and the possibility of non-generic utterances, like cheering for a sports team or talking about a last meal, a total of twenty-six subgenres are
possible, given that a subgenre may consist of two, three, four, or even all five possible categories, which allows for an impressively wide range of potential expression categories. If these utterances were not subject to and sharply constrained by the rhetorical situation, the data should show a wide range of generic and subgeneric use, with some unsurprising clusters around the more humanistic subgenres, such statements of affection and/or repentance.

The data shows no such distribution. The use of subgenres clusters more tightly than do the four main genres; of the twenty-six possible subgenres, only three have been used more than fifty times in the last twenty-eight years. Those three aside, only three more have been used more than ten times in that same timeframe. Most have never been used at all. Thus, I consider that there are three main subgenres and three lesser subgenres; the others are, probably, statistical noise where they exist at all.

Fourteen of the twenty-six have never been used. Prohibitive subgenres cluster strongly toward the complex; of all twelve tripartite and greater possible combinations, only four have ever been used; only one of those four has been used more than three times. In a similar way, non-generic statements don’t seem to combine with any of the four main genres. Of the four possible binary subgenre combinations with non-generic statement, only one has ever been used—and that one has only been used three times. In essence, the data suggests that complex statements and non-generic statements are largely prohibited by the rhetorical situation of the death chamber.

If we set aside null categories, there remain a few—five—subgenres which have been used very rarely in the last twenty-eight years. While it would be fair to dismiss these five as statistical noise, it costs us very little to pay them a little attention. Affectionate statements fuse
very readily into subgenres of one sort or another, and while they combine with non-generic statements, they do so much more infrequently. Three of the five rarely used subgenres are affection based—the other two are statements of affection/defiance/repentance and statements affection/defiance/spirituality—which suggests that statements of affection serve as a sort of subgeneric glue, so to speak, which the condemned use to combine otherwise-disparate statements and give them a human touch. This is strongly reinforced by correlation data.

Statements of defiance/repentance are the most common of the rarely used subgenres, at seven incidents within the corpus, but almost all of them are actually statements of defiance/repentance/spirituality. A rhetorically difficult statement genre, such statements boil down to a fairly simple essence: "It was wrong for me to end a life, and it's wrong for you to do it too."

The smallest of the minor subgenres is statements of defiance/spirituality. Such statements often dwell upon God's mercy in one form or another, and upon the typical prohibitions against killing which are easy to find in almost all religions. These statements are not a frequent component of tripartite statements. Such statements are a very minor part of all final utterances, comprising only about 2% of all utterances.

Statements of affection/repentance/spirituality are the next most common subgenre in the corpus, with 24 examples which represent about 3.5% of the corpus. A fusion subgenre of all three major subgenres, that statements of affection/repentance/spirituality are a minor subgenre should come as no surprise. Statements of affection/repentance/spirituality focus on the span of the condemned's life; they draw upon his or her past sins, for which the condemned repents, and attempts to repair the broken bonds of human society both with regards to the victims' families
and to the condemned's own. Finally, such statements attempt to prepare the condemned for the afterlife that he or she believes is coming by speaking about God to those to whom (s)he is attempting to reconnect. At heart, such statements focus on the human bond between each member of society, and attempt to repair and reinforce them with the condemned's own sense of love and spirituality—the two concepts are often linked quite firmly in these utterances.

The thirty-seven statements of affection/defiance in the corpus occupy an interesting place as a minor subgenre. Constituting about 5.4% of the corpus, these utterances represent an important and significant component of all utterances, and make up the largest single subset of defiant statements generally—over a third of all statements of defiance are also statements of affection. Far outstripping all other combinations of defiance with any other type of statement, statements of affection/defiance strike at the heart of what it means for a condemned man or woman to claim innocence for the crime for which (s)he is about to be executed. Such statements claim that the condemned committed no crime worthy of death (a very few confess to the crime in question but simultaneously reject the death penalty as appropriate) while at the same time reinforcing family bonds that will shortly be severed.

The smallest of the major subgenres, with 56 examples in the corpus, are statements of repentance/spirituality. Representing about 8% of all utterances, statements of repentance/spirituality are a very, very old genre with roots in medieval Christian last rites. These utterances represent, in a way, the most conventional response to the death chamber in Western culture, and this subgenre of last words has well-documented precedent through colonial times and to the very beginnings of our records on final utterances. The largely Christian tradition that these statements respond to demands an end-of-life confession of sins in
order for a person to be admitted into heaven, and even though the gurney is well outside the normal purview of pastor/penitent relationship, the tradition of confessing the shameful truth at the moment of death is a strong one, both inside and out of the death chamber. Given this history, and given also the fact that over three quarters of the nation identifies as some shade of Christianity today, our main question should not be why statements of repentance/spirituality are common, but rather why they are comparatively less common than many other types of statement. Our secondary question should be why this subgenre seems to have been substantially assimilated by the minor subgenre, statements of affection/repentance/spirituality, which represent over half of all statements of repentance/spirituality.

Part of the reason for this decline is that the tradition itself has fallen off substantially in recent times. For the last few decades, the invocation of repentance/spirituality utterances has remained fairly stable as a proportion of overall utterances; by contrast, we know from records that gallows confessions were typical as recently as the early to mid-1800's. Somewhere in the intervening timeframe, it seems that this subgenre lost much of its rhetorical relevance. It may be that as Puritanism died off over the course of the 1800's that this subgenre fell with it. It may be that the move from explicitly public venues to tightly controlled, almost-entirely private execution chambers that the rhetorical exigence to wider public speech, and thus the public confession of one's sins, went with it. It's impossible to say with certainty, given the data at hand.

The final two major subgenres are similar in many ways, and it makes sense to examine them as a bloc. Statements of affection/repentance, with 73 incidents, amount to roughly 10.5%
of all statements, as do statements of affection/spirituality, at 72. The main difference between
the two is their rhetorical focus.

Statements of affection/repentance are focused on the past, and are a full-throated attempt
to mend bridges. Such utterances are thoroughly conscious of the social rifts which the speaker
has created over the course of his or her life, and attempts to make things right. Rhetorically
speaking, they are therefore relatively straightforward.

Statements of affection/spirituality are not so simple. Serving a divided audience,
affectionate/spiritual utterances at once focus on the temporal and the ephemeral, and attempt to
balance the needs of those whom the condemned loves and the God that (s)he hopes to satisfy.
Most examples of this sort of utterance focus on preaching or witnessing as the primary mode of
faith-based expression; the explicit prayer has little place here, as the divide between those two
audiences becomes so great that a condemned man or woman who wants to respond to the
exigency of prayer seems to exclude a statement of affection as being too secondary to the
prayer, or vice versa. Interestingly, these statements focus quite emphatically on the future—
some might say paradoxically, given the imminent demise of the rhetor him- or herself—in the
hopes that the rhetor's family will be able to join him or her in heaven after their respective
deaths. The typical statement of affection/spirituality will exhort the condemned's family to faith
directly and overtly, with little of the subtlety or pretense that can often be found in simpler
statements of spirituality.

Despite the sharply differing focuses on past and future, statements of
affection/repentance and affection/spirituality are ultimately an attempt to unify the audience, to
bring each member—or, at least, each member that the condemned person considers to be
important—into unity with the condemned. Whether that union is social or spiritual is largely irrelevant; either of these two subgenres represent a perceived need on the part of the condemned to find community with other human beings. They are an attempt to be, in the last of all moments, not so terrifically, impossibly alone as they are, strapped to a gurney and about to die. It seems that, in the end, these two subgenres are the most human of all of the subgenres, major, minor, or rare, for their rhetorical end is, with so little pretense or reserve, to find the fundamental humanity in those whom they love, and to touch that kindness one last time. These statements are words in search of comfort—the comfort of a smile, of a few tears of early mourning, of agreement and reunion. While it may be that the explicit audience for these sorts of statements are the condemned's family members, the real exigence in each case is the rhetor's own need for human contact and, most especially, for love in that most unloving of moments.

Correlations

Before I begin any discussion on the data itself, I must caution anyone that reviews it that these correlations have not been evaluated for statistical significance. The larger project is qualitative, and these quantitative numbers are included so that one can get a better sense of the firmer components of the recurring rhetorical exigence of the death chamber. It would be methodologically unsound to go fishing for significance in this data—however, with a sound testing methodology and an intent to look for quantitative association from the very outset, I strongly suspect that some degree of statistical significance would likely attach to parts of the dataset. That, however, is work for another day.
Correlation in this study is essentially an if-then mathematical relationship. In essence, when I claim a correlation, I'm saying that, in the case of A, B is either more or less likely to occur than it should, given a random distribution of data. It's a fairly simple way to evaluate data, but it can be very illuminating when not much is known about a set in general. Correlation tests also serve as a starting point for more complex, subsequent investigations which have the ability to describe the relationship of A and B in detail. Basically, when two things are correlated, there's a relationship of some kind between them. This relationship can come in varying degrees of strength, and standard statistical measures have been used to describe them, using a scale from 0 to [1], where 0 represents no correlation whatsoever and a 1 represents perfect correlation. In essence, a correlation of 0 says that there is no difference between random numerical distribution and what the data says, and a correlation of 1 says that, given A, B will always be present. Negative correlations also exist; a correlation of -1 indicates that, given A, B will never be present.

A correlation below .1 is essentially statistical noise. A correlation between .1 and .25 is weakly correlated. A correlation between .25 and .5 is moderately correlated, and a correlation higher than that is strongly correlated. While it has become almost banal to say, the old statistical axiom that correlation does not imply causation bears repeating here; just because, for instance, statements of defiance and statements of affection/defiance are strongly correlated, it does not mean that statements of defiance beget statements of affection/defiance or vice versa. External variables may be at play that we have not identified, for instance, or it may simply be that the same rhetorical exigence which inspires one utterance is also fruitful for the other. The
rhetorical situation constrains, but not absolutely; a rhetor is free to choose from any response to an exigence which is generally appropriate.

Examining the correlations of these factors is illuminating. First, the strongest correlations in the dataset are between different types of statements and their subgenres; this relationship, however, is not universal. All of the extremely strong correlative relationships in this dataset associate statements of affection with one of its subgenres, or one of the affection-based subgenres with another type of statement. For example, statements of defiance are strongly correlated with statements of affection/defiance, as are statements of repentance with statements of affection/repentance and, statements of spirituality with statements of affection/spirituality. The single strongest correlation in the dataset is between statements of defiance/repentance and statements of affection/defiance/repentance. While other statement genres snowball in the same way to a degree, no other genre of statement amalgamates so rapidly as do statements of affection and its variants. In this way, loving statements serve as a kind of rhetorical glue which allows the condemned to fuse multiple, disparate genres together.

There are a number of expected correlations in the dataset as well. For instance, null statements (instances where the condemned gave no final statement) are negatively correlated, to varying degrees, with everything. Statement genres are associated, with varying degrees of strength, to their subgenres. The decline of null statements in the last few decades has resulted in a noticeable, if not especially strong, positive correlation between the progression of time in the study, from 1985 to 2912, to statements of affection, and statements of repentance.

There are a few categories which are not meaningfully correlated with anything. Ethnicity, as observed in several other studies, is not correlated with any type of statement in any
meaningful way. For this reason, I have excluded ethnicity from the correlation matrix I have included here. Sex is not meaningfully associated with anything except, very, very weakly, statements of affection/repentance/spirituality. The number of victims a person has been convicted of killing is not correlated with anything either except, oddly, location. It seems that states other than Texas are very slightly more likely to execute a convict if (s)he killed more than one person, but this is just barely above the clinical relevance level and, as such, little importance should be attached to it.

Within this data, however, there are some rather interesting things. When a person gives a non-generic statement, that statement is likely to also be a statement of affection; however, it is negatively associated, if to varying degrees of weakness, with all of the main utterance genres as well as to all subgenres except statements of affection/other. Non-generic statements, thus, really are aberrations in the death chamber. By the same token, defiant and repentant statements have a noticeable negative correlation, which reinforces the fundamentally different rhetorical context that each of the two represents.

Some genres are surprisingly unassociated with some or all of their subgenres. The most prominent example of this is statements of defiance/repentance/spirituality, which are not correlated with statements of defiance, repentance, or spirituality. By the same token, statements of affection/repentance/spirituality are correlated much more weakly to their component genres than they are to their component subgenres (a difference of .24, .33, and .32 correlation to .55, .56, and .64). This trend is noticeable across all of the tripartite subgenres, which suggests that once a statement has begun to snowball, it is likely to continue to do so.
The most important factor that we should take away from the correlations should be obvious if we look at the matrix as a whole: statement genres are influenced to a far, far greater degree by each other than they are by any other factor, including ethnicity, date, location, or sex. The data here strongly suggests that, in many ways, it almost doesn't matter how a person came to be in the death chamber; once (s)he is there, the greatest force which will act upon that person, in terms of the composition of their last words, is that person's perception of how they want to affect the other people there, in that room. It means, at a fundamental level, that human beings respond rhetorically to the exigencies they perceive, in moments of the most unimaginable extremity, in largely the same way that they respond to any perceived rhetorical exigence in any place and at any time. As amazing as the fact is, it seems that death is just another rhetorical exigence, no different from any other.

Let's unpack that a bit. The first part of my argument is that final statements—all final statements, whether they are delivered in an execution chamber or a hospital bed—are rhetorical. This should not be controversial; men and women commonly act based on a deceased friend or family member's last wishes; they act or do not act in a certain way, they do or do not do a certain thing, and so forth. Even just remembering that loved one in a certain way, rather than how they were at the end of their lives, a wish common in both terminal cancer patients and executed felons, is rhetorical, as it is an attempt to focus an audience's terministic screen on something less painful. So common is the use of final words as incipient action that it's a literary trope in and of itself, but one based on shared experience—"Why did you do such-and-so?" "Well, it's what that-special-someone would have wanted." Acting based on the final words or
wishes of a loved one is an example almost as clear and unambiguous of the rhetorical situation as Bitzer's fishermen.

The second part of my argument is that there is not a generic distinction between the final statements of the condemned and those who die from other causes, and I acknowledge that claim is more troubled. There is very good reason for this claim, however. First, a genre is specific to a time and place, according to genre theory, but we have seen a wealth of evidence that demonstrates that the genres of final utterance are profoundly stable, regardless of time or place. The rate of instantiation for a given genre or subgenre changes, certainly, but the features of each genre of final statement do not in any significant way. Sir Walter Raleigh's defiant speech would still be a clearly recognizable statement of defiance were it delivered today.

If we accept that the final statements of the condemned are a set of very stable genres, and that those genres do not meaningfully change over time, how does it then follow that utterance genres for final statements in any situation are the same? There are a few reasons, but to get access to them, we have to break down the constituents of a final utterance again. The first and most important of these is that of the controlling exigence—in other words, what is the key imperfection in the world, marked by urgency, which a rhetor in any of these contexts is trying to address? It's the immediacy of that person's own death, of course. There are, naturally, any number of reasons for a rhetor to speak at the end of his or her life, but Bitzer notes repeatedly, first, that while there may be any number of exigencies in any given rhetorical situation, there is always one which the rhetor perceives as most important, most urgent, and most changeable—the controlling exigence. It follows very naturally that any human being, faced with the

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60 If for no other reason than because this is an examination of the last words of executed felons and not an examination of all final utterance.
immediate specter of his or her demise, sees that exigence as the most important and urgent, no matter where it is that they are about to die.

Secondly, Bitzer notes that because situations recur, the history of that recurrence becomes a part of the situation itself, and shapes rhetorical utterance as a key constituent of the rhetorical situation. This is crucial in the context of final utterance because we are taught how to die almost from our first moments. Death and dying are the subject of literature and film and of our own personal narratives. Every time we watch someone we love pass, every time we go to a friend's funeral, and every time we read or watch or hear the story of someone else's death, whether real or fictional, we internalize that narrative—a narrative structure which has not significantly changed in as long as we can trace in our history and storytelling.\footnote{For instance, look at Hector's death in the \textit{Iliad}. His last words, his last thoughts, are a wish for his body to be returned to his family, so that they can mourn him properly. A tender statement of affection, for a mythic hero.} Because this training is so universal and so emphatic, the rhetorical situation of the deathbed, wherever it is, has a strong, persistent, centering narrative which draws us all toward common modes of expression. In almost every situation, the fine details fall away, and we are left with a simple question: given that we are about to die, how can we do so in a way that leaves us at peace? Given that question, the method of our death really doesn't matter.
CHAPTER FOUR: DEAD MEN TALKING

"Okay I've been hanging around this popsicle stand way too long. Before I leave, I want to tell you all. When I die, bury me deep, lay two speakers at my feet, put some headphones on my head and rock and roll me when I'm dead. I'll see you in Heaven someday."


The problem with a statistical analysis of the last words of the executed is just that—the fact that it is a statistical analysis. Ultimately, these statements are the final chance that a man or woman has, or ever will have, to speak. To affect the world. To touch the life of another human being and, perhaps, be touched in turn. Such statements are profoundly human, and while a statistical examination can illuminate the general context in which they were given, no amount of statistical examination will ever help us understand these statements themselves. Indeed, our own examination reveals that final statements are largely unaffected by any factor other than the most crucial one—that the condemned is giving a final statement as (s)he is about to be executed. While there may be minor variances in the rhetorical situation in which these statements are composed and delivered, the variances do not meaningfully affect the constraints that the condemned perceives.

62 While an execution chamber differs from place to place, as does the behavior of the attendants and particular phraseology of the execution ritual itself, it is very clear from the quantitative analysis we conducted in chapter 3 that these differences have little or no effect on what the condemned choose to say. As a result, we can speak of them in broad strokes when we speak of them at all.
Examining the complete rhetorical situation of each of these 692 final statements would be impossible. There is no practical way to convert the wide and varied information which comprises the rhetorical situation of a final statement into statistically relevant data. Certainly, we could code an examination of nuclear family members, for instance, or the incidence rate of single-parent families, but what relevance does that have to a person who was raised lovingly by his aunt or grandfather, and wanted for nothing in his childhood? How could we possibly code for religious fervor? For jury composition, across state lines and accounting for regional demographic differences? For how connected to his or her family the condemned feels? It's absurd to even try.

The three fundamental goals of this project are to understand the recurring rhetorical situation that inspires the last words of the executed, to understand their immediate rhetorical effect, and to see how and when those words propagate through common culture. We have, at this point, accomplished a substantial portion of our first goal; by examining a large corpus of data, analyzing it as a whole, in parts, and in relation to time and place, we have a good sense of the rhetorical situation of the death chamber itself. More importantly, it has done away with a few misconceptions about final statements: that they are highly idiosyncratic, that where a person or by what method has an effect on what the condemned says, and that the sorts of things that a person says when they die change over time. By the same token, it has not done some important things: we have not looked into the factors that influence the composition of a final statement from outside of the death chamber. We have not looked into the effect that the powerful and centralizing genres we discovered earlier have on the formulation of final statements. We have not attempted either of our second or third research goals so far.
The statistical analysis we performed earlier provides this project is a very good foundation for understanding, but the path forward in this case should clearly be qualitative in nature. Methodologically, this allows us to do several worthy things. First, since our quantitative data demonstrates commonality between types of final utterance, we can generalize, examining a representative of each genre to learn more about the whole. Not only is this efficient, it allows us to examine each whole rhetorical situation in a much greater degree of detail, and then extrapolate important general principles from that examination which would otherwise require much more exhaustive cataloguing.\(^6\) Secondly, if we wish to accomplish the second goal of this research project—to understand the immediate rhetorical impact that final statements have—then the best way to do so is qualitatively. Death generally, and executions specifically, are emotionally charged moments, as is the act of remembering and discussing them. The rhetoric of death is often *pathetic*, and because emotional rhetoric can have such wide, subtle, and unpredictable effects, quantitative analysis struggles to describe it in a systematic way. Qualitative analysis serves much better, because context is almost always the answer to the ragged edges that quantitative analyses reveal in these cases. Finally, qualitative analysis allows us to step into the shoes of the condemned, to a degree, to try to understand what and how they were thinking when they found themselves in such an impossible situation as the death chamber. In doing so, we accomplish our first goal: to understand how these statements come to exist.

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\(^6\) Were I to treat each of the 692 final statements in my corpus with the degree of detail that I will be treating the seven generic examples in this chapter, my catalogue would be about 3,500 pages long. If I then expanded the catalogue to include the null statements of the condemned as well, that count would balloon to over 5,000 pages before I could even begin to comment upon them. I cannot imagine anyone who would find such a volume of work to be useful. Generalization, simply put, is the only practical path forward.
The genres which we observed earlier are the same genres which we expect in the final utterances of the dying, whether they appear inside or outside of an execution chamber. The deathbed confession is such a universally understood meme that it has passed beyond the scope of cliché and into the realm of expectation. We all go to the deathbeds of our beloved family members fearing both the end and also the upsetting of all we think we know about them. Similarly, the very act of a final exhortation to faith and spirituality, a last demonstration of religious fervor in the hopes of a heavenly reward came into the practice of execution from more typical final words. Defiance is no stranger to the deathbed either, though it is less common than the other genres as it is less common in the death chamber; it is the refusal of the end, the terrifying limit of mortality and the perhaps-something-perhaps-nothing that lies beyond. And, of course, there is the upwelling of love and affection that comes at the end of a person's life, as a dying man or woman reaches outward for those that (s)he loves in an effort to, simultaneously, comfort those that (s)he is leaving behind and find comfort him- or herself in that last moment.

While there are many productive ways to look qualitatively at the data, the self-categorizing nature of these final statements suggests the use of case studies. A few thoughtfully chosen representatives can give us a clearer idea of what goes into the composition of the varied types of final utterance—why the condemned chose one genre over another, or felt that a particular genre was necessary or that another was inappropriate. A series of brief but detailed case studies will demonstrate more thoroughly the whole rhetorical situation that distinguishes, constrains, and informs each.

Seven case studies are appropriate in this context; one for each of the four primary genres, and then one for each of the three major subgenres; a broader examination which
includes the minor subgenres, while possible, would make the study unwieldy and would inflate the importance of what is, ultimately, a bare minority of all statements. I will not be examining the rhetorical context of null statements, because such an examination would rely far, far too much on conjecture. Why did the condemned opt not to speak? It could be that silence was itself a statement of defiance, as we observed earlier in the case of Lawrence Lee Buxton, but it could equally be that the rhetor simply had nothing to say, having said his or her goodbyes earlier that day. It could be that (s)he was too scared to speak, even though he or she intended to. It could simply be that the condemned had a sore throat, and didn't want to hurt in his or her last moments. Yet, a case study of a null statement would oblige us, as examiners, to assign a motive where one may not be knowable. Such a case study is methodologically unsound and borderline unethical, given that we would have to assign a motive of our own perception to the non-act of another. It is much better to simply acknowledge that null statements are what they are: a choice, for whatever reason, to remain silent.

In conducting these case studies, I have made a few methodological decisions to standardize the dataset. First, I will be looking exclusively at the last words of men. This is for two reasons: first, the overwhelming majority—99.2%—of all final statements are given by men. As a result, there is simply no way to examine a woman's final statement in a way which is representative to the dataset at large without conducting over a hundred case studies. Moreover, because of the very small sample size of women in the dataset at large, it is possible, even though the data does not demonstrate it, that sex does have an important relationship to final utterances in some way, shape, or form, but the extremely constrained sample size of eleven is simply too small to capture or represent this relationship.
The second methodological constraint under which these case studies will operate is that the final statements we will examine were given exclusively by Texas inmates. Again, there are a few reasons for this. The substantial majority of all final statements in the dataset were given in Texas, and since we know that there is a statistically weak, but noticeable, relationship between location and statement type, a single location is the best way to control for that variable. It must be noted, as a result, that Texas overrepresents statements of affection a bit; this will affect four of the cases which we will examine, and while it does not bias the examination itself, it's helpful to keep in mind that the incidence rates of affectionate statements are a little higher.

The second is that Texas keeps, and makes available, a fairly robust set of records for each man and woman that they execute, which allows for a straightforward and reproducible reference point which will fuel these case studies.

The final methodological constraint under which these case studies will operate will be that I will sample statements from the full range of time which this study encompasses. The obvious problem with this methodological decision is that a quantitative analysis of the data reveals that there is, in point of fact, a relationship between time and statement type. This relationship alone would suggest an alternative methodology, that we ought to look at a set of statements from a tightly controlled timeframe, but a more nuanced look at the data demonstrates that to fully engage with the entire timeline is a better course of action. There are two direct reasons for this, and a host of peripheral. The main reason is that the primary relationship between time and utterance type is a notable decline in null statements, which these case studies are already excluding for other methodological reasons. A corresponding rise in other statement types is both expected and normal under these circumstances. Now, this corresponding rise is
not evenly distributed; affectionate and repentant statements are more strongly associated with time, in statistical terms, than are defiant or spiritual statements. In an ideal world, all four genres would show similar growth rates; were this the case, we could easily shrug off the change in statement frequency over time because each genre grew at similar rates. This is, obviously, not the case.

However, the relationship between date and statements of affection and repentance is rather weak. Noticeable, certainly, and worth further investigation, but not powerful or, it seems, predictive. The second significant reason that this data suggests a broad investigation is the very fact that the four genres do not grow evenly. It may be that a qualitative analysis can illuminate why statements of repentance and affection, the two fundamentally social genres, have become more common more quickly. Even if it does not, that same qualitative analysis will demonstrate that the association between the growth rates of the different genres and time is primarily quantitative in nature, and that further investigation thereof ought to be conducted on those lines.

The peripheral reasons that we ought to investigate the dataset longitudinally are similarly compelling. A holistic look at statements from the full span of years with which this study is concerned demonstrates how the rise of the twenty-four-hour news media and the internet, with their ability and readiness to retransmit a condemned man or woman's last words has affected the overall exigence of the death chamber; in essence, if people speak more often, it is because they expect that more people are listening, that people are more likely to listen, or both. Given how usable and high-profile Texas' digital archive of the last words of its condemned is, it really ought to come as no surprise that condemned men and women in that state are more likely to speak. A holistic look at all statements demonstrates, at the same time, the overall stability in
rhetorical composition over time, and just how controlling the exigence of death is. It seems quite clear that the benefits of including the entire timespan of the sample in this examination far outweigh the potential risks.

All this being said, I have chosen each of my seven case studies as a representational sample to the best of my ability. In doing so, I have paid the most attention to date and type of utterance, but I have also done my best to select statements which represent the full span of ethnicities, religions, and socioeconomic backgrounds, so that the seven are individually representative off all who are executed in America, but so that the seven are also representative as a group. Some of these cases are well known. Most are not. I have done my best to represent both the (in)famous and the mundane here, and while I value none of these case studies more highly than any other, I will address the degree of attention each case received, if any, in my observation as a potential constituent of any generic exigence.

Finally, one historical note before proceeding. For much of the time period with which these case studies are concerned, the state of Texas had very strict legal caps on prisoner population in state penitentiaries which were imposed by the federal courts as the result of a series of lawsuits brought by inmates who demonstrated severe and inhumane overcrowding of those prisons. Texas, for a time, coped with the issue by paroling those convicted of lesser offenses far in advance of the length of time of their sentences. This, as much as anything, led to the so-called 'revolving-door' prisons which became a political mantra in the 1980's and 1990's. The practical result for our purposes, though, is that many of the men in these case studies were not merely repeat offenders—they were constant offenders who committed a truly surprising number of crimes in a very short period of time.
Statement of Affection: Shannon Charles Thomas, executed on November 1, 2005

Shannon Charles Thomas was born on July 27, 1971; unfortunately, many of the records of his early life are simply unavailable. This is due to no neglect or oversight, but rather the decree of the courts. Many of his juvenile records are sealed, which severely restricts our ability to get a sense of what sort of a childhood he had. It is quite certain that Thomas had several run-ins with the criminal justice system in his youth, but nothing much, aside from his birth certificate, can be obtained. After he turned 18, his troubles continued. He was arrested, convicted of, and served time for assault. Shortly thereafter, he was arrested for delivering drugs, though the state made no attempt to convict him of drug trafficking. On Christmas Eve, 1993, Thomas was 22 years of age, and had spent more of his adult life under the supervision of the Texas Department of Criminal Justice than he'd spent out of it.

According to state records, Thomas and Kieth Clay, a friend and associate who also dealt drugs from time to time, entered the home of Roberto Rios on Christmas Eve. Rios had sold the two marijuana several times in the past, operating a small and illegal business from his home. Thomas may or may not have waited in Clay's car while the crime itself took place; there is some confusion amongst the various records here. Clay, at the very least, entered the house, armed, with the intent of robbing Rios of drugs and money. The robbery turned sour; when, apparently, Clay couldn't find Rios' drugs or money, he beat the man savagely with a pair of tin snips or shears with which he then stabbed Clay in the neck, and eventually shot him repeatedly. Clay then went upstairs, where Rios' two children were cowering, and made the two lay facedown on the floor while covering their faces with a pillow. He then shot each once in the head, so there would be no witnesses. Clay and Thomas fled the scene, and the police were summoned hours
later by a postal worker, who saw two men leaving the house and entering a car which matched the description of Clay's vehicle. There is considerable confusion amongst state records in this case; Thomas' arrest record alleges that he carried out the murders himself, but later trial transcripts revise the theory of the crime such that Clay is presented as the violent offender here.

Regardless, no progress was made in the case for a full year after the Rios family was murdered, until one Joseph Jones was arrested in a drug bust. He exchanged his testimony and assistance in solving the Rios case for leniency, and was able to get Thomas to confess to his part in the killings while wearing a wire. Thomas was then arrested, and he eventually argued that Clay had been the gunman, and that he had killed the three victims after Thomas left the house. Thomas was identified by the postal worker in a lineup, and the case in general was corroborated by two of Thomas' friends, to whom he had confessed what he and Clay had done. Thomas was convicted of two counts of capital murder in the Rios case, while Clay was convicted of the same charge in an unrelated convenience store robbery that the two had carried out subsequently. The state chose not to charge anybody with Roberto Rios' murder, instead relying on the executions of his two children to condemn Thomas.

Subsequent to his conviction, Thomas pursued several appeals, all of which were unremarkable in their generation and resolution. His sentencing appeal was denied shortly after his conviction. Two separate writs of habeas corpus, filed in 2003 and 2005, were denied by the courts; an application for a Certificate of Appealability was denied in 2004, and a writ of certiorari was turned down that same year. Each application and denial hinged on similar

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64 While Thomas had court-appointed legal assistance for some of his legal appeals, as is typical of death row inmates, he also pursued several on his own account, as is also typical. As none were successful, none are relevant here.
grounds: that the jury trial had been essentially fair, Thomas' conviction constitutional, and that there were no reasonable grounds for appeal. The one exception to this, Thomas' request for *certiorari*, was denied because he had neglected it, and the application window had expired. Thomas' last appeal, a *habeas* request, was denied minutes before he was executed; it's denial, in point of fact, delayed his execution for thirty minutes.

Only a few members of Thomas' family chose to witness his demise. The Rios family did not attend, and neither did any activists or out-of-state reporters. Thomas' final words reflect this:

Yes. Man, I just want you to know how much I love them. I want you to be strong and get through this time. Do not fall back. Keep going forward. Don’t let this hinder you. Let everybody know I love them (several names listed), Kevin - as well as everyone else in the family. Tell them that I love them and stay strong. This is kind of hard to put words together; I am nervous and it is hard to put my thoughts together. Sometimes you don't know what to say; I hope these words give you comfort. I don't know what to say. I want you to know I love you; just stay strong and don't give up. Let everybody know I love them...and love is unconditional, as Mama has always told us. I may be gone in the flesh, but I am always with you in spirit. I love you.

In his final statement, Thomas directly addresses his family, seeking explicitly for a sense of connection which he can use to both give and receive comfort. These words are a fundamental reaffirmation of Thomas' basic humanity, and in the basic humanity of his family members. There is no railing against fate, no great spiritual ambition, only sadness and love.

Is this rhetorical? Bitzer would certainly have grave doubts, but I disagree with his perspective here on the same grounds I criticized his work in Chapter 2: it assumes an overly pragmatic understanding of rhetoric which would discard Thomas' last words, and perhaps all

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65 Some might say exclusively so.
statements of affection, as simple self-expression. This is wrong. To illustrate, imagine that you and I are talking. You believe one thing, and I believe another. We have a debate, in which each of us attempts to convince the other to change his or her mind. I succeed, and we walk away to other business. Is such a situation rhetorical? Clearly. Can it be defined with the terms of Bitzer's rhetorical situation? Absolutely. You and I are scholars who enjoy debating ideas. We each, individually, perceive our disagreement as an exigence, and set out to convince the other to change his or her ways.

Let us change that example just a bit. Instead of debating an idea, you believe something about me which I feel is not right. Perhaps, for instance, you believe me to be a cruel or heartless man, and I don't want to be thought of that way. I set out to convince you that I am, in fact, a kind man—but how do I do that? Do I demand you accept my kindness, or browbeat you into agreeing with me? Of course not. Instead, I exhibit the kindness of my thoughts and feelings. I expose my fundamental humanity for you to see, and I ask for you to do the same; when you do, I do nothing cruel, but instead treat you with respect. When we part ways, your opinion is changed. Was this exchange rhetorical? Certainly. The exigence was your opinion of me, and in changing that opinion, I have corrected an imperfection I perceived in the world. Even if we cleave to Bitzer's hardline demand for functionality, I can easily say that the exchange was rhetorical, because your changed opinion allows for work to be done by the two of us together in a more effective way. It allows me to pursue other tasks with a clear heart and a focus undisturbed by the knowledge that someone whose opinion is important to me thinks of me as cruel. Humans are social creatures, and the modification of a social situation always,
therefore, has both rhetorical and practical effects. This is precisely what Thomas, and all those who give statements of affection, are trying to do.

The controlling exigence which Thomas felt here was clearly the presence of his family, and the absence of any others. His own fear, though he calls it nervousness, sharply constrained his potential range of response. In order to face his death, he needed comfort. Of particular note here is the unconditionality of Thomas' love, as it is a theme which recurs both explicitly and implicitly in statements of affection generally. Some reference to the horrors of the death chamber is often present in such statements, but that horror is placed into the context of love, friendship, solidarity, and human interconnection, which mitigates it in the mind of the condemned. In essence, such statements make a very specific argument to a very specific audience: you, my friends and family, need comfort just as much as I do, lying here and waiting to die. Though no one of us could bear today on his or her own, together we might piece together enough shards of shattered heart to find that the yawning chasms of time and crime are not so great as to keep us from each other. I have you, and you have me—in spirit, if no longer in body.

Statements of affection acknowledge the death chamber, then, but it is only a place, no better or worse than any other. It is the shadow of death that hangs over that place which controls the exigence itself; in an interesting way, a statement of affection makes the death chamber no different than the deathbed of a critically ill patient in a hospital because the critical concern of a rhetor in either situation is the reforging and affirmation of a human, emotional connection with his or her friends and family. This, each person knows, is where death will come, anticipated, unstoppable, and remorseless. Yet, there is still time before that descent, and
there are still the people one loves to talk with. One last time, each has the chance to salve old wounds, to rekindle old friendships, and to reaffirm old love.

More importantly, Thomas' last words illustrate something which will persist throughout each of the seven case studies in this examination: a final statement is essentially connected to the condemned's perceived audience. While the exigence of death is the spark for any final statement, the audience to whom the rhetor feels that (s)he is responding forms the most important constraint to whatever that response will be. Now, there are some interesting questions which get wrapped up in the question of perceived audience—what is the cognitive process which leads some to reconnect with their friends and family in their last moments by making a statement of affection, for instance, while others seek a connection to the divine and the hope of an afterlife, as is the rhetorical aim of statements of spirituality, for instance—but the really important question is why a condemned man or woman's perceived audience exerts such a controlling influence on his or her last words.

Audience is always a key concerns of rhetorical analysis, for all agree that audience is a key part of the whole rhetorical situation. It's easy to hedge that statement, though, and privilege a rhetor's artistic ability, or to emphasize the time and place of a rhetorical utterance, and thereby to make context a more emphatic part of any given rhetorical situation than it really is. Each of these things is important, certainly, but neither so much as audience. By the same token, it is easy to recite statistical information about a rhetor's audience, or biographical data in the case of smaller audiences, in some attempt to derive some objective sense of who that audience is, but that effort is just as misguided. Certainly, such objective facts are true and valuable, but what matters far more is the rhetor's perception of who that audience is, in a very Burkean sense. It's a
question of perspective, in many ways, and as we will see continuing forward, each genre and subgenre that this study examines was chosen as a direct response to the condemned rhetor's perceived audience.

In many ways, the most remarkable thing about the life and death of Shannon Thomas is how unremarkable it is. Archetypal, even. A young, black man from a poor family and with no good options falls into petty crime and drug trafficking. He's devoured by the juvenile justice system, which calcifies error and foolishness into ingrained criminality. Upon his release, his criminal behavior escalated, as he came into repeated and increasingly severe contact with the adult criminal justice system. Eventually, petty crime leads to murder. He's identified, arrested, and convicted with overwhelming evidence on all sides, with even his own word used against him. No appeal has merit. He is executed for his offense. How many times have we heard this story? How many places has it been told? Thomas' story has become so common that it's a part of the way we talk about race and poverty in America today in general.

It's fitting, then, that such an archetypal story have an archetypal end. Thomas' need for human contact, for reassurance, and to give and receive love speaks to the most primal and vital part of human existence: the need to have and to foster human connection. Men, in particular, who are convicted of murder are too often portrayed as madmen, or as maniacs, or as savage, cold-hearted monsters who take joy in the suffering and death of their victims. Statements of affection soundly rebut this common idea, for in all 266 such statements in this study, not one is given by the sort of crazed monster it is so easy for us to envision. In their dying moments, these people sought out the same humanity in others that they were said to lack themselves.
Statement of Defiance: Leonel Herrera, executed on May 12, 1993

Leonel Herrera was born on September 17, 1947 in Hidalgo country, Texas, where he lived for much of his life. He had two siblings, a brother named Raul and a sister, Norma, with whom he was close throughout his life. He never finished high school, but eventually got his G.E.D. After high school, he found work in construction, like many young men lacking a robust education, and it was in this profession that he made his living for about seventeen years. During this time he married, and he and his wife, Judy, had a child together. They divorced in 1976, and while their parting was not amicable, neither was it particularly acrimonious. Judy maintained custody of their child. Leonel Herrera was, in short, an unremarkable, law-abiding citizen according to every available record.

The following account of the events which led to Leonel Herrera's arrest, conviction, and eventual execution are all based on state records, and as such this account assumes Herrera's guilt for narrative purposes. While I must assume Herrera's guilt in order to proceed, it remains an open question.

On a dusty highway on a late September night in 1981, Leonel Herrera was pulled over by Officer David Rucker on a routine traffic stop. Officer Rucker obtained Herrera's Social Security card, and before he had a chance to radio in the stop, he was murdered with the service weapon which had once belonged to Constable Ricky Lewis, who had been killed on duty in 1979. Forensic examiners later discovered Herrera's Social Security card, still clutched in Officer Rucker's hand, when they investigated the crime scene.

Herrera fled the scene of Rucker's murder, but was shortly pulled over by Officer Enrique Carrizales for speeding. Herrera exited his car immediately and shot Officer Carrizales several
times while Officer Carrizales' partner, Officer Enrique Hernandez, reported the crime over their radio. Herrera again fled while Hernandez tended to Carrizales' wounds. Officer Carrizales survived for over a week thereafter, and identified Herrera from a photograph presented to him on his deathbed. Officer Hernandez was unable to identify Herrera as the murderer. Armed with this evidence and the fact that Herrera's live-in girlfriend owned a vehicle which matched the description of the one used in Carrizales' murder, local police arrested Herrera five days after the incident. Herrera pled not guilty, and while the jury deliberated for some time, it eventually both convicted and condemned him. Although Herrera's appeals history is far from simple, his final appeal, which was decided only a few months before his eventual execution, clearly and unambiguously constrained his possible rhetorical responses. That particular appeal will be covered in detail.

Leonel Herrera was the party to a case which came before the Supreme Court, and which has set a major precedent that stands to this day. In a hearing held four months before his scheduled execution date, Herrera's lawyer argued that a substantial body of new evidence had appeared since Herrera's conviction. He argued that this evidence demonstrated his actual innocence of the crime for which he had been convicted—the most substantial piece of evidence being an affidavit signed by Herrera's brother's attorney which testified that Herrera's brother, Raul, had confessed to killing Officer Carrisalaz, and that the crime had been witnessed by Raul's son, who also signed the affidavit to that effect. It would then follow, Herrera's lawyer argued, that the execution of an innocent person would be a violation of the Eighth Amendment ban on cruel and unusual punishment, given that the execution of a person innocent of any crime
would certainly be unusual and would arguably be cruel. This case, a landmark decision, is now referred to as *Herrera v. Collins*.

The court ruled on the case on January 25, 1993, determining by a 6-3 margin that a "claim of actual innocence does not entitle [a person] to federal *habeas corpus* relief;" in other words, the court held that actual innocence or guilt of a crime is immaterial insofar as the appeals process is concerned. Chief Justice William Rehnquist, writing for the majority, argued in his ruling that "few rulings would be more disruptive of our federal system than to provide for federal *habeas* review of" claims of innocence; Justice O'Connor concurred, stating in perhaps more stark terms the reality of Herrera's situation:

> The issue before us is not whether a State can execute the innocent. It is, as the Court notes, whether a fairly convicted and therefore legally guilty person is constitutionally entitled to yet another judicial proceeding in which to adjudicate his guilt anew, 10 years after conviction, notwithstanding his failure to demonstrate that constitutional error infected his trial.

The result of the *Herrera* decision was, in short, that the conviction by a jury of one's peers was an overriding and controlling reality which voided the question of actual guilt or innocence. For Herrera to be eligible for a new trial in which he could use the evidence which had since arisen, he first had to demonstrate some legal, constitutional reason that that trial ought to be granted. In a situation where no such constitutional justification existed, no relief could be granted by the courts.

The Supreme Court decision here was, undoubtedly, a controlling exigence in Herrera's case, given the dramatic nature of the Court's ruling and the doom it set upon him; the Supreme Court had essentially told him that it didn't matter whether he was innocent or guilty in reality. So long as he had been convicted of murder, condemned to die, and so long as the trial that had
so convicted and condemned him was in harmony with the strictures of the Constitution, he was guilty *in the eyes of the law*. Even assuming that Herrera was in reality guilty of murder, that he knew that he was guilty, and that by some arbitrary standard he deserved to die, being told that he would be executed even if he were innocent must have been a horror on a Gothic scale.

So, Herrera entered the death chamber a scant four months after the Supreme Court condemned him to die regardless, and responded to the exigence in the way that almost all who give a statement of defiance do. His last words are reasonably brief, somewhat hyperbolic, and emphatic. It uses repetition prominently, which is typical of statements of defiance, and focuses simultaneously on the past and present; Herrera cannot escape the fact that he's about to be executed, which he condemns in the context of his claimed innocence. These are his last words, in full.

> I am innocent, innocent, innocent. Make no mistake about this; I owe society nothing. Continue the struggle for human rights, helping those who are innocent, especially Mr. Graham. I am an innocent man, and something very wrong is taking place tonight. May God bless you all. I am ready.

While Herrera's case is quite a bit more extreme than that of most who give statements of defiance in their last moments, his statement is almost archetypal in how perfectly it represents defiant statements generically. Central to such an utterance is a heartfelt belief on the part of the rhetor that (s)he does not deserve death. This belief comes in two varieties. The first, and by far the more common, is based on the belief that the condemned rhetor him- or herself is innocent of the crime of which (s)he has been convicted. This does not necessarily imply that the rhetor is

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66 Herrera's lawyer.
actually innocent of that crime—extensive research by psychologists\textsuperscript{67} on one hand and by those investigating personal narratives\textsuperscript{68} on the other have demonstrated clearly that the continual crafting and repetition of an untruth can make it true to the speaker, overwriting reality in his or her memory\textsuperscript{69} though this is \textit{by no means} typical. More recent neuroscience argues that this is how all memory functions, however; when you remember something, it's not the actual thing itself, but the last time you remembered it. Calling up a memory destroys the old, and the new experience of the memory is created by the act of remembering. This is currently the subject of considerable debate, but it would explain how such a seemingly bizarre thing as a person who is actually guilty of a crime could come to believe that (s)he never committed it.

On the other hand, the whole situation here asks an obvious question: why speak at all, in these cases? Bitzer argues that for a statement to be rhetorical, it must be able to affect change in the world. The men and women who make defiant final statements clearly cannot save their lives; mustn't defiant final statements therefore be arhetorical by definition? Only if we accept just the immediate context of the death chamber as the situation which the condemned is trying to change, and the physically present audience as the audience (s)he is trying to address. Neither of these things is true in statements of defiance.

A statement of defiance seeks not to change the rhetorical exigence of the death chamber, but of the whole process of execution. They are words delivered in one place, but intended for

\textsuperscript{67}Abbott's \textit{Narrative and Emergent Behavior} is a fascinating analysis of this phenomenon. It argues, in short, that the stories we tell about something that has happened is what shapes our future behavior, not any objective, controlling truth.

\textsuperscript{68}Young and Saver, in \textit{The Neurology of Narrative}, discuss this idea at some length.

\textsuperscript{69}Braid has quite a lot to say about how it is experiential meaning—what we do, and what mental lessons we take from doing it—is much more important to what we believe than actual truth. "Personal Narrative and Experimental Meaning," \textit{Journal of American Folklore}, 109(431), pp. 5-30 is his most on-point work here, though he has others.
another entirely; such statements aim for lasting, cultural impact. Each rhetor hopes their his or her death will be the last execution—or, at least, that their words will inspire others by their words and example, and thereby change their views on execution itself. These are men and women who aren't really trying to speak to their families—though sometimes they do—or to any of the other attendants, really. They are speaking to posterity, or at least they hope they are. Hence, there is the moral murderer, who excoriates those who are executing him for their heinous acts.

A second variety of defiance occurs when the condemned has committed a crime, but believes that execution is unwarranted for it. Generally, the premise of this argument is that killing another human being is always wrong, and thus the state is only magnifying the heinous act that the rhetor him- or herself committed. It is an across-the-board rhetorical rejection of violence in general and lethal violence in particular, but this rejection is itself deeply complicated by the rhetor's own position as a murderer, given that this variety of defiant statements is generally combined with statements of repentance. While statements of defiance/repentance are not common and, therefore, will not be the subject of a case study, the rejection of all killing as a theme within the genre of statements of defiance is interesting and worth a little explanation.

How can a person who has murdered another—perhaps several other people—make a reasonable case against killing? The position seems profoundly hypocritical, yet these statements are often nuanced and very thoughtful. The rhetorical move here is one of social penitence, where a guilty person comes to an understanding of his or her guilt and consciously reforms. Such a move has deep traditions even in Medieval times, and has particular roots in the earliest versions of the American criminal justice system, which focused on rehabilitation and
reform over punishment. These uncommon utterances, then, are tapping into that old tradition to make the rhetor both a positive and negative example at once. Be as I am now, in short, not as I was. The same rhetoric is commonly, and successfully, used across the nation in so-called 'scared straight' programs, where delinquent teens are put face-to-face with adults who've committed crimes that seal their fate behind bars for decades or forever. The move is often effective, but it limits modes of expression and the ways they can be used. As such, it's not surprising that such statements are rare.

A lack of either real or perceived guilt, then, is the controlling rhetorical exigence in the crafting of a statement of defiance and, hence, the rhetor's perceived audience is not merely the men and women there in the room with him or her, but any part of humanity who might stumble upon the condemned's last words in the future. The condemned rhetor perceives this exigence as morally reprehensible, and as such assumes the role of the most moral individual in the room. While this might seem problematic in absolute terms, the key to understanding the controlling constraint here is that it is the rhetor's perceptions which shape his or her utterance, not any absolute, objective reality. In Burkean terms, the condemned man or woman looks out at a room full of men and women who have come together to execute him or her and sees a crowd of people who are collectively participating in what the rhetor perceives to be the unjust ending of a life. The condemned's terministic screen in that moment captures the social signifiers which seem most relevant at that moment and discards others—these people have come to see him or her die, and as such they must want to see him or her die; the condemned's jailors are about to end his or her life, and so they must want to kill him or her, and so forth. Other salient explanations, such as the jailors participating so that an execution which will be conducted in a
humane and caring way, or a victim's family which is opposed to capital punishment and feels that they owe the condemned the dignity of their presence as (s)he is killed in their collective name, are beyond the condemned's ability to internalize. At this moment, (s)he must act and speak based solely on what (s)he perceives reality to be, regardless of its actual nature.

Statement of Repentance: David Martinez, executed February 4th, 2009

David Martinez was born on May 9th, 1972 into deep poverty. He led a troubled youth, and first came into contact with the juvenile criminal justice system when he was 13, after breaking into a neighbor's house to steal her underthings. Three years later, after his release, he committed several more burglaries, and was re-incarcerated after threatening the life of his parole officer. At this point, he dropped out of school, and served time in juvenile incarceration until he turned 18, and was released. Almost immediately thereafter, Martinez attempted to sexually assault the manager of a store where he was trying on a pair of shoes, and was sentenced to ten years' probation. He violated that parole repeatedly thereafter, and was eventually incarcerated for five years, beginning in the summer of 1992, only to be released again six months later. After his release, he ceased all contact with his parole officer, and a warrant was issued for his arrest. It would be fair to say that Martinez was a career criminal.

About a year after Martinez ceased all contact with his parole officer, in the early summer of 1994, he moved in with Carolina Prado, whom he was dating, and her two children. According to state records and Martinez's own eventual confession, he returned home about a month later, very early in the morning on July 11th, and tripped over a baseball bat that Carolina's 14-year-old son, Erik, had left on the floor. Martinez took the bat and began to assault Erik on
the head with it, waking his younger sister, Belinda. Martinez told her to behave or he'd kill her too. She ran off to find her mother, and Martinez eventually led Belinda back to the bedroom at knifepoint and restrained her. Thereafter, Martinez went to his and Carolina's bedroom and beat her to death with the same bat. He changed clothes, untied Belinda, handed her a note, then left; Belinda fled to her grandmother's house afterward. When he was arrested two days later, Martinez confessed to the murders, and compared killing the two to killing cockroaches.

Martinez's trial, as one might imagine, was swift and remarkable only in that Martinez attempted a mental incompetency defense which did not survive examination by a psychologist, and which was therefore denied by the trial judge. Martinez appealed in all the standard ways—with two habeas applications, a certiorari application, and an application for a certificate of appealability, all of which were denied, appealed, and denied again. Little in any of the applications is of interest, and less is of interest in the various judicial decisions which resulted from those applications. In short, Martinez is guilty of the crime he was convicted of beyond any doubt. His trial was conducted fairly. The appeals of his conviction and sentence were, for lack of a better term, pro forma from top to bottom. They were dismissed because they were baseless. In the spring of 2008, Martinez waived his right to appeal any further.

I go to such lengths in this case to illustrate a point: in some cases, perhaps many cases, the condemned has committed a heinous crime for which (s)he has been convicted, a crime which came at the end of a long string of other, escalating crimes. The argument which is often made by those in favor of the death penalty, that some individuals simply will not stop breaking the law and hurting other people no matter what we do, is based on cases like David Martinez's.
It's hard to characterize Martinez's execution as anything other than typical as well. Belinda, whom he had spared years ago, attended, as did a few members of Martinez's family.

His final words were addressed to them:

Yes, nothing I can say can change the past. I am asking for forgiveness. Saying sorry is not going to change anything. I hope one day you can find peace. I am sorry for all of the pain that I have caused you for all those years. There is nothing else I can say, that can help you. Mija, I love you. Sis, Cynthia, and Sandy, keep on going and it will be O.K. I am sorry to put you through this as well. I can't change the past. I hope you find peace and know that I love you. I am sorry. I am sorry and I can't change it.

Martinez's last words are a fine example of a typical statement of repentance. Repentant utterances are almost always directed squarely to the victim's immediate family members, though sometimes, as in this case, it can be directed at a victim who was not amongst the deceased. Overt apologies are a necessary component of a repentant statement; so central are they to the genre that many apologize repeatedly, as Martinez did. Some affectionate sentiment is often attached to a statement of repentance, as can be seen from Martinez's words, but this insertion tends to cut one of two ways. Either that affection is a core part of the statement, in which case it becomes a statement of affection/repentance with different rhetorical goals, or the statement is entirely subsumed by the general rhetorical drive of the statement as a whole, as is Martinez's.

The latter case is typified when such statements are fully divorced from the rhetoric of the overall statement. Martinez's words, which proceed directly from "There is nothing else I can say, that can help you," to "Mija, I love you," and so forth, and then directly back to "I am sorry..." is a perfect example of this behavior; the rhetor begins his or her utterance, sidetracks into affection for a moment, then returns to his previous rhetorical presentation. No judgment should be made either against rhetors in this situation or against the repentant genre, as the real source of distortion is, in all cases, the gravitic pull of the affectionate genre. The presence of
family or friends at the death chamber is simply such a major, universal rhetorical exigence that almost everyone in that place, waiting to die, offers an affectionate word or two to those they know and love, even if those words have nothing to do with what the condemned set out to say. Humans are social, familial creatures. It shouldn't surprise anyone when they act in social ways, especially to their family members. Nevertheless, the characteristic traits of Martinez's words give us a good measuring stick by which we can identify and exclude such asides from a rhetor's utterance when we consider it more formally.

The controlling exigence in a repentant rhetor is that of regret. It would be too easy to say guilt here, and I avoid the word, because guilt, specifically, implies a passing stage of mourning—that the rhetor speaks out of personal emotional distress. This is simply not the case. Rather, the condemned speaks from a position far removed from his or her actions, and looks upon them with a sad wistfulness, fused with a desire to heal the pain that was inflicted. Guilt is a stage in coping with trauma. Regret comes from looking at yourself honestly and thoughtfully, and finding yourself wanting. For this reason, perhaps the most common, fixed feature of pure statements of regret is the acknowledgement that nothing the rhetor says or does can right the wrong that (s)he committed. A guilty man wishes that he'd never done what he was caught doing. A regretful man wishes that he could do something to make things right.

In a Bitzerian sense, the exigence here is similar to that perceived by those who give statements of affection. However, a change in perceived audience as a core constituent constrains the situation for the rhetor in these cases; in other words, the condemned sees the family of his or her victim, and the chance to apologize to them overrides any other exigence (s)he might perceive. For understandable reasons, the condemned don't want to be thought of as
a heartless monster, and so (s)he attempts to correct that perceived imperfection. The reality of such statements is much more fraught than is the reality of statements of affection, however, and for the same reasons. The audience for a statement of affection, friends and family members, is much more open to rhetorical action than is the typical audience for a statement of repentance, which will typically consider itself not as part of a rhetorical audience, but as a rhetorical opponent\textsuperscript{70}. Thus, a rhetor giving a statement of repentance must often first convince the family of his or her victim to assume the role of audience, rather than opposition, before they can possibly be convinced. The rhetorical moves that one must make in order to even attempt such a statement are nuanced, idiosyncratic, and subtle, even if the goal of those moves is always the same.

Much of our misunderstanding of repentant statements stems from how easy it is to conflate guilt and regret in those we execute, and it makes for sadly simplistic analysis of those who are executed as they utter words of repentance. To express regret, the rhetor must have changed in a substantive way, to the degree that (s)he recognizes not only that what (s)he did was wrong, but that the act is an inseparable part of who he or she is. The rhetor must internalize his or her own heinousness, consider it and, ultimately, assimilate it into his or her sense of self. There is no immature pleading for the impossible fantasy of undoing past transgressions; there is only sadness and a desire to do better. The statements may seem relatively simple, but the psychology and the rhetoric which lies behind them is anything but. A full-throated statement of repentance demands that the rhetor has grown fundamentally as a human being—that (s)he has

\footnote{This is typical, but it is far from uncommon for members of a victim's family to forgive the condemned to some degree. In such cases, they are much more open to such modes of persuasion.}
matured and has been reformed, at least to some degree, and that (s)he be able to demonstrate that fact to the most staunch opposition imaginable.

**Statement of Spirituality:** Jeffery Lynn Williams, executed June 26, 2002

In a more perfect world, we would now be considering the last words of Hai Hai Vuong, who was executed on December 7, 1995. Pure statements of spirituality are not very common at the beginning of our period, and Vuong's is an excellent, fascinating example of classic Christian prayer in the death chamber. His speech represents evangelical spirituality, even as his personal history—what we know of it, anyhow—is not. That history is largely a mystery. I have been unable to unearth any substantive record of Vuong's life before his conviction for murder. Texas itself appears to have a serious records problem in his case; Vuong's arrest report notes, for instance, that the Texas Department of Criminal Justice had no record of his incarceration while he was on trial for capital murder. Thus, I can provide no context for Vuong's final words before his arrest, which in turn invalidates him as a candidate for a case study. However, those words are worth preserving; while I will not perform an analysis of Vuong's final statement, it is as follows:

I thank God that he died for my sins on the cross, and I thank Him for saving my soul, so I will know when my body lays back in the grave, my soul goes to be with the Lord. Praise God. I hope whoever hears my voice tonight will turn to the Lord. I give my spirit back to Him. Praise the Lord. Praise Jesus. Hallelujah.

Those who, like Vuong, delivered a pure statement of spirituality before 2002 fall into three categories: 1.) the statement was very simple, to such a degree that concerted examination is unsustainable; 2.) so few records exist of the condemned's life that context is impossible to
furnish; 3.) their cases are complicated by other issues which distract from a rhetorical
examination of their words in context. Juan Salvez Soria, executed July 26, 2000, is a very good
example of the last group, as his mental faculties were questionable at the time of his execution;
it seems he went to the gurney believing that he was about to be the patient in a medical
procedure of some sort.

I therefore turn to Jeffrey Lynn Williams, who was born on October 15th of 1971 to a
poor black family in Texas. Few records are available about his childhood, as he seems to have
had extensive and repeated contact with the juvenile criminal justice system, which has sealed
his childhood records. While this is inconvenient, Williams' contact with the adult criminal
justice system follows a fairly clear pattern from which reasonable conclusions can be made
about his childhood. A high-school dropout in the ninth grade, Williams made a living as a line
cook when he wasn't serving one of his frequent terms of incarceration.

Williams' paper trail begins in April of 1989, when he was convicted at age 17 of stealing
a car with the intent of selling it. He spent a month in prison, and was released on probation with
a small fine. Less than a month after his release, he was arrested for car theft again when he and
a friend drove two stolen cars into a drainage ditch. During the crime, Williams shot at a
bystander and, while he missed, was convicted of aggravated assault. He was sentenced to seven
years as a result of the day's work, and served a fraction of that before he was released in late
January of 1990. Three months later, he was caught stealing another car, and pled guilty to that
offense, earning another ten years' incarceration. Paroled in late April of 1991, Williams was
arrested less than two months later for stealing yet another car, for which he was sentenced to 25
On the night of October 26th, 1994, Williams broke into his neighbor Barbara Jackson Pullins' apartment with the intent to burglarize the place. Pullins, unfortunately, was home, and there was a brief altercation, in which Williams cut her with a knife, and after which he raped her. Afterward, he tried to suffocate her with a plastic bag; when that failed, he strangled her with the cord from an iron and attempted to light her body on fire with a roll of paper towels. This, too, failed. Eventually, Williams made his way into Pullins' nine-year-old daughter's bedroom. He woke the girl by strangling her, threatened her life, and then raped the child, leaving her alive. He stole a few things from the apartment, left, and then stole Pullins' car. Police arrested Williams after receiving an anonymous tip, and confirmed what he had done in Pullins' apartment with a variety of evidence including fingerprint, DNA, and fiber analysis, then closed the case with Williams' own confession. His conviction was swift; the jury convened to sentence him took only twenty-three minutes to condemn Williams to die.

Williams' appeals process was similarly decisive. After his conviction was affirmed late in 1996, Williams filed a brief flurry of appeals, constituting two habeas petitions and a certiorari petition. All of them failed. Simply put, Williams' trial was fair and straightforward, lacked any reversible error, and he was convicted of a crime which he very clearly committed.

When Williams was brought into the death chamber, most of Williams' family, several members of the Pullins family, as well as the three siblings of the girl he had raped were all in

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71 I do not mean any of this as a value judgment against Williams. Rather, I seek here to describe his character, his personality, and one of the more important life decisions he made, in the interest of providing context. I mean my descriptions in the same way I might describe a wind as cold and biting; it is not a criticism of the wind, but a description of what it is, in the hopes that you might better understand it.
attendance. He acknowledged none of them, and instead prayed the twenty-third psalm. These are his final words:

The Lord is my Shepherd, I shall not want. He maketh me lie down in green pastures; He leadeth me beside the still waters, He restoreth my soul. He leadeth me in the paths of righteousness for His name's sake. Yea, though I walk through the valley of the shadow of death, I will fear no evil; for Thou art with me. Thy rod and Thy staff, they comfort me. Thou preparest a table before me, in the presence of mine enemies. He anointeth my head with oil; my cup runneth over. Surely goodness and mercy shall follow me all the days of my life, and I will dwell in the House of the Lord forever. Amen. Amen.

In some ways, it's hard to respond to such a stark case, one in which the condemned was simply not responding to the human rhetorical context which we are used to dealing with, but instead directing his statements to God. There is no physical audience for this statement. Williams was not attempting to sway even a single person in attendance in any way. This classic prayer, one of the oldest and most beloved in Christian spirituality, seems almost cold in this context. How could he not at least acknowledge his family, we wonder, in his last moments?

Let us begin at the beginning. Where is the rhetoric of this statement? The exigence that Williams felt was one of piety; he believed that he would very shortly be coming face-to-face with God.\textsuperscript{72} He wanted to be certain of that God's good grace, and to do so he demonstrated his devotion at the greatest extreme.\textsuperscript{73} However, he addressed none in the room, and made no attempt to persuade anyone of anything. In an explicitly Bitzerian sense, his words had no pragmatic effect. Should they not be considered rhetorical?

\textsuperscript{72} As he imagined God to be; discussing divinity is somewhat difficult when we need to leave the definitions of and behavior expected by a divine figure open to the interpretation of many spiritual traditions. As such, it is best to frame discussions of that divinity from the perspective of the penitent.

\textsuperscript{73} It should also be noted that there is a strong tradition of Christian martyrdom which Williams probably had very keenly in mind. While it can't be said that he was dying for his God, dying with words that his religion defined as special and holy upon his lips is a common way to invoke that tradition.
The essential distinction which we must remember when we examine statements of spirituality, and particularly prayers, is that, from the perspective of the condemned, there is another audience in the room. The divine, in whatever form the person about to be executed imagines it to be, supersedes all other presences in the death chamber and commands the condemned's attention in these cases. Family matters. Human connections are important. But, in the mind of the faithful condemned, one last demonstration of faith might be the difference between eternal damnation and forgiveness. This is one of those edge cases where Burke rescues a bit of unusual rhetoric from the metaphorical dustbin; consider the matter from Williams’ perspective. He sees an imperfection in the world marked with urgency, an exigence—he is about to die, and the eyes of his god are upon him, watching to see what it is in his final moments he considers to be most important. That same god, he sees, must be satisfied with Williams' piety and devotion, or he will be condemned to Hell for an eternity of suffering. So, Williams speaks, invoking words of spirituality to demonstrate his devotion in an attempt to persuade that god to mercy.

Things become a bit tricky here. On one hand, we can argue that the statement is rhetorical, but doing so simultaneously makes the argument that either there is no God or that God exists, but cannot be persuaded. Regardless, the matter dissolves into metaphysics, and is therefore unproductive. Let us therefore set aside the condemned's primary perceived audience, and address his actual audience: those attending his execution. Regardless of the audience Williams perceived and responded to, there were people in the death chamber with him there who observed his final words and were, to one degree or another, affected by them. Such a prayer at the end of his life would be perceived by Christians as an *exemplum* of his devotion to
God, and an affirmation of their own faith. It might convinced a lapsed Christian to return to church. It might ingrain with absolute certainty in the heart of a brother or a mother that, to see Williams again, they too would need to be devoted and holy, in deed and action. Regardless, they are persuaded to action, even if incidentally. It is argumentation by *ethos*.

Particularly amongst the strongly evangelical or fundamental, a final statement of faith is *essential* for the salvation which the condemned crave. And, honestly, appropriately so. If you believe, in your heart of hearts, in divine justice in the afterlife and if you know that you have violated one of the most important and sacred of your god's commandments, the exigence to act as your faith demands in your last moments, to attempt to atone—not to repent, but to atone, to God—must be overwhelming.

In a Judeo-Christian-Islamic context in particular, such an utterance must find its root in fear. The fear of suffering without end, the fear on the part of the condemned that (s)he has failed the most important test of his or her existence, the fear, ultimately, that (s)he has wasted the gift of life in vice and sin. It is an exigence which traces back to our deep Puritan roots, where a bold preacher once warned us that we were sinners in the hands of an angry God, and that it would take so little effort for us to slip and fall into eternal torment. That strain of Puritanism runs strongly in America, and has never really died out, especially in evangelical Protestant sects. It's not that condemned men and women who respond to this exigence fear God, really, it is that they believe in justice when the world around them is so plainly unjust. They know that what they've done was unjust, and they're afraid that what they've done will be

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74 I chose Williams as an example of statements of spirituality because the rhetorical case for prayers at the end of life is by far the most difficult case to make amongst all genres of final utterance. If prayers are rhetorical in this situation, then preaching and witnessing are very obviously rhetorical.
that small breath that causes their feet to slide and fall into the bottomless pit. They fear
themselves, and so they try to remake themselves in the way that most closely brings them to
God, and in so doing offer prayer. It wouldn't be unfair, as such, to say that statements of
spirituality, and in particular prayerful statements of spirituality, are as hopeful as they are
fearful; those cases, however, tend to pick up a meaningful statement of affection along the way,
and thereby a different rhetorical goal.

**Statements of Affection/Repentance: Jose Santellan, Sr., executed April 10, 2002**

Jose Santellan was born on March 8th, 1961 to a large immigrant family on the far
outskirts of the greater Dallas metropolitan area. The victim of extensive childhood abuse which
resulted in physical, emotional, and neurological damage which would plague him for the rest of
his life, Santellan's childhood was anything but idyllic. He dropped out of high school after
completing the tenth grade and fled from his family, with whom he later, for the most part,
reconciled. In the meanwhile, he assimilated into the unskilled labor force, and survived by
working in freight, loading and unloading trucks for a living for the larger part of his youth. He
married, fathered children, and divorced young.

Santellan's first encounter with the criminal justice system occurred in March of 1987,
when he was arrested for burglary. He received five years' probation for the crime, which was
revoked three months later after he was arrested and convicted of assault in an unrelated case.
He served one year of two before he was paroled in August of 1988. A month later, he was
arrested during a domestic dispute with a girlfriend, and a month after that he was arrested for
assault again, and returned to prison in April of 1989. He served a month in prison and the
remainder of his sentence in mandatory supervision, which ended in the summer of 1990.

At this point, Santellan left Texas and served time in other states for a variety of offenses.
While living in Michigan, he was arrested several times in rapid succession for a variety of
crimes, including shoplifting, breaking and entering, assault with a dangerous weapon, and
carrying a concealed weapon. He served two years in the Michigan penitentiary system; during
his time there, he attempted to escape from prison through violence, and assaulted a prison
employee with a deadly weapon. In 1992, he was paroled and returned to Texas.

Some time between his return to Texas and the summer of 1993, Santellan met and began
to court Yolanda Garza, a nurse assistant and mother of two. Their relationship didn't last long,
and Garza felt threatened enough by Santellan that she sent several letters to her family in which
she described her fear of him, and notified her work that she would be moving because of
concern for her safety. On August 22\textsuperscript{nd} of 1993, Santellan met Garza outside of her place of
employment at the end of a shift. While one of Garza's friends, Norma Hoffman, watched,
Santellan and Garza argued for a short while, then Santellan shot Garza repeatedly with a small-
caliber pistol. He then took Garza's body, put it in the passenger seat of his car, and fled. On his
way out of town, he used his pistol to rob a store for petty cash and beer, and eventually checked
into a motel about eighty miles away. While there, he spent two days raping Garza's corpse
repeatedly, sprinkling it with perfume to conceal its decomposition. When police eventually
tracked him to the motel, they found him passed out near her corpse, drunk and high on pills he'd
stolen from Garza's purse. While in prison awaiting trial, Santellan attacked a corrections
officer, and after he was convicted, he repeated the offense many times. He also set fire to his
prison cell, threw urine on corrections officers, and regularly threatened the lives of his jailors and other inmates, whom he repeatedly assaulted.

Santellan's trial and initial appeals were unremarkable, given the panoply of evidence against him. A habeas application was denied in 1998, but the decision was appealed. In March of 2000, a federal court partially granted Santellan's habeas request, saying that he was entitled to a new trial on the basis that his first attorney had not made Santellan's neurological impairment, a result of his childhood abuse, an issue at court. The State of Texas appealed the decision, and the Fifth Circuit reversed the lower court's decision, but noted in its decision that Santellan's "attorney rendered unconstitutionally deficient performance by not investigating [Santellan's] possible organic brain injury," but that the attorney's failure to do so was essentially irrelevant, given all of the other evidence available. Santellan made a certiorari petition, which was denied; he was executed while a second was pending before the appellate court.

Given Santellan's personal history—that of an aggressive, antisocial thug and a repeat felon with little regard for others—and a complicated trial history which included a potentially ameliorating factor which was not considered at trial and a pending request for legal relief which had not been ruled on at the time of his execution, one would be fair in expecting a defiant statement from him in his final moments. Certainly, there are troubling aspects of his appeals history, but it does not seem that this troubled Santellan when he was brought into the death chamber. These are his last words:

First of all, I would like to apologize to the Guajardo family even though they are not present. I loved Yolanda a lot. I hope and pray they can forgive me for all the pain. To my family, stay strong. Tom, Orlando, Celia, stay strong. Michael, thank you for your friendship. Thank you for the support you have given me. I thank all of you and I love all of you. To the guys on death row, stay strong and I hope to see you someday. Bye bye, I love you guys, don't worry about me. It's going to be alright.
A perfect example of an affectionate/repentant statement. What is the exigence here—what symbols catch on Santellan's terministic screen? It clearly was not any sense of justice or injustice. It is certainly unusual for a person to be executed while they have an appeal of their execution pending, and while that situation might inspire another to make a statement of defiance at being denied even a few more days of life while that appeal was being decided, it wasn't the exigence that Santellan perceived.

What Santellan's final words illustrate here is that what the condemned feels is important in his or her last moment is the controlling exigence of the rhetorical situation of the death chamber. Santellan saw his family and thought of the family of the victim, and he felt it was important to address them all. He wanted to comfort all—even those who clearly did not want his comfort. Whatever the condemned perceives to be important is an entirely, wholly subjective judgment, and hinges not only on the condemned's perception of his or her rhetorical situation, but on his or her ability to affect it. If the condemned perceives injustice but doesn't feel able to affect it with their words, a defiant response would be totally inappropriate from the perspective of the rhetor.

And so it is for Santellan, as heinous as his crimes are and as antisocial as he has been. He saw his family and friends from the death chamber, and sought comfort in sharing his love with them. He knew that his victim's family wasn't there, but he wished to reach out and attempt to repair his shattered relationship with them by apologizing for his actions. Jose Santellan, in his final moments, sought comfort in the humanity he shared with everyone there that day, and even though he was about to die, even though any comfort he could receive could only be
fleeting and ephemeral, he clearly perceived that the need to connect to other people was of commanding importance.

This is the defining characteristic of statements of affection/repentance as a subgenre of affectionate statements. Such utterances hinge upon the condemned's need for community and comfort in an impossible moment, and are typically long, detailed, and exhaustive in who they address. Almost all of the longest statements in the corpus are statements of affection/repentance and the reason for their typical length is that, as part of the exigence, the rhetor must generally build the community which (s)he seeks as the primary rhetorical object of his or her statement. A minority of statements of affection/repentance are the exact opposite of this typical presentation: they are exceptionally short, often only a sentence or two long. The exigence in this case in no different, but the context is; in such cases, the condemned doesn't feel the need to build a community because it has already been built. Often this results from extensive communication before the condemned arrives in the death chamber in the years and months leading up to execution. In these cases, statements of affection/repentance are simpler affirmations of the same community which the condemned still needs to feel before (s)he can face the end of his or her life. They are, at heart, a subset of statements of affection, in which the language of repentance is used to reinforce the fundamental humanity of the rhetor, and thereby make the human bridging which (s)he strives for more possible.

Santellan's last words are evidence that the single most important constraint in the composition of a final statement is the death chamber itself; all other factors are secondary. His statement echoes the correlations we found and, more importantly, did not find when we examined the corpus qualitatively, and it puts a very personal face on those numbers. Amongst
the most important parts of all final statements is the need for comfort; everyone who enters the death chamber is afraid, to some degree, and statements of affection/repentance are the most pure expression of a need to both provide and receive human comfort.

**Statements of Affection/Spirituality: Alvin Andrew Kelly, executed October 14, 2008**

Alvin Andrew Kelly was born on March 14, 1951, and is the oldest individual included in our case studies. His life, and case, are complicated and heavily disputed in both the legal and public arenas, and as such will be difficult to disentangle. To that end, I will cover his early life only in brief, because it has little relevance to the segment of his life with which we are interested.

Kelly married relatively young, and had several children with his wife, Cynthia. A high school dropout, Kelly eventually received his G.E.D., and worked full-time as a heavy equipment operator for much of his life. He earned a modest living, and supported his family in a mobile home community, but he and his wife became addicted to methamphetamines sometime in the late 1970's. As a result, their previously stable, if lower-class, life became precarious. The two began to sell and use drugs and were able to arrest the family's decline for a time. The economy worsened, however, and the two were forced to turn more and more to their illicit side business to make ends meet. It is certain that, in this period, Kelly and his wife committed a series of crimes, but the two were never caught or charged with any misdeed and, while Kelly eventually became quite open about the later stages of his criminal career, he never spoke much about the earlier parts of it. Thus, we have an oddly backwards situation; the entirety of Kelly's criminal record happened *after* the crime for which he would eventually be condemned to die.
On April 30th, 1984, records provided by the State of Texas indicate that Kelly and the narcotics distributor for whom he worked, Ronnie Lee Wilson, arrived at the home of Jerry Morgan. The two were accompanied by Kelly's wife and her brother, Steven, both of whom also worked for Wilson selling drugs. Morgan had been a longtime customer to the two, but Kelly and Wilson had begun to suspect that he was cooperating with police, and so went to his residence to silence him either by intimidation or by force. Steven testified that he watched his brother-in-law threaten Morgan with a gun, but the four eventually left his house without anything more alarming happening. Records state that Kelly, Wilson, and Kelly's wife, Cynthia, returned to Morgan's home later that night. The three broke in, and Kelly shot Morgan four times, and then proceeded to murder Morgan's wife and his eighteen-month-old infant. The three fled, and the case remained open for six years.

In that time period, Kelly had repeated contact with the criminal justice system. In 1984, Kelly and his wife murdered their roommate, John T. Ford, who owed them drugs and money. Kelly later described the crime; he and Cynthia met Ford out in the country with the intent of stripping him of his worldly possessions and leaving him there to make his way back into town. The intended punishment went awry when a gun, which Cynthia was holding on Ford while the three were far from civilization, went off. Kelly took the gun and emptied it into Ford, killing him. Kelly then set Ford's car and all of the evidence aflame, and fled the scene with his wife; as a result, police were unable to pursue the case. In September of 1985, Kelly was convicted of burglary, sentenced to five years, and served six months. Two years later, he was finally caught selling narcotics, and was sentenced to another five-year prison term and was paroled after four months. Kelly and his wife then became estranged, and in late 1989, Cynthia offered testimony
against Kelly to the police in both the Ford and Wilson cases. Kelly pled guilty to Ford's murder in August of 1990, and was sentenced to thirty years' imprisonment. He denied involvement in the Wilson case, and turned down several plea bargains which would've sentenced him to life imprisonment. Given that he was a 40-year-old man serving a thirty-year sentence, life imprisonment was a reality for Kelly. Despite that, he maintained that his protestations of innocence were based on the fact that, in the Wilson case, he had not actually done what he had been charged with.

Kelly's trial was not simple. Kelly fought his conviction every step of the way, and had his lawyer argue that a pair of unspecified black men had committed the crime he stood accused of. He further claimed that his wife had had a relationship with Morgan, and that she'd perjured herself in an effort to spite Kelly. The state had no physical evidence of Kelly's presence at the house, and its case hinged almost entirely on Cynthia's testimony and that of her brother; despite this, Kelly's jury eventually returned a guilty verdict and condemned him to die. Wilson was convicted in a separate trial and sentenced to 66 years' incarceration.

Kelly's post-conviction appeals process is even more convoluted than his trial was. Spanning over twenty years, Kelly's appeals included several habeas and certiorari applications. Amongst his several appellate claims is a 2000 claim that his rights to due process had been violated because he was actually innocent of the crime he'd been convicted of; that claim was rejected based on the precedent set several years earlier by Leonel Herrera, examined in detail earlier. Most of Kelly's appeals, however, centered on whether and to what degree Cynthia's testimony had been falsified. The resultant chain of legal disputation, while convoluted, is based on a few simple points. First, Cynthia and her brother were never charged for their roles in either
the Ford murder or the Morgan murders; Kelly argued that their testimony had been essentially bought and paid for with an offer of immunity by the District Attorney, but no documentation of such a deal existed, and the legal wrangling which dealt with whether or not such a deal had been made and, if it had, what effect it had had on the testimony in Kelly's trial consumed several appeals. Second, testimony arose some years after Kelly's conviction that Cynthia had bragged to friends and family members that she had deliberately perjured herself to get him convicted; plumbing the depths of this particular rabbit-hole consumed the vast majority of Kelly's appeals process. The summation of all of Kelly's efforts is straightforward: Kelly's wife may or may not have perjured herself, but any relief for Kelly must rely on the state being able and willing to prove the fact. The state could not or would not do so, and as a result Kelly's conviction and condemnation stood.

When Kelly was brought into the death chamber on October 14th of 2008, his children and a substantial portion of his family were in attendance. Also present was Morgan's niece, but Kelly addressed her only in passing, as a rhetorical side note. His last words are as follows:

Yes, I would like to thank God for my salvation and all he has done in my life. I thank my family, loved ones, and friends. I give Him thanks, honor, and glory. I love you Mary Taylor with all my heart, I always have. You are my girl. I love you, Michelle. You are my little kitten. Kevin, it’s all you now. You are my boy. Sylvia, my sister, keep your eyes on Christ, forever. Everything is going to be okay. Angela Christine, keep your eyes on the prize and nothing else. I love all of you. God’s been good. I would like to address the family: I offer my sorrow and my heart goes out to ya’ll. I know you believe that you’re going to have closure tonight and as I stand before God today, the true judge, I had nothing to do with the death of your family. I ask God to hold this. I would like to address the family of John T. Ford: I ask for forgiveness, because I do stand guilty for my involvement for that. Thank you Lord Jesus Christ for coming to my life. (quiet singing) Thank you Lord Jesus for coming into my life, you walked me through prison. Thank you Lord Jesus because you died for me. Thank you Lord Jesus for remembering me...
Kelly's last words are typical of many statements of affection/spirituality, in that they are exhaustively lengthy and detailed. More importantly, they are a fine example of preaching as a response to the standard spiritual rhetorical exigence, which is a need to live up to God’s expectations in the expectation of immediate judgment; this feature is very typical of statements of affection/spirituality, and is in fact the typical response for a rhetor who feels the need to preach generally. Such a rhetorical response seems to invite familial and personal connections as a reinforcing and humanizing component which mediates the impersonal spiritual devotion of prayer and the human emphasis of witnessing. Kelly's words are abnormal here in that they include a passing reference to the victim's family which could either be read as mildly defiant or repentant, but its presence is completely subsumed in the larger rhetorical drive of the statement. This is clearly an exhortation to faith, and a recapitulation of the religion he and his family shares.

The motives behind such a statement are more complex than are those of the four primary utterance genres. Certainly, we can see the reaching-out for human contact and comfort which lies behind all statements of affection, and certainly we can see a striving towards the divine, to whom the condemned feels (s)he will shortly be responsible. The problem is that the two motives get mixed up in one another, each twisted by the other's presence. A statement of affection/spirituality attempts to bind family and friends together, certainly, but it does not do so out of the typical affectionate urge to repair relationships and heal wounds. It seeks to affirm a shared spiritual code which each person believes to be true in the hope that each family member will be reunited with the others in the afterlife. By the same token, a condemned man or woman pleads to whatever his or her conception of God is for salvation, mercy, and all the rest, but that
too is secondary; the rhetor wishes to be reunited with his or her family after death, and it is frankly immaterial where or how that happens. Any version of a heaven is acceptable, and so we typically see fairly bland, if heartfelt, affirmations of faith in statements of affection/spirituality. "Keep your eyes on the prize," Kelly exhorts his children; it's not about pleasing God, but using him to get what each member of this strained family wants. Kelly's confidence in his otherworldly reward is absolute, and he wants to ensure that his family's is as well.

Statements of affection/spirituality could be said to occupy the same niche as statements of affection, with the sole exception that they rely on a different context. Statements of affection seek to build community in the physical world, to prepare the condemned and his or her loved ones for death; affectionate/spiritual statements seek to build that same community in the afterlife.

**Statements of Repentance/Spirituality:** Ángel Maturino Reséndiz, executed June 27, 2006

The story of Ángel Maturino Reséndiz, born Ángel Leoncio Reyes Recendis, is long and sad. A native of Izúcar de Matamoros in the state of Puebla, Mexico on the first of August, 1960, Reséndiz came from the worst sort of background. Born to a poor single mother who beat him mercilessly for the first six years of his life, and then sent to an uncle who regularly raped and allowed others to rape him, Reséndiz's childhood should properly be called anything but. When he turned eleven, Reséndiz fled his uncle and became homeless, an addict and, tragically, his sexual victimization continued, this time at the hands of transients and at least one gang of local boys. We know little about his life until after he turned 16, in 1976; there is simply no record of Reséndiz, because he lived almost entirely outside of society. He appears in the late
summer of 1976 in deportation proceedings after he tried and failed to cross illegally into America. The attempt did not discourage him, and while Reséndiz was caught and deported several times, he eventually made it across the border. After this first success, Reséndiz had little trouble later re-entering the United States when he was eventually, and repeatedly, deported later on in his life. Perhaps as a result of his abuse as a child, and perhaps in addition to it, Reséndiz developed a complicated web of psychological problems, including schizoid disorder and persistent, Biblically based paranoid delusions. Because Reséndiz never settled down to live a life as we commonly define it, our knowledge of his history is somewhat limited; however, his constant and repeated contact with the criminal justice system leaves a trail for us to follow, and a terrifying one it is.

Reséndiz's first conviction came in Florida, where he received a twenty-year sentence for burglary, aggravated assault, and automobile theft. He served part of the sentence and was deported. Before he returned to the United States, he committed his first murder, as far as we are aware. In 1986, he shot and killed a homeless woman he met at a shelter with a .38-caliber pistol, then hid her body in an abandoned farmhouse. Shortly thereafter, he tracked down the woman's boyfriend and murdered him as well. Reséndiz claimed after his arrest and conviction years later that he did so because he believed the man was a practitioner of black magic. Thereafter he re-entered the United States, was detained by Immigration officers, and served an eighteen-month sentence for illegal re-entry before being deported to Mexico again in 1987. He disappears again for a few years here, but in the summer of 1991, Reséndiz appeared in Lexington, Kentucky, and murdered Michael White by beating him to death with a brick. Reséndiz believed the man to be gay. He was captured again by Immigrations officers shortly
thereafter and served a 30-month sentence for illegal re-entry and false representation with the intent to obtain a passport, after which he was transferred to the New Mexico Corrections Department to serve a further 18-month sentence for burglary; despite his apprehension, he was not, at this time, a suspect in any murder. He was deported on April 3rd of 1993.

And, for a time, we know nothing of the life of Ángel Maturino Reséndiz. At some point in this time period, he re-entered the United States, but we have no idea when or where. Most consider it likely that during this time Reséndiz's spree of serial murders began; while we know for certain that he committed at least fifteen, some suspect that he actually killed as many as twice that number before he was finally caught. The first two victims of which we know in this timeframe were Jesse Howell, of Oclala, Florida, whom Reséndiz beat to death with a hose, and Howell's fiancée, Wendy von Huben, who Reséndiz raped, strangled, and buried in a shallow grave on or around March 23, 1997. Four months later, a homeless man was beaten to death with a chunk of plywood in Colton, California, and while it is has not been proven conclusively that Reséndiz was the perpetrator in this case, police consider him to be the only real suspect. A month later, in Lexington, Kentucky, Reséndiz beat Christopher Maier to death with a large rock. Maier's girlfriend at the time, Holly Pendleton, was raped and savagely beaten as well; she is the only known survivor of an attack by Reséndiz. His success as a murderer at this time came from his extensive use of the freight rail system, which Reséndiz employed to travel undetected from state to state and, indeed, country to country. Because of this, he would eventually gain the moniker 'the railway killer.'

Reséndiz disappeared for about a year here, but murdered again in Hughes Springs, Texas. The victim, Leafie Mason, was beaten to death with an antique flat iron, a knickknack
she'd bought to decorate her home. Two months later, in West University Place, Texas, Reséndiz raped, stabbed, and beat Claudia Benton to death, then stole her Jeep and fled to San Antonio, where the vehicle was later recovered by police. In early May of 1999, Reséndiz surfaced again in Weimar, Texas, where he murdered Norman J. Sirnic and his wife, Karen Sirnic. The two were bludgeoned to death with a sledgehammer, and Reséndiz stole their car. It, too, was eventually recovered in San Antonio.

Reséndiz's last three murders were a pell-mell spree; on June 4th, 1999, Reséndiz murdered Noemi Dominguez with a pickaxe in Houston, then stole her car and fled to Fayette County, in Texas, where he murdered Josephine Konvicka with the same weapon. Reséndiz then drove north, and murdered George Morber, Sr. and Carolyn Frederick in Gorham, Illinois with a shotgun and a tire iron, respectively. He then turned south again, and was finally arrested at the International Bridge in El Paso after his sister, Manuela, began to cooperate with the FBI.

It would be for the rape and murder of Claudia Benton which Reséndiz would eventually be tried. Prosecutors presented evidence of his presence in the house, his fingerprints on the steering column of her stolen Jeep, and DNA evidence left on Benton's body. Reséndiz never disputed the actions, and argued through his lawyer that he was not guilty by reason of insanity—that, in essence, he couldn't be held responsible for his actions on account of his schizophrenia, and that he believed that he was acting out God's divine wrath upon the unholy. His defense was elaborate, thorough, and quite possibly true, but prosecutors made a convincing case that, regardless of his mental capacity, he knew right from wrong. The jury convicted and condemned him based on that testimony.
It is at this point that Reséndiz's behavior and his legal record diverge. Upon receiving persistent spiritual counsel in prison and regular medication for his schizophrenia, Reséndiz quickly came to believe that what he had done was wrong, and began to work with FBI investigators to identify every murder he'd committed within the United States, and thereby close the cases and give the families of his many victims closure. Reséndiz eventually confessed to twelve murders in America besides Benton's; in so doing, he said that he hoped to accelerate his own execution, which he believed was the only right thing.

Reséndiz's court-appointed lawyers, meanwhile, pursued all of the standard death row appeals without his help. Two habeas applications were denied, as were two certiorari applications. Interestingly, at the end of the appeals process, the Mexican government appointed a lawyer to oppose Reséndiz's execution, as Mexico has banned capital punishment and opposes its imposition on any of its citizens. The lawyer, Jack Zimmerman, managed to delay Reséndiz's execution by a month and a half pending a competency hearing. The application failed, and Zimmerman appealed to the Supreme Court on the grounds that the death penalty itself was inhumane and that Reséndiz was mentally unfit for execution. The court affirmed Reséndiz's sentence, and in the evening of the 27th of June, he was brought to the death chamber.

As is often the case when a high-profile serial killer comes to the death chamber, the execution itself was a center of attention. Representatives of all of the major news outlets attended, as did several family members of Reséndiz's many victims, though each was limited to one representative at most, on account of the sheer number of people who would otherwise attempt to attend. Reséndiz addressed them all directly in his last words:

Yes sir. I want to ask if it is in your heart to forgive me. You don't have to. I know I allowed the devil to rule my life. I just ask you to forgive me and ask the Lord to forgive
me for allowing the devil to deceive me. I thank God for having patience with me. I don't deserve to cause you pain. You did not deserve this. I deserve what I am getting.

While his final statement is rhetorically straightforward, and while it is very heavily loaded given his history, Reséndiz's last words are quite typical of all statements of repentance/spirituality. Reséndiz addresses his audience directly, and fuses his request for forgiveness with his spiritual invocation. That forgiveness forms the heart and soul of his rhetorical goals in this situation, but there are a few features in Reséndiz's last words, and in statements of repentance/spirituality generally, which differentiate them from their parent genres.

Statements of repentance seek to rebuild fractured community, and statements of spirituality seek to prepare the rhetor for the afterlife, but statements of affection/spirituality don't do either of these things. A strong and defining feature of the subgenre is that the rhetor always creates a clear distinction between him- or herself and his or her audience. There is no attempt to rebuild a community here, only deepest regret. The rhetor asks for forgiveness, but does not expect to receive it nor, generally, does (s)he believe that (s)he deserves it. The rhetor generally reaches for divine language not out of a real hope to make right by God, but because (s)he lacks any more meaningful language to convey the depths of his or her regret. A minority of these statements are a more simple fusion of repentant and spiritual statements, and function in exactly the way that you'd expect: they are a simple apology and a simple prayer. Such a response to the exigence of the death chamber is not typical, however, amongst statements of repentance/spirituality.

The best way to look at this subgenre is as a true subset of statements of repentance, in which spiritual language has been used as a magnifier, a form of emphasis, on the regret which lies at the real heart of the condemned's rhetoric here. It is, so far as I can tell, the only context in
which the most emphatic language of belief is used in a way which has nothing at all to do with the rhetor's relationship with the divine, and in that sense it seems strange. On the other hand, America—and Mexico, for the matter—are profoundly religious places, where the language of spirituality is frequently adapted to other rhetorical ends. It seems that in the same way that a politician might invoke God's name for political gain or a soldier might invoke the same to more emphatically express his or her unease in a combat situation, so too can the condemned adapt the language of the spirit to give greater and more emphatic meaning to something completely different.

**Art and Argumentation**

And that's really the heart of the matter; if a man as disturbed as Ángel Maturino Reséndiz can use the divine as a magnifier the same way you or I might to make a point in an argument, if a man as indignant as Leonel Herrerra can argue about the injustice of an act which he cannot stop and which he cannot live to see remedied, if a man as violent as Jose Santellan, Sr. can seek out community and love in his final moments, then the conclusion that people use rhetoric at the end of their lives in the exact same way as they do when they're living them is inescapable. The rhetoric of death is the rhetoric of life. There is no difference.

It ought to be deeply reassuring to us because it tells us that rhetoric, at its deepest heart, is a simple, fundamental thing intrinsic to all human language. A three-year-old can mount an argument (though probably not a very good one) and be understood. The need to reach across the void and affect another human being is essential to who we are, and the basics of how we do
that are a part of the way we think. There isn't any special preparation any of us have to make to face death. We are ready to respond to it, if only in rhetorical terms.

In practical terms, however, these seven case studies raise a couple of interesting questions. First, if the rhetorical composition strategies that a person can call upon in one situation are the same that (s)he can call upon in any other rhetorical situation, as is the case from what we've seen both quantitatively and qualitatively, then Vatz's position on the rhetorical situation—or, rather, his rejection of it—would seem to be vindicated. After all, if situations change but the way we respond to them does not, then the obvious interpretation is that artistry and rhetorical choice are crucial.

I do not think that the obvious interpretation here is wrong, but I do not think that it's entirely right either. After all, this qualitative analysis definitely confirms that at least one component of the rhetorical situation, the rhetor's audience, is an enormously important constraint on how a rhetor responds to that situation. Take statements of affection as a very common example; the presence of a rhetor's friends and family are regularly so important to the condemned rhetor that that presence commands a response. So potent is the pull of human connection that statements of affection attach constantly to other statement types; of the seven genres and subgenres we examined in detail, almost half were direct statements of affection in some form. Rhetorical situations clearly exist, and the constraints they provide are seminal in the formation of rhetorical utterance.

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75 By this, I mean that the set of tools which a person uses to construct rhetorical utterance, regardless of specific situation. We are all equipped to persuade by living, by human interaction, and by formal instruction, but each person's method of writing, speaking, and arguing is different from any other person's in small ways. What I am observing here is that the way that a rhetor approaches the crafting of an utterance in his or her final moments is no different than the way (s)he constructs any other rhetorical utterance in his/her life.
Allow me to take a moment here and explore an idea I mentioned a moment ago in a little more depth. Bitzer describes the rhetorical situation in its most fundamental sense—rhetor, audience, exigence, context—and focuses very carefully on how audience, exigence, and context constrain rhetorical utterance. He does not, however, spend much time at all considering the rhetor. This is the root of Vatz' criticism, and while I don't think Vatz has the truth of it, there is certainly a gap. When we craft an argument, we bring something to the situation ourselves, as a rhetor; change the rhetor and you change the situation, Bitzer would certainly agree. But why? There's certainly more to it than who we are and what we have done, as though we were simply an aggregation of decayed rhetorical situations, long past, which we mine for meaning and in the gestation of rhetoric. Each of us has a particular, unique way by which we approach utterance, a complex of phrases and words, of experience and tradition, of ideals and pragmatism which shapes what we each perceive as the most appropriate, fitting response to a given rhetorical situation. It is Burke all over again, and our terministic screens, shaped by who we are at our most fundamental, define what we perceive to be the most important symbolic components of a rhetorical situation and the best symbols we can invoke to respond to it. I call this complex our rhetorical composition strategy.

That strategy does not change from situation to situation, though it does change over time. Rather, it is a reflection of who we perceive ourselves to be, and how we try to put our stamp on the world around us. The symbolic values, ideals, and goals which we feel are of crucial importance in any situation are our toolbox, so to speak, which we bring with us to all of our rhetorical situations. Thus, if a person values faith, (s)he is likely to argue on faithful grounds, whether at a wedding or a funeral or in a diner over lunch.
I think the tension between the two plain truths that both rhetorical situation exists and
the fact that human rhetorical composition strategies differ very little regardless of situation
might be eased somewhat if we separate that composition strategy from utterance. If I were to
mount an argument that the sky is blue, for instance, I would probably base my argument on
observational evidence, reinforced with an exposition of the science of the light wave/particle as
we understand it, and capped by an exhortation to common sense. Almost regardless of who I
made this argument to, so long as that person was sighted, my strategy would largely be the
same. However, the words I would use to make the argument specifically, in the real world,
would depend heavily on where I was and who I was arguing to. As my perception of the
situation changed, so too would my perception not only of which words would be the most
effective, but also the most artistic.

Perhaps the best analogy I can think of in this case would be to Chomsky's x-bar schema.
If Chomsky is correct, and the field of Linguistics seems fairly certain that he is, then the entire
spread of human language can be summed up in a fairly simple self-referencing mathematical
formula which describes precisely how each and every sentence that ever has or ever will be
composed will work. This, however, does not remove the possibility of beauty or of artistry;
rather, it provides a framework within which that beauty can be created. I think much the same
could be said of our rhetorical composition strategies. A fairly simple set of principles which all
of us understand allows us to be artistic in more meaningful and profound ways because we don't
have to devise a proper rhetorical response from scratch for each new situation we find ourselves
in. A constraint is a liberation; when you don't have to worry about one thing, you're free to
focus fully on another.
The second interesting question that these case studies raise is, if rhetorical composition strategies differ very little from situation to situation, with repeated themes, ideas, and even subject matter, why is one rhetorical utterance more memorable than another, very similar to it? To take a historical example, how many people, do you think, could name the person who delivered the speech that came before Martin Luther King, Jr.s famous *I Have a Dream?* Or, frankly, anyone else who spoke on that day? Each of the men and women who spoke at the Lincoln Memorial were responding to a rhetorical situation which changed so little from speaker to speaker that it could be fairly said to be nearly static. Each spoke about the same issues. Each cited the same examples. The subject matter of each speech was, in short, very much like all the others. Yet, we remember only one.

Words matter; this simple truth lies underneath everything we do, because the right word in the right place and time can change the world in a way that no other force on Earth can. We remember King's words not only because they were the appropriate response to the situation—any of the speeches given that day, with the possible exception of John Lewis' rather inflammatory rhetoric, could very fairly be said to be appropriate responses—but because they were beautiful as well. Rhetorical artistry\(^76\) set his speech apart—artistry in the words King chose, artistry in the crafting of his metaphors and his use of the common cultural touchstones of American liberty. In essence, King didn't just make an argument, with the intent of persuading his audience by evidence or emotion. He asked each of us to become the people we had imagined that we already were, and in doing so touched in a profound way upon what it means to be human. His speech continues to inspire people now, decades after the exigence has decayed,

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\(^76\) I defined this in chapter 2. In brief, it is rhetoric which not only seeks to generate action, but to alter perception.
because it reached past the immediate struggle of the civil rights movement and touched directly upon what it means to be human.

From that fairly simple example we can take a general truth, which is reinforced by many of the more elegant final statements that the men and women in this study have made: rhetoric is what happens when, as Bitzer observes, a rhetor perceives that something is wrong and sets out to fix it with language. Rhetoric responds to situations. Artistic rhetoric, however, can not only respond to a situation—it can, as we will shortly see, create new situations by surpassing its immediate context and penetrating into the minds and hearts of a wider audience. There it resides, resonating with something essential to peoples' identities, beliefs, values, or some other part of what makes them who they are. In doing so, that artful argument can alter peoples' perception of the world around them and eventually help create entirely new rhetorical situations. Metaphorically speaking, you can hammer a nail in with a rock or with a hammer, but only one of those tools will inspire someone to become a carpenter.

There are a few final statements in our corpus that have entered into wider culture to various degrees. Most statements which have received attention beyond their immediate context have received relatively little. A very few have become genuinely famous in one way or another. The questions here are why, and how, this happens.
CHAPTER FIVE: RHETORICAL ART AND THE CONTROVERSY OF DEATH

"I'm ready, warden."\(^{77}\)

We can see rhetorical art when a rhetor's words grow and continue beyond his or her immediate situation. It is a transition from function to the general consciousness, and then from public awareness to an enduring place in our common culture. In essence, we can see the moment that rhetoric becomes rhetorical art when a rhetor's words stop addressing his or her own situation and begin to address many others. We can see rhetorical art when the words of one rhetor become constraints in another rhetor's situation—or even the defining, seminal component thereof. Rhetoric is always pragmatic, always practical. Something magical happens, however, when it does more.

I mention this because there are few places where we can observe this process in action more clearly than with the final words of the condemned. This is its full spread of possible meanings; certainly, we can see those precious few utterances which grow beyond their situations, and which carve a place for themselves in our cultural heart. Far more rare, however, is a recurring rhetorical situation where those statements which do not find that place, which ultimately fail the test of elegance and beauty which defines meaningful art of any sort, are still recorded. It's easy to find examples of fantastic rhetoric, the sort of words which move men and

\(^{77}\) It is interesting to note that, in most situations where a condemned man or woman gives a final statement, his or her very last words are often some variation on "I'm ready, Warden," in which they state explicitly that the process of ending their lives should begin.
mountains. It's much harder to find many examples of the sort of words which just barely missed that lofty goal.

The simple truth that I have not meaningfully addressed to this point is that execution is one of the more controversial acts that is still widely practiced by the various governmental bodies of the United States of America. It is, further, an act of public record in most states. For these reasons, we not only have robust governmental records but also public interest in them. We have outside groups who interact with the condemned, the government, and the public at large. Many of these groups use the condemned—their stories, their words, or both—in an attempt to drive their political agendas; both the supporters and opponents of capital punishment work toward the same goal: the elevation of rhetoric to rhetorical art. Ethical concerns aside, it is this effort by many to transform the rhetorical utterances of the condemned which stands behind my effort to do precisely the opposite: if we are to examine the last words of the condemned from any perspective but that of neutrality, of objectivity, then a meaningful examination of the reinterpretation and transformation of our rhetors' words would be tainted beyond hope of salvage.

So much work is done by third-party rhetors with wildly different rhetorical goals in this regard that we will spend a considerable amount of time in this chapter examining how a fairly wide variety of such men and women work with the final statements from our corpus. Our

78 Access to those records, however, remains a serious issue. The reason that I have made such a big deal about the Texas Department of Criminal Justice offender information website is because the degree to which it makes documents which would otherwise be quite difficult to obtain readily and conveniently available to the general public. The availability of those records has made much of the work of this project possible where, even a decade ago, it would have been outside my reach—in particular, much of the deep examination of context we performed in Chapter 4 would have been impossible.

79 Or, rather, our best effort at it. Burke was absolutely right when he argued that genuine objectivity is impossible.
examination will seek to span the breadth of forums where such sentiment can be expressed, from the informality of the common blog to the public face of multinational advocacy organizations.

But we also have the news media, which plays a strange, interesting role in this whole process; print, broadcast, and digital news media almost universally act as a bridge and a screen where the first public presentation of any man or woman's final utterance will be presented to the nation at large. Perhaps in spite of the general controversy surrounding the practice of execution and perhaps because of it, public interest in executions is and has remained fairly high. News organizations, eager for the financial gain that news of an execution represents—preferably of someone who was convicted of a particularly sordid or horrific crime—act sometimes as advocates for and sometimes as advocates against the death penalty. Sometimes they're condemners and sometimes they're pardoners, sometimes simplifying the complex realities of a now-dead man or woman's life and sometimes honoring the reality of that same person's life and death. Always, however, they are the first reporters of the final words of the condemned, and the gateway through which other advocates find the rhetoric that they hope will shape further debate.

Before we can profitably examine broader use and interpretation of the last words of the executed, we must first investigate the methods by which those words come into the common usage.

It would be fair to observe that my project has spilled a considerable quantity of ink and consumed reams of paper thusfar to observe and understand the simplest part of the way that final words are created and delivered, and to examine why and how those words work. The further interrelationship between those words and myriad groups with vastly different goals,
needs, motives, and methods is considerably more complex, and worthy of a large project in its own right. This is not that project. As such, I intend to lay out here a sort of working skeleton, with examples, to sketch out how these groups are put together and how the rhetoric of the condemned moves through them.

So we return to an old problem, one which troubled us for some time earlier in this text: the often-wide gulf between what a condemned man or woman actually said when (s)he faced his or her death and what we remember those last words to have been. This project went to some considerable lengths to examine only the most accurate and comprehensive records of the last words of the condemned in an effort to understand their whole rhetorical context, and to consider them within that context in an objective manner. That work was essential for a number of reasons; the first and most obvious is that drawing an understanding of the last words of the condemned from any source(s) other than the very best is methodologically unsound. Moreover, cleaving closely to those words is fundamentally respectful to the basic humanity of the men and women who uttered them. By far the most important reason for such a meticulous examination of those words, however, is that it allows us to understand how they change and evolve as they move from simple statement to rhetorical art.

Art requires interpretation and reinterpretation. In most cases, this is not a terribly problematic issue; a painting remains as a fixed point of reference, regardless of what anyone says about it. A musical arrangement can be performed in a variety of different ways, but sheet music remains as a common point of departure. Literature is translated, retranslated, debated, and reconsidered—consider, for instance, how many times the Iliad has been updated and retranslated in the twentieth century alone—but the originals remain.
To this point, much of the work on the last words of the condemned has not followed this pattern. We consider what people remember as a man or woman's final words, or what was reported in the newspapers. Sometimes state records have been consulted, but not commonly. What I have done to this point is fundamentally bibliographical work—the examination, description, and categorization of primary source materials.

Transmissions in Relay

Unlike many—perhaps most—examples of public rhetoric, the last words of the executed are not carried directly to the public. When we think of rhetorical utterances, speeches, art exhibits, songs, websites, or what have you, the traditional model by which we commonly think of the transmission of meaning from rhetor to audience could best be summarized—if somewhat problematically—by the conduit metaphor. In essence, a rhetor packs his or her meaning, ships it to his or her audience, and that audience unpacks the language and assembles a different meaning (even if the differences are insignificant in gross terms). The model is simple, and while the addition of more sophisticated theoretical models, such as terministic screens, make it much richer and more accurate, the basic idea holds.

The Basic Burkean Conduit

80 I both acknowledge and agree with the many and varied problems which exist in the use of the conduit metaphor; however, as my interest here is to trace the progression of the rhetoric if the condemned through society, not to describe the transmission of meaning from one person to another. I use the conduit metaphor here primarily as a simple, universally-understood illustration of the complications in relay which occur as part of the typical rhetorical process, not as a correct description of the process itself.
This is not how an executed rhetor's words are conveyed, because the death chamber is closed, in many cases, to recording devices of all kinds and in all cases to broadcast where recording is permitted; allow me to sketch out in brief how the last words of the condemned propagate outward, so that we have a sense of perspective before we begin our real examination. Thus, traditionally, you have a rhetor sending meaning to his or her audience and that audience assembling different meanings as a result; instead here you have here a series of transmissions of rhetorical meaning, each with its own, slightly different rhetorical situation. Any rhetorical utterance begins at the rhetor, and this case is no different. (S)he delivers a statement to those physically present in the death chamber and then dies. A few people present hear that statement and then disperse. Some may be members of the local news media, or not. Some may take the condemned's last words and use them for their own rhetorical ends, or not. Generally, there are one or two reporters present at an execution; only rarely does anyone else in the chamber use a rhetor's own words after the condemned have been executed.

Once the condemned has been executed, the warden or a public relations manager for the state will give a public statement noting that the execution has taken place. This statement will generally include either an executed rhetor's full final statement or a selection therefrom, and will always include a summary of the crime for which the condemned was executed. Often, it is from this public statement that local news media will take their initial information to later report on a condemned rhetor's last words. Those news organizations which were physically present within the death chamber may or may not take the state's statement into consideration when formulating their own response(s). Sometimes the state's statement will be directly televised by broadcast and/or digital news media sources, but only rarely will that broadcast be without some other
commentary or context. Again, there is often a physically present audience in attendance at the time of an official statement (often members of third-party advocacy groups and the like), and generally a larger one than that in the death chamber at that.

Thereafter, a rhetor's execution will be covered by local and, occasionally, the national news if the crime in question was particularly grievous or the legal process particularly controversial. There will be some commentary about the executed rhetor's life and the crime(s) he was convicted of. Almost always, the news media will include a one- or two-sentence excerpt or description of the condemned's last words, but never the full text unless it was very, very brief. Due to the constraints of the broadcast schedule, there is a degree of editorialization which is inherent in this point of the process; that editorialization sometimes flows directly from the state's statement, and sometimes rests entirely upon the news media organizations themselves. Often these reports will attempt neutrality, but as often as not the reports will explicitly condemn or pardon the executed. Regardless, the news is an insatiably hungry beast, and even the most newsworthy execution and its aftermath will be forgotten by reporters within a week or two.

Not so with third-party advocates, who will take the last words of the executed and often use them in new ways, attempting to either condemn or defend capital punishment. These rhetors tend toward considerable idiosyncrasy; even groups with generally similar rhetorical goals will pursue those goals in radically different ways. Consider, as a simple and fairly well-known pair of examples, the difference in tactics, tone, and rhetorical ends between Greenpeace and P.E.T.A. They want the same thing, but how each acts is radically different from the other. So it generally is with third-party organizations involved in any debate, except that in this case,
there are third-party groups which support or oppose the practice of execution.

The last words of the executed make their way into the public's consciousness by a method not terribly different from a kindergarten game of telephone. As with the classic conduit metaphor, a rhetor passes meaning on to his or her audience, but in this case, that audience then takes that meaning, as they understand it, and pass it on. However, the matter is complicated because at each stage of the game, the message chain branches into two or more meaning-chains, some of which may reunite with other meaning-chains a few links down the chain. As with the childhood game, it is an inevitable part of the process that meaning, intent, and even content change from rhetor to rhetor.

Of course, the model only becomes more complex when we consider the general public discussing those final words within itself—weighing them, reinterpreting them, restating them in slightly different ways, occasionally misquoting them—and then sometimes that same public begins to use those final words in its own political movement(s) in one way or another. What you get, in the end, is a variety of 'takes' from various rhetors on the same statement. Each take is a rhetorical utterance in its own right, responding to its own rhetorical situation. Each rhetor's rhetorical situation is different from the others in the chain, and each has different needs and
rhetorical goals. There is not often any overlap between the needs of the various rhetors in the conduit chain.

It may be useful at this point, then, to consider an important difference between basic rhetorical utterance as we have traditionally understood it—in the way that Bitzer and Burke discuss utterance and comprehension, for example—and rhetorical artistry. Art is, by its very nature, idiosyncratic and subjective, and the process of transformation of rhetoric to rhetorical art is the transformation of the semi-objective to the fully subjective. Such transformations are common in public perceptions of the last words of the famously executed—we observed as much in the execution of Sir Walter Raleigh earlier—and conform to the concept of truthiness, a term coined some years ago by Stephen Colbert in a particularly brilliant moment of satire. The heart of that concept is that, as far as public perception of an utterance is concerned, it doesn't matter whether that utterance is genuinely true or not so long as _it sounds like it should be_. The best summation of the strange transmission and retransmission process is that it is a search, by all rhetors along the meaning-chain, for truthiness. Sometimes the condemned rhetor gets it right away. Sometimes (s)he tries for it and fails, to one degree or another. Sometimes (s)he has no concern for rhetorical artistry, but others subsequently search for and occasionally find a degree

81 Again, I use Burke's definition of art here, as discussed in detail a few chapters ago.

82 This requires unpacking. Bitzer argues correctly that a rhetorical situation is a thing in and of itself, like a ball or a rock. It exists in a fully objective sense. However, humans are fundamentally subjective; Bitzer admits this, and Burke embraces it. Hence, if we are to interact with and modify a rhetorical situation, we must subjectively interpret it before we can attempt to formulate a functional response, which makes conventional rhetoric semi-objective; it is a subjective understanding of objective reality in an attempt to change that reality. Rhetorical art, by contrast, interprets objective reality and then attempts to influence not the reality itself, but the way _others_ perceive that reality. It changes not reality, but our understanding of it. While it could be fairly said that changing our understanding of reality changes reality itself, doing so brings up the hall-of-mirrors problem that tags along with any discussion of terministic screens which we discussed in detail in chapter 2. Suffice to say that, barring brain scans and a perfect understanding of how neural physiology affects cognition on a moment-to-moment basis, I contend that changing the way that a person perceives a situation does not change the situation itself, only our approach to it.
of truthiness later. That truthiness, the matching of the right words to the kairotical moment, is essential to rhetorical art.

A search for the right cultural fit is a classic and essential part of the assimilation of any form of art, and so it has particular relevance here. Only rarely is a significant work of art recognized immediately upon its creation, universally acclaimed, and accepted by all. Much more frequently, it appears and puzzles its audience, which then spends some time trying to understand its deeper meaning. This quest is usually fruitless; in such cases where a fit cannot be found, the art is generally forgotten by all save a few, to whom it speaks. In those cases where a fit can be found—a cultural context in which the art makes sense both in and of itself and as part of a larger whole—then and only then can the art in question become significant. This happens in almost all contexts with almost all forms of art; *Paradise Lost* did not become a really major part of English literature until Joseph Addison spoke up for it, for instance. Van Gogh died penniless, his paintings moldering.

The State's Rhetor

Shortly after the death of a condemned man or woman, that person's death is formally announced by a state representative to the public at large, usually by way of local news media. Which part of the state apparatus, precisely, depends quite a lot on the state in question, but generally the state's rhetor is either the warden of the prison which performed the execution or a representative from the District Attorney's office which oversaw the executed rhetor's trial and conviction. In high-profile cases, both the warden and a representative from the D.A.'s office may issue statements.
A prison's warden and a representative of the state's legal apparatus have somewhat different rhetorical needs; however, in gross terms, the two overlap. Each needs to defend the state's right to execute from critics of the process. Each needs to demonstrate that the condemned was executed humanely and, to as great a degree as possible, painlessly. Each needs to defend the criminal justice system which produced the execution. Regardless of who is issuing the statement, each is acting as the public face of the state government, and therefore as a respectable and sensible front to represent its policies in general. These general needs are the same because the continued functioning of each person's position relies on the public's tolerance of a practice which is viewed as, at best, a necessity.

Mostly, a warden's and an attorney's rhetorical needs differ in emphasis. A warden, for instance, will tend to emphasize the humane ending of the prisoner's life, where an attorney will emphasize the heinousness of that person's crimes and how completely his or her conviction was upheld. More commonly in recent times, however, a professional public relations manager working for the district attorney will handle the crafting and issuing of formal statements on behalf of the state. For instance, it is the exclusive procedure for the State of Texas to issue its formal statements through the state attorney general's office; smaller states, with less robustly staffed civic offices, are more likely to rely instead upon a warden to speak.

When a warden issues such a statement, it is almost exclusively read aloud publicly, and always shortly after the execution of the condemned has taken place. In cases where another state agency is acting as the primary face for the execution, the warden will simply state the facts of execution—when the procedure was begun, for instance, and when the condemned's heart stopped—and nothing more. When the warden must act as the face for executions in the state,
his or her statement will be more robust; regardless, though, wardens' statements seem to be somewhat restrained.

Statements delivered by a representative of the state's legal apparatus, be it at the district level or the state level, tend to be much more robust. These statements are issued at one of two points in time, and generally in one of two ways: immediately preceding or following the condemned's execution, and either in a printed press release or as both a live statement to local and national news and a printed release. It should be unsurprising that the simple printed press release is by far the more common of the two; live press releases are often reserved for the executions of the most heinous offenders. The press release\textsuperscript{83} that the State of Texas’ Office of the Attorney General issued immediately before the execution of David Martinez, whom we examined in detail in the previous chapter, is a fine representative example

The attorney general's statement led Martinez's actual execution by a full week, and it places Martinez's execution in the context of the crime for which he was convicted. The first paragraph of the statement is surprisingly restrained in its condemnation of Martinez:

Texas Attorney General Greg Abbott offers the following information on David Martinez, who is scheduled to be executed after 6 p.m. on Wednesday, February 4, 2008. Martinez was convicted and sentenced to death for the 1994 capital murder of Carolina and her 14-year-old son, Erik Prado. A summary of the evidence presented at trial follows.

It's easy to expect the public face of the state organization which pursued the death penalty for this crime to be harsh in its condemnation of the man who committed it; such a soft introduction seems out of place. Nevertheless, it is almost universal, and it works in all cases as a rhetorical hedge. By saying that all information which follows that introduction is what the state presented as fact at trial, the office of the Attorney General is in effect defending itself against the

\textsuperscript{83} The document has been removed since this text was written.
possibility of losing face later if what follows turns incorrect or unfair. Simply put, it makes everything that follows a matter of simple truth: this is what was said at trial.

More importantly, such a soft, hedged opening allows the remainder of the attorney general's statement to be as brutal or as reserved as the office prefers it to be. The statement, in this case, is reserved and simple for the most part; in fact, only in one place are Martinez's actions commented upon in any way:

Martinez later confessed to the brutal murders of Carolina and Erik Prado, asking that he be given the death penalty. Martinez stated that he was “freaking and tripping” at the time because he had consumed a twelve-pack of beer and a bottle of rum.

Given that Martinez himself requested the death penalty—which the Attorney General's office makes certain to point out, and again later—that office has little rhetorical work to do to defend Martinez's execution. Nevertheless, the Texas A.G.'s office places that observation in the context of the only characterization in the entire document. As such, Martinez is presented as irredeemably deserving of death, condemned by his own words.

That characterization is seeded throughout the document, sometimes to truly silly degrees. It includes a brief history of the legal proceedings around Martinez's conviction and appeals and his other criminal history, which concludes, absurdly, by noting that:

While incarcerated in the Bexar County Adult Detention Center awaiting trial for the murders of Carolina Prado and her son, Martinez threatened two detention officers, kicked his food tray at an officer, disobeyed an order by changing the channel on the available television, and attempted to control and manipulate other inmates.

Clearly, a man who changes the channel of a television deserves death. Joking aside, the presence of such trivialities in a statement of this magnitude is puzzling. Surely, we would expect someone who has broken the law in the most heinous way possible to occasionally break

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84 Emphasis mine.
a rule while incarcerated. It's a place and time of heightened stress and emotion, a context in which any normal human would act out in some small way. The more that matters are outside our control, the more we feel the need to have some small degree thereof.

But why include such minutiae? It trivializes the position of the Attorney General, and tends to weaken the case for capital punishment in Martinez's case, rather than strengthen it. Given that the Attorney General has a vested interest in the defense of capital punishment, it logically follows that (s)he would want to put as strong a face as possible on the case for execution—which the office does quite deftly earlier in this document.

Now we must separate ourselves as rhetorical scholars from the general public, because what the Attorney General's office is doing here is presenting a rhetorical parade of horribles. The office leads with a description of Martinez's actions, as it sees them, follows with his legal history, and concludes with everything else they can claim he did. The point here is to generalize about Martinez and characterize him as simply evil. The attempt seems ham-handed to us because we've been trained as rhetoricians, but the vast majority of the citizenry of the nation lack such training. It's a gambit, in many ways: if the office can get their audience to simply accept that Martinez was a monster by showing every possible monster-like quality he ever exhibited, then any defense of capital punishment is moot. Given how commonly this rhetorical strategy is employed by various state apparatuses, the gambit seems sensible.

The only place Martinez's own language enters the Attorney General's statement is immediately following the paragraph where the attorney general's office noted his request for the death penalty:

I feel for the actions I took, I’m requesting the only just sentence for me is the death penalty. I took the life of someone who I cared about a lot. I feel that I can never bring her back.
Please give me the death penalty for mine and everybody else’s sake. I’ll never forget Carol. The pain dwells within my heart forever. Carol, wherever you are, please forgive me. I do love you.

These are not Martinez’s final words. They’re rather similar to what his final statement would wind up being, but they are presented here as the end of the Attorney General’s statement on the crime which Martinez committed. They are, literally, the last word on the matter. Small wonder, given their content, that they full-throatedly defend the position which the Attorney General has taken.

We shouldn’t condemn or even criticize the rhetoric employed by the office of the Attorney General of the State of Texas. They have a difficult job to do, and they seem to do it quite effectively, given the character of this and other, similar, statements. To stress a perhaps-overlooked point, rhetoric is not formal logic. The goal of any rhetorical discourse is the persuasion of its audience, so while we have the privilege of looking down our collective noses at the overt and overwhelming bias we see in the arguments presented by the Attorney General’s office, that bias is part and parcel of being forced to take one side in a charged, ongoing political debate.

So what of wardens’ statements? One of the key problems in evaluating such statements is that they are only very rarely archived or preserved in any way, save as formal missives from one part of the state apparatus to itself and that do not enter public discourse. In essence, a warden is generally responsible for two formal statements upon the execution of an inmate. First, (s)he must issue a public statement which announces the death of the inmate in question.  

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85 Neither of these is the recording of the last words of the condemned, though in some states a warden will have a direct hand in the recording and/or preservation of those statements. The places where this happens tend to execute very few people.
In some states, this statement may be made inside the death chamber itself, to the witnesses present to observe the execution. More commonly, the warden will deliver a brief statement outside the prison where the condemned was executed or in a conference room therein. This statement will often be very short—only a few sentences long, usually—and will include simple factual information about who the condemned was, what crime (s)he was convicted of, and when (s)he died. Sometimes this public statement will be reported on or included in a news item, but only rarely outside of the local television news media; print and digital media seem to prefer other sources for quotation for unknown reasons, and the national broadcast news media has the resources and influence to demand comment by higher-level representatives than a simple warden. Unusual or remarkable statements, though, most certainly can be included in any level of broadcast or written reporting if their content is unusual or interesting enough. One notable example of this was the execution of Donald Harding in 1992. Several witnesses, including both the Attorney General of the state of Arizona at the time as well as the warden of the prison, were disturbed enough by Harding’s botched execution that they felt compelled to speak to the matter afterward. As such, wardens’ statements have notable, if very limited, penetration into the public consciousness.

The second statement that a warden is generally responsible for is a little more robust. A formal, written notice must be generated, accompanied by a varying degree of paperwork as demanded by the state in question, detailing all the particulars of the condemned's execution. This report is sent from the warden to another part of the state political apparatus, which can vary on a state-to-state basis, but which is most frequently another section of the Department of

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86 This was examined in some depth in Chapter 1.
Justice. Interestingly, though, this report is almost never read by anybody, and is simply archived against possible legal action. As such, while the warden’s formal report is more robust and objectively useful in sussing out information about the execution of a given prisoner, it really does not bear examination.

Local News

Local reporting is an increasingly strange creature these days. The rise of the internet has hit most conventional publishers, periodical or otherwise, quite hard. Local news outlets, however, have borne the most severe brunt of a shift which can be fairly described, depending on your perspective, as either seismic or cataclysmic. In my discussion on the transformation of the media going forward, I rely extensively on a series of studies conducted over the last half-decade by the Pew Research Centers. Many news outlets have struggled to find an audience in recent years, and local newspapers and broadcast news programs have struggled the most. Town and county newspapers have been closing at an astonishing rate nationwide. For years now, local newspapers have been closing at a rate around 150 per year; the trend has been steady since at least 2010, but even before that point, the new millennium has been positively toxic to local news publishing.

Local broadcast media has suffered almost as much as local news media. While vastly more profitable than their print counterparts, local television companies have seen their revenues drop significantly, which has left them vulnerable to acquisition. In 2013 alone, over 300 local newspapers and broadcast news programs have been closing at a rate around 150 per year; the trend has been steady since at least 2010, but even before that point, the new millennium has been positively toxic to local news publishing.

87 The Pew Research Center State of the News reports for 2010, 2011, 2012, 2013, and 2014 were consulted extensively for much of the statistical and numeric data discussed in this chapter, and include a much richer description of the state of the news broadcast industry, on both local and national levels, than I discuss here.
television stations were bought out by massive international media conglomerates like Disney, Viacom, and News Corp, which almost universally begin their ownership with major slashes to local budgets. As of the time of this writing, one in four TV stations now produce no content whatsoever, and instead simply retransmit programming produced elsewhere.\textsuperscript{88} This level of media consolidation is unprecedented in the history of the nation; the impact of it is only beginning to be felt, and we can scarcely begin to speculate as to the effects it will have in the long term. To put it simply, local news media now face an existential struggle—a struggle it is largely failing in.\textsuperscript{89}

My discussion on the complex issues which local news media faces has been very brief. However, it is because of these struggles that modern local news media's coverage of an executed felon's final words is increasingly editorialized and sculpted to suit the politics of a given local audience. Take the case of George Rivas, executed February 29, 2012, for instance.

Rivas was convicted of taking part in series of armed robberies which culminated in the murder of an Irving, Texas police officer. There was a major manhunt, national media attention, and even a spot on America's Most Wanted, after which Rivas and his accomplices were arrested, convicted, and eventually executed. Rivas' final words are as follows:

Yes, I do. First of all for the Aubrey Hawkins family, I do apologize for everything that happened. Not because I am here, but for closure in your hearts. I really believe that you deserve that. To my wife, Cheri, I am so grateful you're in my life. I love you so dearly. Thank you to my sister and dear friend Katherine Cox, my son and family, friends and family. I love you so dearly. To my friends, all the guys on the row, you have my courtesy

\textsuperscript{88} Josh Harkinsson, of Mother Jones, offers a very readable summary of the transformation now sweeping through the local television environment.

\textsuperscript{89} According to the Pew Research Center, news of all kinds engage political extremists to an increasing degree, which in turn pushes that same news media toward extremism itself, in a vicious feedback loop. The whole situation is something of a death spiral, in the long term, and there's no clear solution to the problem it represents.
and respect. Thank you to the people involved and to the courtesy of the officers. I am grateful for everything in my life. To my wife, take care of yourself. I will be waiting for you. I love you. God Bless. I am ready to go.

While these are certainly not the most concise or pithy final words we've looked at, it is in the end a very typical statement. A rambling statement of affection/repentance, it attempts to meet several divergent rhetorical needs which Rivas perceived, and is ultimately more conversational than forcefully rhetorical. Rivas' last words are frankly unremarkable in any serious way.

However, the story of his crime spree and the manhunt which followed had garnered some notable media coverage years before, and as such many local and national news organizations felt the need to cover his death. The Houston Chronicle, which serves the relatively liberal city from which it takes its name, offered an excerpt of his last words which focused on his repentance:

I do apologize for everything that happened. Not because I'm here, but for closure in your hearts," Rivas said Wednesday evening in a statement intended for Hawkins' family. "I really do believe you deserve that." The slain officer's relatives were absent, but four officers who worked with him and the district attorney who prosecuted the case attended on his family's behalf. They stood in the death chamber watching through a window just a few feet from Rivas. The inmate thanked his friends who were watching through another window and said he loved them. A Canadian woman whom Rivas recently married by proxy, also looked on. "I am grateful for everything in my life," Rivas said. "To my wife, I will be waiting for you."

Ten minutes later, at 6:22 p.m. CST, he was pronounced dead. The inmate thanked his friends who were watching through another window and said he loved them. A Canadian woman whom Rivas recently married by proxy, also looked on. "I am grateful for everything in my life," Rivas said. "To my wife, I will be waiting for you."

Given the political leanings of the city of Houston, it's not very surprising that the Chronicle opted to present Rivas as a sympathetic, repentant man, hoping for forgiveness—despite the fact that most of what he actually said was simple and conversational, a reaffirmation of friendship with his family and peers. The largest chunk of Rivas' statement has been discarded.

90 The original article, published Feb. 29, 2012, has been removed from the Chronicle's web archive.
The Huntsville Item\textsuperscript{91}, by contrast, which represents the conservative, rural college town of Huntsville, Texas, had almost nothing to say about Rivas' last words:

The inmate thanked his friends who were watching through another window and said he loved them. A Canadian woman whom Rivas recently married by proxy, also looked on. “I am grateful for everything in my life,” Rivas said. “To my wife, I will be waiting for you.” Ten minutes later, at 6:22 p.m. CST, he was pronounced dead.

Representing Rivas as unrepentant and caring only for the family which he'd assembled from inside prison, Rivas is presented here as a man cut off from his biological family and unconcerned with his victim's friends or family. Rather, his final statement is surrounded by the perfect image of the stereotypical stoic police officer, dourly representing the fallen.

Immediately before Rivas' last words, the Item observes:

The slain officer’s relatives were absent, but four officers who worked with him and the district attorney who prosecuted the case attended on his family’s behalf. They stood in the death chamber watching through a window just a few feet from Rivas.

And, immediately after the Item notes his last words, it continues:

More than two dozen police officers in uniforms stood quietly in a line outside the Huntsville prison during the execution, then walked in unison to stand behind the state criminal justice spokesman as he announced Rivas' death. Texas' parole board voted 7-0 this week to reject a clemency petition for Rivas. No 11th-hour appeals were made to try to head off the execution, the second this year in the nation’s most active death penalty state.

Again, Rivas' words have been editorialized considerably, and have been flavored with quite a bit of editorial characterization. One can only speculate as to why.

Unfortunately, due to the sheer volume of data which a single thirty-minute broadcast represents, no local broadcast news organization which I can find still maintains an accessible record of its reporting on Rivas' last words. Broadcast news organizations, whether national or

\textsuperscript{91} The Item's original article has been removed from the newspaper's website as well. It was published on Feb. 29, 2012.
local, rarely leave their broadcasts online for more than a week or two, which generally sets them outside the reach of a more deliberative study like this. Thus, while I can provide general information about these organizations, it is not possible to illustrate them in this case.

Neither print version of Rivas’ last words is a very accurate representation of his actual last moments. Both the *Item* and the *Chronicle* are trying to find the right, resonant, and effective rhetorical version of what he *did* say. Each is trying to turn a momentary, ephemeral, and obviously personal utterance into an artistic expression of culture. The urge toward narratization, as Braid notes, is inherent both in the way we think about ourselves, our own story, and of the stories of others. The last words of an executed felon do not signify in our experience, neither knowing him nor any of his victims or their families. Each of our own personal narratives is how we understand the world around us and our place within it; while the people around us, whom we care about, play major roles in that narrative, there is and can be little place for the far-away sufferings of those we know next to nothing about. We care, in these cases, not because we care about the person or his or her life, but because the particular place that his or her life has brought him or her to intersects with our beliefs.

**National News**

The national broadcast news media faces many of the same problems that local news does: low viewer engagement, despite the fact that 65% of Americans watch. Those who are engaged in the news cycle make up a distinct, but notable and politically extremist subset, of the

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92 There are many competing and simultaneous reasons for this: the newspaper seeks to pander to the views of its primary audience; it seeks to push a particular political perspective; its writers are simply unprofessional, and include personal politics in their articles; it is making an effort to ‘balance’ a prior article which was perceived to lean in an opposite political direction—the list goes on.
overall viewer population; so much so, in fact, that the skew toward extremist engagement in the viewship of national broadcast media dwarfs the extremism typical of local news.\footnote{Again, the Pew Research Center State of the News reports for 2010, 2011, 2012, 2013, and 2014 were consulted for these trends.} The influence of this hardline audience is quite noticeable in the political slant that many broadcast news organizations now take deliberately as a matter of course. A longstanding decrease in viewership of national broadcast news as a proportion of the overall populace has now become, for the first time since the invention of broadcast media, a decline in the actual number of people watching the news. Even if we set aside quantitative measures of the quality and character of the national broadcast media, its decline is clear from the character of the newsroom itself. A constant churn of formats, anchors, and emphases has become the norm. Mainline anchors of the most respected news programs in the nation rarely last more than a few years these days. It is a telling footnote to this trend that Jon Stewart's seventeen years as the host of the satirical news program \textit{The Daily Show} will make him the longest-serving news anchor in his generation on a national television news broadcast when he retires in late 2015.

If things are bad for national broadcast media, matters are genuinely dire for the national print news industry. More national newspapers have been bought and sold in the last decade and a half than have been bought and sold in the entirely of the twentieth century, as panicked owners and investors try to either limit their losses or to turn a profit on bargain-priced, troubled, but respected names in news reporting. Two of the nation's three newspapers of record, the \textit{Los Angeles Times}, and the \textit{Washington Post}, have been sold in the last fifteen years. All struggle to keep themselves relevant in the face of a constant onslaught of cheaper, more readily available, and above all \textit{free} competition from the internet, where the vast majority of news consumers now
get their news.

Financial stresses have pushed most news organizations out of the political center, and while this is not universally so—a few organizations like the New York Times and National Public Radio have made notable reputations lately for being stubbornly moderate—it is worth our while to look at an example from each political extreme, as well as a more moderate example, to get a more full sense of how things shake out.

MSNBC's coverage of Clayton Lockett's last words are presented in an overwhelmingly sympathetic light, as they are delivered to the network's viewers by his stepmother, who spends much of the two and a half-minute segment visibly on the verge of tears. She speaks without interruption, and relays both the last words that he gave to her, and summarizes the last words that Lockett delivered within the chamber. Those words are remorseful, apologetic, and moderately defiant; Lockett's mother argues that he accepted his sentence for the crime he committed, but that he was afraid of the particular method of his execution, believing it to be untested and possibly dangerous. The execution was subsequently botched, with the drug cocktail at fault, leading to a nationwide news hullabaloo that lasted for several weeks.

MSNBC's coverage here is very typical of both liberal news reporting on the last words of the condemned and on capital punishment in general. Lockett is humanized in a variety of different ways: his spokesperson is a family member, visibly grieving; he is presented as emotional and human, filled with love and fear and regret like anyone would expect a normal

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94 Executed April 29, 2014. Lockett is not included in the full corpus, but is included here because very few video broadcasts are archived for long after their use, thus limiting the scope of materials which we can usefully examine.

95 The segment, The Last Word, originally aired on April 30, 2014 and has since been removed.
person in his situation to be. His life is emphasized, and others' deemphasized—when the victim's family is mentioned in this coverage, it is in passing, a sidenote. It is worth noting that it seems that liberal news reporting often completely ignores executions when the condemned in question does not fit their political narrative; in essence, when the condemned is heinous, his or her guilt is certain, and when there was no controversy around the process itself, the event is only rarely reported on.\footnote{I encourage any reader to scour the MSNBC's, CNN's, or any other notably liberal news channel's digital archives for their coverage of executions. The results are surprisingly slim.}

By contrast, Fox News' coverage of the same execution\footnote{The segment aired on April 30, 2014 and has since been removed.} is entirely different in its character, in that it doesn't cover anything that Lockett said in any way, shape, or form. It is, in its entirely, a political process story which focuses on the controversy of capital punishment and the ongoing political fight to defend or abolish it. The two minute and forty-seven second interview is from one news anchor to a reporter, and revolves around the mechanics of execution.

Erasure of the last words of the condemned is a very common rhetorical move on the political right, which seeks to defend the validity of execution and, at the same time, emphasize the primacy of victims' rights over those of the condemned. As the situation becomes more public and the condemned more sympathetic, conservative reporting tends to erase the humanity of the condemned to a greater and greater degree. Fox News' reporting on the execution of Earl Ringo, Jr., an execution which was almost entirely unremarkable, is a fine illustration of how a less controversial execution is generally reported upon:

Ringo's last words were a quote from the Quran that expresses belief and wishes for after death. He wiggled his feet as the process began, breathed deeply a few times, then closed his eyes, all in a matter of seconds.
This is the entirety of Fox News' reporting on Ringo's last words. As with the reporting on Lockett's execution, Ringo's last words are largely erased, but some nugget of his actual utterance is preserved here. The reporting takes pains to note that the execution was humane, and then spends the rest of the article observing the heinousness of Ringo's crime and the legal process leading up to his execution. MSNBC did not report on Ringo's execution.

Despite the fact that MSNBC and Fox News' distorting, polarized reporting seems to attract a reasonably robust audience, at least in the short term, remnants of an older tradition of journalism remain. The New York Times, one of relatively few news organizations which has been able to survive while holding to a more traditional, balanced, and nuanced view of the process of newsmaking, is the best-known example of this tradition. Like MSNBC, it does not cover every execution; though it is a national newspaper, it rarely covers executions at all, save when they are unusual in some way or another. When it does, though, its coverage tends to be remarkable. One notable example of this sort of coverage is entitled Last Words of the Condemned and is both an investigative article and a photojournal.

The most public face of the Times in this case is a photojournal, which chronicles a selection of sixteen men executed in Texas between 1985 and 2012. It notes these men's identities, their year of death, age at the time of their executions, a brief summary of the crime for which they were executed, and then reproduces each man's last words next to a photograph of his face. The effect is stark, Spartan, and largely without commentary. Nevertheless, edits have

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98 I cannot but speculate that his quotation of the Qur'an is mentioned here for political reasons. Fox News regularly uses mention of the text to condemn subjects and to frighten its viewers.

99 Originally posted June 29, 2013, this article was updated on July 7 of that year.
been made.

The most notable editing of this group of sixteen men is the last words of James Beathard, from which the bulk of his actual last words have been removed. This is what the Times represents his final statement to be:

I would like to address the State of Texas and specially Joe Price, the District Attorney who put me here ... Gene Hawthorn lied at my trial. Everybody knew it ... I hope somebody makes Mr. Price account for or explain the tennis shoes he is talking about that put me here. I'm still completely lost on that ...

I love my family, and nobody, nobody, has got a better family than me. I love you, booger bear. I love doodle bug, too. Don't let them ever forget me. I'll never forget them. I'll see you on the other side, okay. Bye bye Debbie. Bye bro, bye booger bear. Father Mike, Father Walsh, love you all. That's all, sir.

A fine, fairly typical final utterance, except that the sections which were edited out from it are:

I want to start out by acknowledging the love that I've had in my family. No man in this world has had a better family than me. I had the best parents in the world. I had the best brothers and sisters in the world. I've had the most wonderful life any man could have ever had. I've never been more proud of anybody than I have of my daughter and my son. I've got no complaints and no regrets about that. I love everyone of them and have always been loved all of my life. I've never had any doubts about that. Couple of matters that I want to talk about since this is one of the few times people will listen to what I have to say. The United States has gotten to a point now where they zero respect for human life. My death is just a symptom of a bigger illness. At some point the government has got to wake up and stop doing things to destroy other countries and killing innocent children. The ongoing embargo and sanctions against places like Iran and Iraq, Cuba and other places. They are not doing anything to change the world, but they are harming innocent children. That's got to stop at some point. Perhaps more important in a lot of ways is what we are doing to the environment is even more devastating because as long as we keep going the direction we're going the end result is it won't matter how we treat other people because everybody on the planet will be on their way out. We have got to wake up and stop doing that. Ah, one of the few ways in the world the truth is ever going to get out, or people are ever going to know what's happening as long as we support a free press out there. I see the press struggling to stay existent as a free institution One of the few truly free institutions is the press in Texas. People like the Texas Observer and I want to thank them for the job they've done in keeping me and everybody else informed. I hope people out there will support them, listen to them.

100 I have italicized the passages included in the Times' coverage.
and be there for them. Without it, things like this are going to happen and nobody will even
know. I love all of you. I always have I always will.

I would like to address the State of Texas and specially Joe Price, the District Attorney who
put me here. I want to remind Mr. Price of the mistake he made at Gene Hawthorn’s trial
when he said that Gene Hawthorn was telling the truth at my trial. Mr. Price is a one-eyed
hunting dog. He in fact is not a one-eyed hunting dog, and in fact Gene Hawthorn lied at my
trial. Everybody knew it.

I’m dying tonight based on testimony, that all parties, me, the man who gave the testimony,
the prosecutor he used knew it was a lie. I am hoping somebody will call him to the floor for
recent comments he’s made in the newspaper. It’s bad enough that a prosecutor can take truth
and spin on it and try to re-doctor it. But when they actually make facts up and present to the
public as trial’s evidence. That goes beyond fail, that’s completely unforgivable and I hope
somebody makes Mr. Price account for or explain the tennis shoes he is talking about that
put me here. I'm still completely lost on that and I'm hoping that somebody will go back and
verify the trial record and make him accountable for lying to the public and the press that
way. That's really all I have to say except that

I love my family, and nobody, nobody has got a better family than me. I love you booger
bear. I love doodle bug, too. Don’t let them ever forget me. I’ll never forget them. I'll see you
on the other side, okay. Bye bye Debbie. Bye bro, bye booger bear. Father Mike, Father
Walsh, love you all. That’s all, sir.

In some cases, the removed sections simply heighten, explain, or justify the included sections,
but other parts—the opening paragraph, in particular—changes the entire nature of the utterance.
Beathard’s last words, at first, were a fairly straightforward statement of affection, meant to
connect with and offer comfort to his family. He then shifted to a condemnation of all violence,
in any context. It is in this frame that his defiant statement is made; was condemned to die
despite repeated procedural errors, but regardless of those errors, killing is wrong. Throughout
this, however, Beathard meandered about, touching on Iraq, journalistic ethics in Texas, and so
forth; his statement was, for lack of a better term, stream-of-consciousness. He eventually
finished with a last aside to his family, effectively bookending his rehearsed objection with
personal affection. When the Times edited his statements, they removed the whole context of his
statement, its justification, and reduced his statement to its most simple level.

The *Times* acknowledges the significance of the edit elsewhere, in its analytical coverage of the story, but this does not reduce the significance of the edit itself. Few will ever know Beathard's actual last words because they were inconvenient and strange;\(^\text{101}\) the *Times* editorial board decided that they were an inappropriate fit for their rhetorical needs, and so cut them.

Now, I am not claiming here that it is inappropriate, unusual, or objectionable that a newspaper presents only an excerpt of whatever it's covering. Were we to take the *Times'* edited version of Beathard's last words as gospel, there is a strong implication from them that Beathard was protesting innocence when, in fact, the substance of his actual last words make a case much closer to one of procedural and reversible error. There's a world of difference between those two claims.

Other statements—particularly those which are shorter, more pithy, or simply more interesting—are presented in their entirety. Here, the *Times* has made a clear effort to represent the last words not only of those who speak to the political controversy of capital punishment, but to those who have no interest in the matter. Take Jesse Hernandez's last words for instance, the first which a reader will lay eyes upon when reading this photojournal:

Tell my son I love him very much. God bless everybody. Continue to walk with God. Go Cowboys! Love ya'll man. Don't forget the T-ball. Ms. Mary, thank you for everything that you've done. You too, Brad, thank you. I can feel it, taste it, not bad.

Apropos of absolutely nothing, as are many of the actual final statements of the condemned,

\(^{101}\) How could they be anything but? Like the response to any rhetorical situation, they are an idiosyncratic response to a particular moment, place, and audience, and are as such designed to fit that situation, and not any other. Years removed, with a different, non-overlapping audience, and in response to a different exigence, there's no reason that Beathard's last words should make sense, unedited. In editing them, however, the *Times* is changing the effect that those words can and will have, because it needs to tell a story about the execution of the death penalty, not about the execution of a single man.
Hernandez's last words are for his friends and family. They are just the last words of a man who will never see his family again, and are no more politically or rhetorically charged than any other words in such a situation would be. Karl Chamberlain's last words, the very next on the page, are a sharp contrast:

My death began on August 2, 1991, and continued when I began to see the beautiful and innocent life that I had taken. I am so terribly sorry. I wish I could die more than once to tell you how sorry I am. I have said in interviews, if you want to hurt me and choke me, that's how terrible I felt before this crime.

The juxtaposition is, I think, deliberate. Some of these men are taking a stand. Some are not. Each perceived his rhetorical situation in a subtly different way, as my own project illustrates, and responded idiosyncratically as a result. The *Times* does a much better job than most of respecting this reality.

What, then, of its more analytical coverage of the same? In an attached article,\(^\text{102}\) the *Times* discusses not only the final words of the condemned, but the whole phenomenon of uttering and recording final words. It opens with a summary of the last words of several men executed in Texas, with the crimes for which they were executed appended to each. Shortly, though, the article becomes philosophical:

> “It’s kind of mesmerizing to read through these,” said Robert Perkinson, the author of “Texas Tough: The Rise of America’s Prison Empire” and a professor at the University of Hawaii at Manoa. “Most people about to be executed haven’t had a lot of success in school or life. They’re not always so skilled at articulating themselves. There are plenty of clichés, sometimes peculiar ones, like the Cowboys reference. But I think many of these individuals are also striving to say something poignant, worthy of the existential occasion.”

and then, immediately, continues to say that "the power of their words to change the system or even heal the hearts of those they have hurt is uncertain.” The article goes on to represent the

\(^{102}\) Published June 29, 2013.
views of both the most hard-line supporters of the death penalty and those who see it as "perverse." It is, ultimately, a deeply philosophical document, which offers no answers, but a whole host of problems.

Very little coverage of the death penalty takes the tack that the *Times* generally does, and has done very explicitly in this case: it seeks to challenge assumptions, to make the readers of the *Times* think and question, whatever their beliefs might be. It directly and repeatedly troubles both the belief in the rightness of capital punishment and the drive to see it abolished. The *Times* believes that the controlling rhetorical exigency here is the chance to ask their readers to think carefully about not only what they believe, but why, and whether that belief is truly justified. Admira

Admirable, certainly, but it's not hard to figure out why reporting of this type has more trouble finding an audience than does reporting which simply affirms a person's beliefs.

**Advocates**

Before we examine the rhetoric of any third-party\(^{103}\) group or individual, it must be said from the outset that doing so in a generalized way is impossible. These organizations shatter fractally into groups and subgroups, each with its own particular idiosyncratic rhetorical strategy. There is no particularly strong central tendency in any of these groups except in the most general terms: death penalty abolitionists tend to foreground the humanity of the condemned in their arguments, while death penalty defenders tend to foreground the suffering of the victims. Political extremism is common, and arguments tend to diverge from the center, rather than

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\(^{103}\) I.E., generally nonprofit groups which are not associated with any governmental or political organization other than themselves. A very good example of such an organization is Amnesty International, but there are a host of others which represent many perspectives on capital punishment.
Advocacy groups tend to progressively polarize themselves as time goes on, moving from more moderate positions toward more extreme ones until their extremism either forces a splintering or the group fades into obscurity and irrelevancy. Only rarely to advocacy groups make a move toward the political center, and when one does, it generally fragments, shedding a substantial portion of its more politically extremist wing. Such splintering sometimes results in the general disintegration of the group. Describing the complex and strange workings of advocacy groups in detail as they evolve, change, grow, and die is work others have done very well, but it is much more than we need here. Instead, a more simple example of the process at work illustrates why it is so hard to make generalized statements about such groups.

The People for the Ethical Treatment of Animals was founded in 1980 by Ingrid Newkirk, and first gained significant notice a year later when they began a vocal protest of live-animal experiments at the Institute of Behavioral Research, in Maryland. For a time, these sorts of protests were the heart and soul of what PETA was; a third-party organization which worked to fight animal cruelty, which they generally saw to be experimentation upon and vivisection of laboratory animals. In the early 1990's, however, the organization began to attract significant numbers of ethical vegetarians interested in propagating that viewpoint. The old guard resisted the move, but PETA began to advocate against the use of fur, specifically, in clothing. Criticism of leather was conspicuously absent for a long time because, while an animal must be raised and slaughtered for the sole purpose of producing fur for a coat, leather is a byproduct of the beef and sheep industry which would otherwise be wasted.

104 People who do not eat meat because doing so violates their personal code of ethical conduct. These individuals generally believe that the consumption of another living, vertebrate organism is ethically unjustifiable.
The center could not hold, however, and around the turn of the millennium, PETA became an organization which overtly and loudly advocated for universal vegetarianism. Its advocacy campaigns became increasingly extreme and, in some cases, bizarre—in one case, the group fashioned bikinis out of iceberg lettuce leaves and dressed attractive, young women in them to advocate vegetarianism. At the same time, its campaigns became more extreme; it was at this point in time that PETA launched its "I'd rather go naked than wear fur" campaign, in which famous celebrities would pose nude in pictures or videos.

Since then, PETA has moved more and more toward aggressive advocacy of universal vegetarianism, and its tactics to achieve that end have grown more and more outlandish, even as its more traditional paths of advocacy have been abandoned. It has been years since the organization has spent any time or money speaking on behalf of test animals; instead, in 2008, it released *Cooking Mama Kills Animals*, a satire game in which players, as the titular Mama, dismember animals in literal showers of blood and gore in order to cook a Thanksgiving turkey dinner. Other notable moves include a fake comic book cover, printed at poster size, entitled "Your Mommy Kills Animals," upon which a 1950's-era housewife (in pearls, no less), stabs a horrified bunny to death with a bowie knife as blood flies everywhere and, launched in 2011, a pornographic website in which the models hold signs bearing PETA's slogans.

If advocacy groups can be erratic and idiosyncratic, the people who take it upon themselves to speak out on issues that they care about on their own can be downright bizarre; even the most radical group is a *group*, and must operate by something akin to consensus. An individual may do whatever (s)he pleases.

What we will do is examine some of the louder, more influential voices which speak now,
and some of the more common, less well-known voices which orbit the issue in a more subtle way, to get a general sense for how the last words of the condemned are transformed as part of their collective advocacy. This examination will not be representative, because the scope of detail a genuinely representative examination of these matters would require is rather more than I am able to offer here. Instead, I will examine a major abolitionist organization, a vocal defender of capital punishment, and a pair of individuals who have taken it upon themselves to argue the matter.

**Amnesty International**

Amnesty International is a very large international human rights advocacy organization which has taken a strong stand against capital punishment in particular, though it speaks out on a number of issues. It is, at the time of this writing, the largest death penalty abolitionist organization in the world, and the largest portion of their work in that regard focuses on the United States, because, frankly, Amnesty International is based in America. The U.S. is not the highest executor, either on a per capita basis, or by volume—not by a long shot—but it gets lot more attention from Amnesty International than places like Iran do.

Amnesty International deals with the last words of the condemned in an unusual and interesting way in its advocacy, because it doesn't directly use them. At all. Rhetorically, the organization prefers to use loaded statistics about capital punishment. A 2010 report on global death penalty statistics, for instance, has the following three paragraphs bolded, as the first phrase of successive paragraphs:

**China remains the world’s top executioner by the numbers...**
**The Middle East and North Africa region continues to lead in executions, per capita.**
The US was the only country in the Americas and the only Western democracy to execute prisoners last year.

These passages rhetorically conflate the repressive regimes in China and the Middle East with America in an effort to illustrate the perceived barbarism of the death penalty.

Such a rhetorical strategy is interesting in that it stands as a notable outlier to the general debate on capital punishment in America. In general, we argue about whether or not a person convicted of murder deserves to die for his or her crime; in that context, final statements are often useful in one way or another. However, Amnesty International's rhetorical campaign hinges not on arguments of an individual's worthiness or vileness, but on what kind of a society at large we are. Such an argument is deeply perceptive, as it understands that, fundamentally, we're not arguing about whether someone deserves to live or die, but about what the act of executing or not executing says about us all, as a people.

Amnesty International is absolutely right in seeing the real scope of the debate, but by mounting its own argument on those terms, it is speaking past its audience, which is more interested in individual cases than societal implications; as such, it renders the organization's rhetoric relatively ineffective. They understand that the rhetoric of capital punishment is centered around societal identity, but they don't seem to understand why, or why everyone is so preoccupied with the people who are executed.

However, Amnesty International does use the last words of the condemned in their advocacy in indirect ways. Every now and again, their reports, studies, or advocacy activities will reference the last words of executed men and women obliquely; they refer to Troy Davis' last words after his botched execution, for instance, and to Kelsey Patterson's last words in a report on executing the mentally ill, and use advocacy texts like The Last Words of the
Executed\textsuperscript{105} in their local activities. By keeping the more pathetic\textsuperscript{106} last words of the condemned out of their mainline arguments, Amnesty International is trying to fashion an image of logicality, of analysis, and of thoughtfulness; at the same time, it feels the need to push away the perception of death penalty abolitionists as bleeding hearts, who feel sympathy for and kinship with everyone and everything. It's an interesting rhetorical strategy, but it leaves the organization at cross purposes with itself; Amnesty International feels it must mount highly logical, evidence-based arguments in a debate which is almost entirely pathetic in nature. If it engages on a more emotional level, Amnesty International loses the rhetorical authority it's crafted for itself, even if the organization is able to mount more effective, targeted, relevant arguments in the process.

So they make those pathetic arguments on an individual level, keeping such rhetoric quiet, and put on a large-scale public face of statistical formality. A problematic compromise, and the difficulty it presents Amnesty International with may be part of the reason that they have not made any meaningful progress in recent years—indeed, it may be part of the reason that the organization, despite the effectiveness of its rhetoric elsewhere in the world, has become largely irrelevant to the debate on capital punishment itself.

\textbf{Justice for All}

Justice for All is one of the largest of very few organizations which support the use of the death penalty. Now, in saying this I don't claim that there isn't quite a bit of support for capital

\textsuperscript{105} By Robert K. Elder, published in 2010.

\textsuperscript{106} I use this term, universally, in its rhetorical sense—as a descriptor for an emotional argumentation.
punishment—there most definitely is—but rather that, for whatever reason, supporters of the death penalty don't seem to feel the need to band together to promote their collective message as do death penalty abolitionists; after all, if what you want is what's currently in effect, much of your work is already done. Justice For All's website, for instance, has not been significantly updated in thirteen years, at the time of this writing. Only one organization that supports capital punishment that I could find has updated their web presence this year, and many were even older than Justice For All's presence. So out of date is the site's materials that their listing of upcoming executions, which extended five years into the future when it was last updated, does not include those happening at the time of writing. Despite this, their licenses are all in order, and their office remains open and functioning.

Given the vehemence and churning activity of their philosophical opponents, it is curious that Justice For All seems to feel so little need to have a significant, modern, or even current rhetorical presence on the internet. Part of the reason for this may be that their audience skews older, more conservative, more likely to be strongly Christian, less technologically savvy, and therefore less likely to make heavy use of the internet, but it is generally a strategy for failure in the long term, as without new, young supporters, any political issue will be lost in time due to simple attrition.

A second part of the reason for this calmness is that supporting capital punishment is the default state in America. Put another way, it is part of our cultural identity that we kill the bad guys, and you can see that in, really, any of the stories we tell about ourselves, the stories we tell
in fiction and film, and even the way that stories are told on the news. Justice and retribution for wrongdoing are very much part of what makes America America. As such, supporters of capital punishment have a comparably easy time rallying support for the practice.

Justice For All, in a very standard rhetorical move for those who support the death penalty, never uses the last words of the condemned in any way. Instead, the last words of the victims of murder, wherever they are known, are used, and used fairly regularly. Justice For All operates a website called Victims' Voices, which lists murder victims along with heartfelt pleas from their family members and summaries of those victims' lives and deaths. The move rhetorically foregrounds victims while erasing their murderers. Doing so emphasizes the victims of murder, certainly, but more importantly it frames the debate on capital punishment as one concerned with justice for the innocent. It's a deeply pathetic argument which speaks to the heart of the debate on capital punishment, and as such is highly effective. Just as importantly, it is pithy in a way that is easily repeatable and endlessly adaptable; it is common to see the rebuttal of an abolitionist argument take the form of "I wish someone stood up for the victim like you're standing up for the monster who murdered him/her."

Large-scale arguments—by this I mean rhetorical discourse on the national stage by large numbers of death penalty supporters—are largely unnecessary in America, because the standard response to abolitionist arguments is easy to remember, effective, and forces a reframing of the issue on grounds that a death penalty supporter prefers. Every aspect of the argument is made to

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107 Watch the first reports of an officer-involved shooting some time for a fairly stark illustration of this effect. Almost universally, the reports assume the guilt of whoever has been shot by the police officer. This is actually backed up by the FBI, which classifies anyone shot by a police officer as a criminal for the purposes of their yearly statistical analyses.

108 This is very much in keeping with the political and rhetorical strategy of its ideological allies, which we have discussed earlier.
be about the victim, to the point that any discussion of the condemned becomes extraneous. So
dehumanized are those executed for murder in these arguments that their very humanity is
irrelevant to the issue at large, insofar as proponents of capital punishment are concerned. They
forfeited their humanity when they took a life. It's a potent argument, if unforgiving.

**Death Penalty Reflections and Information**

It's much more likely for an individual supporter of capital punishment to have a
significant, modern, and current web presence than it is for larger organizations. Death Penalty
Reflections and Information, a long-running blog maintained by Randall Abrams, represents the
way that such presences work.

While the arguments that many supporters of capital punishment mount in defense of the
practice are similar, the motivations of each advocate are much more individualized and
idiosyncratic. Abrams, for instance, seems to have a deep-seated fascination with the process of
execution itself, and focuses on it much more than he does on the lives of victims or the lives of
the condemned. He never uses the last words of the condemned in his arguments, as is typical of
pro-capital punishment rhetoric, but neither does he use the last words of victims, which often
play some role in other individual-level advocacy on capital punishment.

One of Abrams' first posts, entitled "Why I Support the Death Penalty," lays out the basis
for his arguments in support of capital punishment. This passage represents the core of his
rhetoric:

First, there is a small, but significant, number of people who will do “really bad” things and
not think that they are wrong. People like that are a virus on society and need to be
eliminated... Second, there are people who will decided that what they are doing is wrong,
and that they are likely to get caught and punished, but that they can handle any period of
incarceration... Finally, there are people who will still commit serious crimes even in the face of an almost certain execution... Since nothing will deter them from their act the first time, then they should be prevented from having any opportunity for a second time.

Abrams here is unusually analytical in his support for capital punishment, laying out what amounts to a logical proof which demands action. While most arguments center around either the victim or the condemned, Abrams squarely faces the sociological problem which is the root of the rhetorical situation itself: what do we do with people whom we can't reform? By presenting a series of arguments about the nature of those who commit crime, Abrams concludes that there is a segment of any society which cannot be reformed or dissuaded by any means.

In one sense, he is right: there are people like John Wayne Gacy who will, given the opportunity, kill without remorse for the perverse joy of doing so. Any functioning society needs to have a concrete and comprehensive answer to the question, "How do we deal with people like this?" Given that there aren't very many good options, Abrams rests his argument here on the premise that there are certain situations where capital punishment cannot be practically avoided, because every breath a certain segment of humanity takes places the rest of it at risk. Abrams argues that more murderers ought to be executed than currently are, and the framing of his rhetoric leaves his opponents in a difficult spot.

On the other hand, Abrams' arguments veer into the disturbing elsewhere. In one post in December of 2005, he wonders if his fascination with the machinery and process of execution amounts to a paraphilia, and concludes that it probably does. Elsewhere, he imagines what it

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109 These arguments are not backed by facts in any way, and Abrams himself acknowledges that he is no expert, but feels qualified to make these judgments as a result of his "years as a human and a member of society," which gives him "a reasonable understanding of how we work, in a large part from extrapolating how I work to the rest of mankind."
would feel like to be executed,\textsuperscript{110} describing in detail the physical and sensational process which he imagines he would experience if he were executed by a wide variety of methods, from lethal injection to beheading by a sword. He maintains an extensive gallery of the machinery of capital punishment from around the world. At one point, he even muses on things that another him might have done, and included on that list is "deliberately commit a capital crime, then make an effort to ensure my execution for it," which he acknowledges scares him not because it would result in his death, but because he'd have to hurt another person to make it happen. While Abrams' blog is \textit{by no means} typical of individual advocacy in support of capital punishment, it is a fascinating and rhetorically effective defense of the practice.

\textbf{Parting Words}

Amy Elkins works as a photographer out of Los Angeles, and has begun to receive national attention for her unusual photographs, which largely work with those on death row and who have been sentenced to life imprisonment for crimes of various sorts. She is an abolitionist, and her politics infuse her work, but she is not as extreme as many are. Elkins presents a series of several hundred photographs of the faces of executed men and women, digitally edited to be displayed through the letters of the last words of the condemned. Her Parting Words series of photographs are her most explicit condemnation of the death penalty. As the visual impact of these images cannot be summarized very well, several have been included in Appendix 1. She won the Aperture Foundation's Portfolio Prize\textsuperscript{111} in 2014 for this series.

\textsuperscript{110} In a post on March 10, 2014.
Elkins' work is perhaps the most explicit use of final utterances that exist in advocacy connected to the death penalty. Her rhetoric is literally dependent upon the last words of the condemned for its very existence; without the superimposition of the last words of the condemned upon these peoples' faces, her art would simply be a series of mugshots, harvested from several departments of corrections. The photographs seek to create a visual and emotional connection between the faces of the executed and their last words, and in doing this, Elkins taps into the single common rhetorical strategy\(^\text{112}\) of death penalty abolitionists in a truly primal way. These images are large, and while detail is grainy, it is very difficult not to meet the eyes of the deceased, as we would in any other photograph, and feel a spark of human connection.

Almost always, Elkins has edited the last words of the condemned in her work, so that a single sentence or phrase is repeated\(^\text{113}\) over and over across the page. In a few cases, where the last words of the condemned were brief, or where they gave none, the entire statement is repeated, but this is atypical. Far more typically, Elkins selects the most humanizing parts of these men and women's last words, where they reach out to other people in the chamber, or rail against their executions, or simply make statements which would horrify a typical person. For example, Milton Mathis's last statement, which runs to 225 words, is shortened to the very last phrase he uttered: "I can feel it right now. My life, my life!"

Humanization is at the very core of what Elkins is doing here, and while it is a fairly

\(^{111}\) The Aperture Foundation is a not-for-profit organization which supports photographic artists. Its Portfolio Prize is awarded once per year, and is extremely competitive.

\(^{112}\) Death penalty advocates always seek to humanize the condemned—to push the sympathetic stories of these men and women's life and death to the foreground of any discussion of capital punishment.

\(^{113}\) In cases where the condemned gave no last words, Elkins simply repeats, "None," which is the typical way that null statements are recorded for the purposes of state records.
typical tactic for abolitionists to pursue, none do so as viscerally or in such an emotionally charged packet as Elkins does. Her rhetorical assumption is that it is all but impossible for a person to believe that another person rightly deserves to die if the two know each other; in other words, she tries to make the act of execution rhetorically personal in a way that the entire process seeks to make impersonal. She pushes the most human part of the condemned, their faces, to the forefront, excluding everything else except their words. Their eyes, their mouths, their utterances. This is Elkins' argument: you wouldn't kill someone you knew, even if they did something awful. You now know these people. We shouldn't have killed them.

The effect of an argument like this is to directly appeal to the viewer's empathy, and by framing the debate on capital punishment as a simple question of whether or not we should kill people at all, Elkins and those who mount arguments of a similar nature are deliberately reducing the complexity of an issue which has huge implications that stretch far beyond the level of individual rights and dignity and rest on what kind of a society we are, and what the story we tell about ourselves is.

**The Stories We Tell About Ourselves**

Once the last words of the condemned leave the death chamber, they are transformed successively—sharpened and hardened into rhetorical swords which we use to fight over what it means to be *us*. While each rhetor in the public debate is, ostensibly, arguing over whether or not it is right for us to execute and, if we do, who, that's not what the actual argument is about. The real debate is over *who the little guy is*. We all want to stand up for him, whoever he ends up being, because standing up for the disadvantaged is such a viscerally central part of what it
means to be American that nobody, on any side of the controversy, can even understand the whole mess in terms that don't speak to this central narrative of Americanism. The defenders of the death penalty say that the victim is the little guy. Abolitionists say that the condemned is. That's why the issue has been so curiously intractable in America, when almost the entire rest of the world has done away with the practice on, largely, pragmatic grounds.\textsuperscript{114}

America stands up for the little guy, no matter who he or she is, and our need to stand up for that little guy, and our internal conflict about who that person is, is actually typical of most arguments which result in a state of national paralysis. Abortion, for instance, frames a fetus as the little guy for pro-lifers and a woman as the little guy for pro-choicers. This is why, as a result, pro-life slogans, campaigns, and rhetorical tactics almost universally feature very specific facts about fetal development—development dates for fingernails and hearts are a favorite—and why pro-choice slogans, campaigns, and rhetorical tactics revolve around a lone woman being crushed by the full might and majesty of American law. It's similarly typical of our arguments when we go to war,\textsuperscript{115} when we prohibit drugs and other narcotics,\textsuperscript{116} why we strike trade deals\textsuperscript{117}—I could continue. It's a matter, fundamentally, about identity; because America, as a nation and a culture, is founded upon and stands for the preservation of the rights of the individual in the face of the opposition of many, it has become the central tenet of what it means to be American. Almost every patriotic debate boils down, in the end, to "we should

\textsuperscript{114} The process of execution, by whatever means, is universally more expensive than simply housing an offender for the remainder of his or her natural lifespan. Many countries have abolished the death penalty for ethical reasons, but all have taken financial and practical realities into account when coming to that decision.

\textsuperscript{115} We had to defend Sadaam Hussein's people from him \textit{both} times we went to war with Iraq.

\textsuperscript{116} The addict is regularly portrayed as a helpless victim in the face of overwhelming chemical effects.

\textsuperscript{117} NAFTA and CAFTA, for instance, were both sold to the American public as helping small business.
protect/defend/save/preserve this thing or that person” from some powerful, otherwise-dominant force. The trope is near-universal. Even debates on corporate regulation are generally reduced to "we should protect massive, multi-national companies worth hundreds of billions of dollars from the big, bad government" versus "we should protect hundreds of millions of citizens from being taken advantage of by a wealthy minority." When you stop to think about the terms of the argument, the issue of scale gets fairly comical, yet those are the terms of the discussion.

The debate about capital punishment is not about capital punishment. It's about what the moral of our collective story is going to be. Are we the people who stand up for those whose voices have been irrevocably silenced by the cruel and vicious? Are we the people who never kill without need, regardless of how richly a person deserves it? It is for this very reason that we care so deeply about the last words of the condemned, because at the end of every story, we all know, there's a moral. Almost always, the last words of the story, in fact. We hang off those last words, needing a moral to explain, to justify, the story we want to tell about who we are.

This is where the rhetorical artistry of all sides comes to the center of the metaphorical stage. By manipulating the last words of hundreds of dead men and women in an attempt to speak to the central experience of being just, of being human, of being American, these rhetors are trying to capture the ephemeral essence of being, of identity itself. In this way, all rhetors who speak about capital punishment are alike in that the most central desire of each is to seek out in the ephemeral, uncertain world beyond the dark behind the eyes another who is like him- or herself. Yes, there is the desire, the hope, to shape the world with words, but it is secondary. Arguments about capital punishment are never really about the policy of putting people to death, even when they attempt to address policy directly—such arguments are at their core an attempt
to redefine an entire society and change its conceptualization of what we each consider to be, on a fundamental level, right and noble and decent. It is an argument which seeks to change identity itself on a massive scale. Conventional argumentation, by which I mean measured debate on the merits, disadvantages, and challenges of a variety of practical options in pursuit of the best amongst them, fails utterly in the face of such a massive challenge.

Once in a while, though, rhetorical art—the rhetoric if identity, of being, of the very definition of humanity and its limits—can make such a change. It requires, however, an unusual conflux of ethos, pathos, logos, and particularly kairos to be possible; the right person must make a profoundly sensible and passionate argument at the right time and place. It wouldn't be wrong to read our current churning, frothing discontent over capital punishment as a search for art to define us and an artist to craft it.

Which words resonate? Which seem irrelevant? Since we sift these utterances for the moral at the end of the story, which morals we find in them become indicators of and incubators for our philosophical values. We draw statements of affection from the condemned into evidence of humanity; if even condemned murderers feel love, then the platonic ideal of love, a universal force which permeates us all, must certainly exist. In statements of defiance we find strength incomparable, nobility and endurance beyond any that most of us could imagine ourselves having. Yet, the least noble amongst us can demonstrate these traits; mustn't there be nobility in us all? Statements of repentance are proof positive that anyone can change, can become better than (s)he was. It's a long journey from brutal murderer to penitent; how much easier must it be for us to ask forgiveness for our smaller transgressions. Finally, in spirituality at the end our own faith is vindicated, regardless of religion, spirituality, or even the absence thereof. Our belief in
ideals can sustain us in the face of death. There is inspiration in that for each of us. We bring meaning to these statements as members of their audience, and we bring the meaning we desire most for them to have. Final statements aren't about the dead. They're about those who remain.

There's no special, hidden, or powerful meaning intrinsic in final statements; if the quantitative and qualitative examinations of these utterances has demonstrated nothing else, it's that these words are not composed to serve as moral or ethical guideposts. They're personal. They're idiosyncratic. They're not, in the least, proverbial. We have to bring that meaning to them, and we do. Endlessly.
Bibliography


APPENDIX

PARTING WORDS