

Unframing the Death Penalty

Transatlantic Discourse on the Possibility of Abolition and the Execution of Saddam Hussein

Kathryn A. Heard

INTRODUCTION: AN EXECUTION WORTH A THOUSAND WORDS

In the early morning hours of December 30, 2006, Saddam Hussein was executed by hanging in the depths of an Iraqi military bunker. Unbeknown to the officials orchestrating the execution, witnesses smuggled video and camera phones into the makeshift death chamber. Within several hours of Hussein's last breath, images of his execution flooded popular media channels; the resulting photographs and videos ranged in scope from documenting the precise moment at which the noose was placed around Hussein's neck (see [Figure 5.1](#)) to a full digital account of his execution.¹ Reactions to his execution were swift and unequivocal. American President George W. Bush hailed the news of Hussein's death as an "important milestone on Iraq's course to becoming a democracy that can govern, sustain, and defend itself."² Across the Atlantic, European officials on both a supranational and local level roundly condemned the execution. European Commissioner for Development and Humanitarian Aid Louis Michel declared: "One cannot fight barbarism with means that are equally barbaric. The death penalty is not compatible with democracy."³ Even British officials, representing an administration that had been a staunch ally of the United States during the invasion and subsequent liberation of Iraq, criticized the use of capital punishment. British Foreign Secretary Margaret Beckett, in a statement released by Downing Street, stressed that her

¹ Saddam Hussein's execution can be viewed in total at: <http://www.youtube.com/watch?v=AfJrZSRj-fE>. Please understand that this video contains graphic footage, and YouTube advises viewer discretion.

² White House Press Conference (December 30, 2006). As quoted in: Tariq Ali, "Lynched by the Mob," *The Guardian* (UK), December 30, 2006. This article can be found at: <http://www.guardian.co.uk/commentisfree/2006/dec/30/post852> (accessed January 6, 2007).

³ "Hanging of Saddam 'Barbaric' – Top EU Official," *AlertNet: Alerting Humanitarians to Emergencies* (Reuters), December 30, 2006. It can be found electronically at: <http://www.alertnet.org/thenews/newsdesk/L30630950.htm> (accessed January 6, 2007).



FIGURE 5.1. The execution of Saddam Hussein, December 30, 2006.⁴

government “did not support the use of the death penalty in Iraq or anywhere else.”⁵

These statements are compelling for several reasons. At once both declarative and imperative, they capture a set of assumptions and anxieties about the contemporary application of and campaign against the death penalty. The competing qualifications of capital punishment as barbaric and as essential for democracy offered by Commissioner Michel and President Bush, respectively, are of particular interest: They signal a growing ideological divergence between the European Union and the United States on what can rightly be construed as justice. In the discerning eyes of European officials, the use of capital punishment in Iraq – although condoned by the newly installed post-Hussein government – represents a troubling and pervasive American influence that threatens the global advancement of civilization. Indeed, Michel’s words imply that the complete and total abolition of capital punishment is necessary to achieve fully the democratic ideals associated with European norms of civilization: liberty, equality, and the unassailable right to life. The appeal to such rhetoric, however, cannot be confined solely to the European Union and its representatives. President Bush invokes the same liberal principles, albeit to a much

⁴ The image of Hussein’s execution is available at: <http://www.guardian.co.uk/news/blog/2006/dec/30/inpicturesrea> (accessed January 6, 2007).

⁵ “Hanging of Saddam ‘Barbaric’ – Top EU Official.”

different end. Not only does he regard the execution of Hussein as a necessary component for the successful completion of the American overseas mission, but he also determines that it serves as a catalyst for Iraq's political transformation and progression toward eventual self-governance. When these statements are taken together, it is possible to see that the furor surrounding Saddam Hussein's execution is twofold: It is both a response to the death of a dictator renowned for his proclivity toward genocide and a site in which discourse over the continued legitimacy of capital punishment as a method of democratic governance is reproduced, demarcated, and reinforced. The latter aspect informs this chapter.

Narrowly construed, the purpose of this chapter is to use the rhetoric generated by the execution of Saddam Hussein as a point of departure to examine if, and how, the language of democracy and civilization provides an effective means of establishing a transatlantic consensus on the viability of abolition.⁶ It questions: How do Commissioner Michel and President Bush's statements reveal broader cultural attitudes regarding the persistence of the death penalty and, more specifically, its efficacy as a form of punishment? Furthermore, how does the European belief in abolition as a particularly "European" trait influence the possibility of America's own eventual achievement of the eradication of the death penalty? And finally, if the ideals of democracy and civilization do fail – as I contend they indeed will – to provide an adequate forum for discourse on the possibilities of abolition, what recourse remains for those committed to anti-death penalty policies?

In exploring these questions, this chapter is loosely divided into three parts. The first part examines in more depth the responses to the photographs offered by each government. Drawing from the notion of framing advanced by Judith Butler, I argue that both the European Union (as the figurehead of the European nations in the American-led Coalition of the Willing) and the United States read the photograph in Figure 5.1 as a threat to the established meaning and narrative of the war. This reading of the image, I insist, was necessitated primarily because of the unprecedented and unexpected nature of what it depicted; to mitigate the image's perceived threat, engagement by both Commissioner Michel and President Bush with the troubling aspects of the photograph would be needed. The second part of this chapter expands on this argument by linking the concept of framing to that of performativity. It traces both Europe and America's contentious relationship with the death penalty, deploying performativity as a means by which to develop a more nuanced understanding of what the rhetoric of abolition and retention have come to constitute for each. The third and concluding section of this chapter contends that

⁶ Austin Sarat and Christian Boulanger, "Putting Culture into the Picture" in *The Cultural Lives of Capital Punishment: Comparative Perspectives*, eds. Austin Sarat and Christian Boulanger (Stanford: Stanford University Press, 2005), 34. Following the argument made by Sarat and Boulanger, I understand "abolition," "abolitionist," and "abolitionism" to mean the complete eradication of capital punishment. In contrast, "retention," "retentionist," and "retentionism" refers to ideas which "support the legal institution of capital punishment and countries where it is still practiced."

contemporary transatlantic discourse on capital punishment, and its heavy reliance on terms associated with democracy, barbarism, and civilization, can be understood as one means by which Europe and the United States attempt to understand themselves and their relationship with capital punishment. It argues that what is important about the execution of Saddam Hussein and the ensuing reactions is not whether the execution was indeed barbaric, nor whether it represented a substantial step toward or away from the development of a free-standing Iraqi democracy. Rather, what is important are the multiple ways in which hierarchical language was deployed as a means to structure and order the actions of individual nations, a practice that drastically endangers the project of global abolition through the misunderstanding and misconception of mutually employed terms. I argue that one way forward from such a discursive bind is to refocus on the image with which we began and the very elements that prompted such a political kerfuffle; indeed, by isolating the portions of the image that represented a threat to the stability of contemporary capital punishment dialogue, it might – just might – be possible to move away from the inadequacy of its current vocabulary and toward a new, unframed vision of abolition.

TECHNOLOGIES OF WAR: PHOTOGRAPHY, EMBEDDING, AND THE DISRUPTIVE POSSIBILITIES OF NEW MEDIA

To understand precisely why Commissioner Michel and President Bush's words have significant implications for the study of abolition, it is first necessary to clarify the underlying concepts and ideas central to this chapter. To this end, I suggest we turn our attention to two fundamental precepts: first, to the power of photographs to contain and constrain meaning; and second, to how responses to an image deemed "deviant" can be considered an attempt to realign and reorient its contents to fit more concretely within a given socio-political context. Indeed, it is possible to ask: What qualities inherent to the photograph were judged to be so intrinsically troublesome that pronouncements of barbarism, civilization, and democracy were considered not only useful, but necessary for its interpretation? The answers to this question are complex; however, by examining in further detail the politics of photographs, frames, and the war, it will be easier to see just how a clandestine photograph captured in the heart of the Middle East has everything to do with the possibility of abolition.

Simply stated, the photograph capturing Hussein's execution – to paraphrase Timothy Kaufman-Osborn's reading of the photographs documenting the torture of Iraqi prisoners of war at Abu Ghraib⁷ – does not speak for itself. Photographs, argues Susan Sontag, exist within a complex field of historical, social, and ideological meanings, such that the images are not merely representative (but also not wholly interpretative) of the actions and persons they contain.⁸ Images like the one

⁷ Timothy Kaufman-Osborn, "Gender Trouble at Abu Ghraib?" *Gender & Politics* 1 (2005), 599.

⁸ Susan Sontag, *Regarding the Pain of Others* (New York: Farrar, Straus, and Giroux, 2003), 26.

reproduced in Figure 5.1 provide their viewers with a visual frame that brings them closer to the “human cost of war, famine, and destruction in places that may be distant both geographically and culturally.”⁹ In doing so, photographs convey affect; that is to say, they require that the viewers engage in acts of translation such that they acquire meaning within their own cultural or political consciousness. But what entails an act of translation? For Sontag, it can be as straightforward as the caption accompanying a photograph in a newspaper or a more intricate written exegesis in a periodical; what remains the same in each instance, though, is the presence of human narratives to make sense of a discrete and atomic image.¹⁰ Under this interpretation, photographs alone do not have the power to incite political transformation because they are considered naturally momentary, but once situated within a specific cultural and political context through an affective narrative, they acquire the potential to evoke a moral or ethical response and lay the “tracks for how important conflicts are judged and remembered.”¹¹

Sontag’s insistence that photographic images alone have no meaningful capacity to motivate their viewers to political action due to their noninterpretative nature and reliance on human narratives does not adequately account for the sheer scale of the political furor following Hussein’s execution. This is not to say that the image of his execution does not require interpretation and translation (as it very well does, as will be seen from further discussion), but rather to suggest that the image *itself* is not nearly as innocuous as Sontag would make it seem. In her most recent work, *Frames of War*, Judith Butler takes up Sontag’s notion that photographic images provide visual frames that bring the viewer close to distant – and potentially troubling – subject matter. However, unlike Sontag’s belief that such images only take on meaning when interpreted within the viewer’s own cultural and political setting, Butler determines that photographs themselves actively participate in the viewer’s understanding of the subject matter by virtue of delimiting what is knowable, what is true, and what can be seen. She writes:

We do not have to be supplied with a caption or a narrative in order to understand that a political background is being explicitly formulated and renewed through and by the frame, that the frame only functions not only as a boundary to the image, but as structuring the image itself. If the image in turn structures how we register reality, then it is bound up with the interpretative scene in which we operate. The question for war photography thus concerns not only what it shows, but how it shows what it shows.¹²

On this reading, photographs produced under the conditions of war are by no means benign. The photographer, the state, the subject, and even the angle of the camera

⁹ Judith Butler, *Frames of War: When Is Life Grievable?* (New York: Verso, 2009), 68.

¹⁰ Sontag, *Regarding the Pain of Others*, 83.

¹¹ Susan Sontag, “Regarding the Torture of Others: Notes on What Has Been Done – and Why – to Prisoners, by Americans,” *The New York Times Sunday Magazine* (May 23, 2004), 25.

¹² Butler, *Frames of War*, 71.

itself subtly shape and manipulate the viewer's field of vision. For Butler, what is included is as important as what is excluded, just as the photographer's political sympathies are as important as her employer's. The frame, once the photograph reaches the public eye, is no longer visible and, accordingly, imparts the appearance of neutral observation to the viewer; this perceived appearance obliquely structures the viewer's perceptions of and reactions to the image's subject. As a result, the photographic image is not simply waiting for the interpretative assistance provided by narratives à la Sontag, but rather engages in interpretation even *before* being exposed to film, etched on a digital memory card, or viewed by a member of the public.

The heavy hand frames have in our interpretation of certain events is well illustrated by the role of the media in the second Iraq war – the setting of this chapter's inquiry. Throughout the invasion and later occupation of Iraq, the Bush administration tightly controlled the release of any media even tenuously war-related. Embedding, a Department of Defense-sponsored program that enabled journalists to report from the frontlines of battle due to their strategic placement within military convoys, defined precise ground rules as to what was considered acceptable, and thus distributable, news. An embedded journalist "traveled only on certain transports, looked at certain scenes, and related home images and narratives of only certain kinds of actions."¹³ The Embedment Manual issued by the Department of Defense exemplifies this perspective perfectly, as members of the media corps in Iraq were to be briefed "in advance about what information is sensitive and what the parameters are for covering this type of [classified] information."¹⁴ Furthermore, if a journalist encountered potentially sensitive information while in the field and wished to include it in her report, "the commander [might have] offered access to it if the reporter agreed to a security review of their [sic] coverage or asked [the reporter] to remove that information."¹⁵ The regulation of what could be reported extended so far as to mandate that the bodies of the injured and dead soldiers (including the shrouded American coffins returning home from abroad) were not to be photographed for fear of undermining popular support for the war. Ultimately, embedded reporting provided the Department of Defense with the means of controlling the greater narrative scope of the second Iraq war; indeed, it was able to deploy the power of the state to promote a particular photographic interpretation by purposefully crafting the appearance of objectivity and reality in the work released by embedded reporters.¹⁶ Iraq was, for the viewing publics of the United States and

¹³ Butler, *Frames of War*, 64.

¹⁴ "Embedment Manual" in *Embedded: The Media at War in Iraq*, Bill Katovsky and Timothy Carlson (Guilford, CT: The Lyons Press, 2003), 401–417. The full text of the manual can also be found at: <http://www.concernedjournalists.org/ground-rules-embedded-reporters-iraq> (accessed February 20, 2010).

¹⁵ Katovsky and Carlson, "Embedment Manual," 407.

¹⁶ Here, it is important to note that embedded reporters traveling with American military convoys were not always from the United States because it broadens the scope and impact of the frames discussed above. When embedment first began, the media corps was indeed comprised mostly of selected and

the European Union, intended to be a carefully controlled and highly sanitized mission.

Put bluntly, the image of Hussein's execution followed neither the prescription for wartime reporting nor the general rules elucidated earlier by Butler for the control of photographic affect. Taken not by members of the embedded media corps, but rather by a seemingly chaotic group of Iraqi witnesses wielding camera phones, the image transgressed and disregarded the frames considered by the Department of Defense to be necessary for the maintenance of the war's meaning writ large. Audiences in both America and the European Union saw almost immediately the implications of the invasion of Iraq: The introduction (or, perhaps, continuation) of American practices like capital punishment,¹⁷ rowdy crowds clamoring for the "spectacle" of execution that has rarely been seen in Western countries since the nineteenth century, and the very real cost the war had on sentient bodies. Stated differently, in place of the previous images of camouflaged patrols bloodlessly securing the entrances to key cities and outposts, viewers instead found pictures and videos depicting the noose around Hussein's neck and the long arms of unknown Iraqis reaching out to adjust it. Furthermore, the accompanying cellular phone video footage¹⁸ revealed that the moments before Hussein's execution were quite hostile; the guards charged with keeping order in the death chamber instead disrupted it, shouting Shiite militia slogans to the Sunni Saddam.¹⁹ When witnessed this way,

nations did not provide embedment "services" for their reporters. Furthermore, these "other nations" were primarily European in character because the nations of Europe represented the second-largest majority of coalition troops after the United States. These journalists (termed "unilaterals" by the United States) were welcome to travel to Iraq independently, but they had to provide for their own security detail and transportation once in the country. Traveling without the aid of sanctioned military convoys yielded wartime images that did not have to be approved by the Department of Defense, but as the invasion escalated and nonmilitary movement across Iraq became increasingly risky, more and more unilaterals traded journalistic freedom for the relative safety offered by the embedment corps; ultimately, this meant that nations like Britain and Germany – close allies of the United States following the events of September 11, 2001 – gained a meaningful way of controlling their own narrative and continued support of the Iraq war. Consequently, the vast majority of the images emerging from Iraq during the invasion and occupation stages were the result of embedding and subject to censure, regardless of the reporter's initial country of origin or official affiliation with the American Department of Defense.

¹⁷ In Saddam Hussein's Iraq, executions were deployed as a means by which to suppress political dissent. Indeed, at least 114 crimes carried the sentences of the death penalty. After the invasion of Iraq, however, U.S. administrator L. Paul Bremer discontinued the practice, stating that "the former regime used certain provisions of the penal code as a means of oppression, in violation of internationally acknowledged human rights." In May 2005, capital punishment was reinstated under American supervision for a smaller set of crimes – and, as was widely believed, to prepare for the execution of Hussein. For more, see: Jonathan Finer and Naseer Nouri, "Capital Punishment Returns to Iraq: Public Welcomes Practice Suspended After U.S. Invasion," *The Washington Post*, May 26, 2005. This article can be found electronically at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/25/AR2005052501970.html> (accessed September 11, 2010).

¹⁸ See *supra* footnote 2.

¹⁹ Sabrina Tavernise, "For Sunnis, Dictator's Degrading End Signals Ominous Dawn for the New Iraq," *The New York Times*, January 1, 2007. This article can be found electronically at: <http://www.nytimes>

the image of Hussein's execution appears to conform not to the controlled frames of peacekeeping and occupation put forth by the embedded reporters traveling with Western military forces, but rather to historical photographs documenting vigilante lynchings in the Jim Crow-era American South – lynchings whose modern connotations of lawlessness and untempered violence²⁰ are very nearly the precise opposite of the narrative desired.

In this instance, the photograph documenting Hussein's execution acts as an *unframed image*²¹ – that is, an image that makes vulnerable the continued and unchallenged operation of the dominant frame. With the weakening of the dominant frame, discrete individuals now had unrestricted visual access to the manifest consequences of the war's larger political aims, as well as to the more specific penal tactics deployed in the realization of such goals. As such, the post-execution conditions were set, depending upon the cultural and political contexts in which the image was received, for "astonishment, outrage, revulsion, admiration, and discovery."²² The varying affects that an unframed image may elicit from its viewers, argues Butler, both call into question a "taken-for-granted reality" and expose the "orchestrating designs of the authority that sought to control the [original] frame."²³ Thus, if we take seriously the notions of framed and unframed images, we see that the United States and the European contingent of the Coalition of the Willing are placed in a tricky rhetorical situation: To prevent the larger narrative of the Iraqi enterprise from collapse, they must bring the unframed image back into proper affective alignment, but to do so, each government must first engage with the image's subject – Hussein's imminent expiration on the gallows – in such a way as to render it sensible, and thus a legitimate or illegitimate consequence of the war's objectives, to its respective audiences. In short, for both the United States and the European Union, an *ex post facto*, culturally specific frame was needed.

It is at this point, with the invocation of an *ex post facto* frame to contain and control an unframed image, that a pause for further elaboration is needed. This chapter's appeal to the notion of an unframed image may unwittingly imply that the image of Hussein's execution lacked any serious affective potential prior to the attempts made by Western governments to lend it interpretative stability, and that, once stabilized, the image is evacuated of its transformative force and the narrative continuity of the

.com/2007/01/01/world/middleeast/01sunnis.html?pagewanted=1&ei=5088&en=9a4812fde9db44e5&ex=1325307600&partner=rssnyt&emc=rss (accessed May 29, 2010).

²⁰ Amy Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890–1940* (Chapel Hill: University of North Carolina Press, 2009), 2.

²¹ For the remainder of this chapter, I will use the term "unframed" to refer to any image that does not conform to or represent a dominant mode of interpretation. In this instance, the image of Saddam Hussein's execution is "unframed" because it does not adhere to the policies mandated by the Department of Defense's Embedment Manual and, writ largely, the intended war narratives of the United States and its allies.

²² Butler, *Frames of War*, 11.

²³ Butler, *Frames of War*, 12.

Iraq war soldiers on unscathed. This vein of argumentation, however, runs the risk of throwing out the baby with the bathwater by failing to account for the uniquely disruptive nature of the photograph itself; indeed, I want to suggest that what is so theoretically enticing about the statements made by President Bush and Commissioner Michel are the ways in which they seek to make uncontested an image that is meaningfully and perpetually contested – and what is elided or valorized in their respective processes. As established earlier, an unframed image is an image that breaks from and challenges existing and dominant narratives. What is, however, particularly compelling about the unframed image of Hussein's death is that it does not mandate or elicit a particular response from its viewers because it occupies "no single time and no specific space."²⁴ Put in more concrete terms, the use of an officially unsanctioned recording medium (cellular phone technology) to capture Hussein's execution and the viral channels (social networking sites like Facebook and YouTube) through which it was subsequently distributed guaranteed that the image was "shown again and again, transposed from context to context."²⁵ Its sheer mobility ensured not only that it would be successively framed and reframed through private and non-state-mediated encounters with the photograph, but that this subaltern witnessing would also, perhaps negatively, condition the possibility of a single public interpretation like that encouraged by wartime embedding. As such, what I term an *ex post facto* frame is then the scramble made by American and European governments to impose interpretative boundaries on an image that is, at its core, narratively dislocated.

The importance of this dislocation for the study of abolition cannot be underestimated. Indeed, Hussein's execution temporarily hijacked the staid and cohesive flow of transatlantic war reporting and left in its wake the imprint of a hastily constructed gallows and interpretative dissonance. It is here, in the penumbra created by the combined and related influences of dissonance and dislocation, that we can at long last begin to see how the unframed image's depiction of the death penalty – and the ensuing responses offered to it – reveals much about the prospects for its eventual eradication.²⁶ It is now possible to ask: How do the opposing attempts to settle the meaning of the unframed image by American and European authorities demonstrate particular political or cultural convictions relating to the legitimacy of the death penalty as a means of dispensing justice? Furthermore, how are we to understand the discrepancy between their statements, with President Bush appealing to capital punishment's supposedly democratizing effect and Commissioner Michel decrying its presence as evidence of society's barbarism, if both ultimately remain committed to the war's broader political aims? Finally, and most critically,

²⁴ Butler, *Frames of War*, 78.

²⁵ Butler, *Frames of War*, 78.

²⁶ To paraphrase the original title of this project.

what precisely do these statements, borne from a geographically distant and unexpectedly high profile event, *do* for us as transatlantic abolitionists? To take the initial step toward answering these questions, let us (albeit temporarily) leave behind photographs and turn our attention to the prescriptive power of words. In doing so, we come to the principle objective of this chapter: To understand how the responses offered to the dislocated image of Hussein's execution are the products of particular discursive histories – histories that are seemingly rooted in the supposition that the transatlantic experiences of capital punishment have been, and will continue to be, meaningfully divergent.

THE REFRAMING POWER OF PERFORMATIVE SPEECH AND THE CONVENTIONS OF CAPITAL PUNISHMENT

Performance Theory

Certain configurations of words, argues J.L. Austin, possess the performative power to “accomplish a deed through the very act of their enunciation.” They may at differing times, for example, inflict bodily injury, render a marriage binding or dissolved, or instigate war. In this sense, words – when ordered correctly and situated in the appropriate context – harbor a productive capacity; that is, they differentiate, variegate, consolidate, and, ultimately, totalize specific social, cultural, and political norms in the pursuit of some end.²⁷ To locate how words acquire such a constitutive character, Austin directs our theoretical attention toward “total speech situations”²⁸; examining the confluence of locutionary, perlocutionary, and illocutionary acts in speech, he argues, will illuminate how words garner the discursive power to impart a new social reality purely through their articulation. Understanding the ways in which these modes of speech operate and overlap provides the tools with which it will be possible to dissect the statements offered by Commissioner Michel and President Bush following Hussein's execution and the dissemination of the unframed image; this dissection, it is hoped, will demonstrate precisely how these statements appealed to culturally specific renderings of capital punishment as a means to reframe the image's fraught meaning and, through this, regain narrative control over the broader military mission in Iraq.

By way of following Austin's prescription to investigate total speech situations, let us turn to a specific example through which the nuanced differences and similarities motivating locutionary, perlocutionary, and illocutionary acts can be articulated. In

²⁷ The use of Foucaultian terminology here was inspired by this excellent work: Tomoko Masuzawa, *The Invention of World Religion: Or, How European Universalism was Preserved in the Language of Pluralism* (Chicago: The University of Chicago Press, 2005), 20.

²⁸ J.L. Austin, *How to Do Things with Words* (Cambridge, MA: Harvard University Press, 1975), 52, 148; see also Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997), 3.

From Noose to Needle,²⁹ an excellent and compelling work on the complicated role of capital punishment in the late liberal state, Timothy Kaufman-Osborn does just this by modifying one of Austin's own examples:

Consider this hypothetical incident of extrastate violence: Two thugs, one menacing and the other somewhat less so, stand on either side of a man who has failed to make good on his gambling debts. The first turns to the second and says, "Shoot him." The second, after some hesitation, raises a pistol and kills the hapless debtor. Shortly after having read Austin's posthumous text, I observe this event. In my capacity as witness, I describe what I saw to the police: "The first man said to the second, 'Shoot him,' meaning by 'shoot' to fire the gun and by 'him' to refer to the deceased."³⁰

When Kaufman-Osborn relates to the police both the action (the shot fired) and the person to whom the action was directed (the ill-fated debtor), he captures a locutionary act; that is, in his role as a knowledgeable bystander, he uses his statement to illustrate the relationship of the menacing thug's words ("shoot" and "him") and their meanings to one another. Yet Kaufman-Osborn, as a seasoned political theorist, recognizes that much more is at work (and punitively at stake) in this situation and amends his hypothetical statement to the police:

But my philosophical sensibilities primed, I soon realize that this does not exhaust what transpired via this utterance; and so I explain to the police that the second man wavered, and hence that he must have been *persuaded* by the words of the first to commit this deed.³¹

In contrast to his initial locutionary-laden version of the shooting, Kaufman-Osborn amends his account of the shooting to incorporate the consequences of the words deployed by the thug. This revision reveals an important correlation present in the imaginary tableau that had previously gone unnoticed: The man in possession of the gun only shoots the unfortunate debtor *because of* the persuasive efforts made by the first man in his desire to induce the hoped-for action. Put differently, Kaufman-Osborn's statement to the police portrays the kill shot administered to the debtor as a *consequence* of the words articulated by the more menacing thug. In shifting the focus from the relationship between certain descriptive words to the consequences brought about through their utterance, Kaufman-Osborn transforms his statement to account for the presence of a perlocutionary act instead of the more one-dimensional locutionary act. But, once again, Kaufman-Osborn remains unsatisfied with his portrayal of the event:

And yet, as I explain to the now exasperated officers, there is still more to this utterance, for I have yet to capture the sense in which it was itself an action.

²⁹ Kaufman-Osborn's interpretation of dignity in this volume, although not explicitly engaging with performativity as in his earlier works, will become important in later sections of this chapter.

³⁰ Kaufman-Osborn, *From Noose to Needle*, 25.

³¹ Kaufman-Osborn, *From Noose to Needle*, 25; emphasis in original.

Specifically, when the first man said, “Shoot him,” he *ordered* the second to do so. Although this utterance may indeed have set in motion the train of actions that led to the debtor’s death, it was a deed in its own right.³²

This final rendering of the death of the debtor privileges an illocutionary act; it is a deed that is performed simply in virtue of articulation. Whereas the previous statements to the police provided an account of the shooting that depicted the relationship between the actors and the eventual consequences of their words, Kaufman-Osborn’s last iteration captures the certain sense of immediacy present in the shooting. Indeed, an utterance is an illocutionary one if it is, in and of itself, enough to accomplish an end and make manifest its import *at the instant of its articulation*.³³ When this provision is then imposed on Kaufman-Osborn’s Austinian example, the force of the words metaphorically replaces the force of the bullet in effecting the debtor’s death – the moment the thug says, “Shoot him,” the debtor’s lifeless body falls to the street.

What might we learn by extracting this theory of language from the thugs-and-debtors situation and applying it to the American and European governments’ encounters with an unsanctioned and viral image of Hussein’s execution? In other words, how can we understand Commissioner Michel and President Bush’s statements to be functioning as performative utterances? To make the initial foray into answering these questions, we must preliminarily leave aside any differences in their appeals to civilization, barbarism, and democracy present in their respective statements, and instead direct our focus to the actions these statements sought to induce: the ascription of a culturally and politically uniform narrative onto the unframed image as a means through which to render its disruptive potential moot; in doing so, it is possible to ascertain just how such assertions presume an illocutionary, and thus productive, force.

The primary way in which Commissioner Michel and President Bush seek to circumvent any lingering or permanent dissonance in narrative affect is simply through their engagement with the photograph. It is assumed that in doing so those who have yet to encounter the photograph – and, presumably, even those who already have come into cognitive contact with it – would instantaneously acquire a mental *ex post facto* frame through which to appropriately perceive and interpret its subject. Less obviously, but perhaps more importantly, such engagements with the photograph also signal Commissioner Michel and President Bush’s intent that their utterances will still the viral dissemination of the photograph by assigning to it an official affect; through this ascription, the image’s potential to shock and awe – to borrow from tactical wartime terminology – is neutralized and it consequently ceases to be an object of global interest. Even through this initial exegesis, the statements issued by Commissioner Michel and President Bush move away from

³² Kaufman-Osborn, *From Noose to Needle*, 25; emphasis in original.

³³ For more on this, please see Butler, *Excitable Speech*, 2–17.

both the purely descriptive function of locutionary speech and the consequentialism of perlocutionary speech and shift, even if just infinitesimally, toward the possession of an illocutionary force.

This categorization of Commissioner Michel and President Bush's desire to reframe the image along performative lines is, however, still incomplete because it does not yet provide an accounting for the inclusion by each actor of substantially different organizational norms. At first blush, their respective references to barbarism, civilization, and democracy easily recall Kaufman-Osborn's earlier treatment of locutionary and perlocutionary acts in the thugs-and-debtors example: Such statements seek to describe the meaning of one term (the norm) to another (the death penalty) in a manner that privileges their consequences. For example, when Commissioner Michel declares, "One cannot fight barbarism with means that are equally barbaric. The death penalty is not compatible with democracy,"³⁴ he determines that because the supposedly unjust practice of the death penalty was deployed as a form of justice in Iraq, the larger civilizing mission of the Iraq war has been improperly compromised. A similar rhetorical framework, albeit one that is inverse in its meaning, can be applied to the statement made by President Bush. This reading of their statements, however, oversimplifies both the complexities of meaning that are contained in the deployment of such terms and how such meanings may actually *compel* their ultimate illocutionary, and thus potentially reframing, power.

By way of understanding how the meaningfully complex terms utilized by Commissioner Michel and President Bush possess a constitutive character, let us turn briefly, if somewhat incongruously, to the example of marriage. When I take a marriage vow and say, "I do," I offer a description of the action in which I am participating, an action that may be deemed either true or false depending upon the context in which it is uttered. An "I do" offered to a random individual that I happen to encounter on my walk to my neighborhood's coffee shop in the morning does not a marriage vow make; yet if I say the same words to this individual in the company of an authority vested by the state of California (such as a justice of the peace or an appropriately accredited religious official) to perform marriage ceremonies, the "I do" then executes the action it names: a marriage vow.³⁵ If we were to examine both of these potential marriage situations through the lens of locutionary speech acts, any meaningful distinctions motivating their separation would be lost; indeed, we can imagine an instance in which a bystander outside of the coffee shop and a decidedly unenthused attendant at my wedding offer the same interpretation of the events they had just witnessed: "She said 'I do,' which is a marriage vow, to another person, meaning an individual other than herself." If, however, the disaffected attendant

³⁴ See Kaufman-Osborn, *From Noose to Needle*, 25. Here, Kaufman-Osborn compels theorists of both the death penalty and performativity to ask in what sense death sentences may be considered illocutionary. For the purposes of this chapter, however, I alter Kaufman-Osborn's question slightly.

³⁵ This example is deployed by Austin in "Performative Utterances" as well as in Kaufman-Osborn's *From Noose to Needle*.

were to give a perlocutionary account of my utterance, she would note that, directly following my proclamation of “I do,” I formally entered into the state of marriage with another person because I was prompted to do so by the officiate; whereas this description negates the possibility of the “I do” offered to the random individual on my walk to the coffee shop as an invocation of a marriage vow, it does not yet fully articulate how the words themselves induce a legally binding state of matrimony. If we understand my utterance of “I do” at the courthouse as an illocutionary act, not only do we see that it ushers in a new and palpable reality (that of the marital state) at the moment at which it was articulated, but that it had the legitimate power to do so because it presumed – in a way that locutionary and perlocutionary speech acts are unable to – that the individual to whom I uttered the vow was both a willing participant in the ceremony and recognized by the state of California as a person capable of entering into such a commitment.

Hence, marriage vows, when approached from a perspective that takes into consideration their total speech situation, derive their performative force from their illocutionary appeal to what Austin terms conventions.³⁶ The efficacy of speech acts, he writes, depends on “an accepted conventional procedure having certain conventional effect, that procedure to include the uttering of certain words by certain persons in certain circumstances.”³⁷ In the marriage example, then, the performative utterance of “I do” has the force to bring into being a state of matrimony because it recalled not only the accepted social practice of marriage as an act between two willing and appropriate people, but because it also had to be witnessed, and ultimately sanctioned, by a representative of the state in order to be accepted as valid. To assume otherwise, as I did when I muttered, “I do,” to the stranger on the streets of Berkeley and expected to be married from that moment forward is, for Austin, distinctly infelicitous.³⁸

If the logic of conventions is applied to Commissioner Michel and President Bush’s statements, their competing qualifications of the image as either “barbarous” or “democratic” emerge as attempts to locate an appropriate context for it such that their assertions automatically induce productive witnessing – or, illocutionary reframing – within their respective audiences. For traditional theorists of performative speech acts (like Austin), however, this application is not a happy one. In the case of the marriage vow detailed earlier, the conventions that endowed it with its performative force were not articulated within the actual utterance;

³⁶ Although I use the term conventions, Austin has, at different times, also used the terms “ritual” or “ceremony.” Both Butler in *Excitable Speech* (at page 3) and Kaufman-Osborn in *From Noose to Needle* (at page 26) note these differences; for the purpose of this chapter, however, I will adhere to the term “conventions” because I believe it more accurately captures the confluence of historically grounded forces that legitimate an illocutionary act’s force.

³⁷ Austin, *How to Do Things with Words*, 14.

³⁸ Jürgen Martschukat, “Nineteenth-Century Executions as Performances of Law, Death, and Civilization,” in *The Cultural Lives of Capital Punishment*, eds. Austin Sarat and Christian Boulanger (Stanford: Stanford University Press, 2005), 51; see also Kaufman-Osborn, *From Noose to Needle*, 26.

instead, it distinguished itself from a perlocutionary act precisely because of its reliance on the presence of the correct social context and political circumstances to aid in the creation of a new reality, a reliance that allowed it to relinquish its ties to descriptive necessity. However, if the context in which the utterance is performed is *relocated to the setting of the iteration itself*, as our earlier determination to investigate the complexities of meaning present in Commissioner Michel and President Bush's statements urges us to do, then any clear distinction between the perlocutionary and illocutionary elements of speech collapses. This is not to suggest that perlocutionary and illocutionary acts should be considered as one and the same within Commissioner Michel and President Bush's utterances, but rather that they exhibit an interdependency that, when properly understood, has significant ramifications for the study of transatlantic capital punishment practices.

To see more concretely how this interdependency between perlocutionary and illocutionary acts is established, as well as how it simultaneously effects the reframing of Hussein's execution and cultivates a space in which to advocate for abolition, a substantive return to the works of Judith Butler is required. In *Bodies that Matter and Excitable Speech*, Butler charges that Austin's determination that an utterance's productive authority can only emerge in the context of commonly accepted conventions is insufficient. To follow Austin's prescription, she insists, is to misunderstand and misrepresent the coercive nature of modern power. She writes that performativity "must be understood not as a singular or deliberate 'act,' but rather as the reiterative and citational practice by which discourse produces the effects that it names."³⁹ On this understanding, conventions *qua* Butler render an utterance apprehensible to its audience and subjects by operating within and recalling "networks of meaning, modes of behavior, and institutions."⁴⁰ Their efficacy, as Jürgen Martschukat clarifies Butler, depends on their ability to connect to multiple points of reference that "allow for the performative act to make sense and unfold a specific meaning at a certain moment in history."⁴¹ Butler's (and Martschukat's) reading of Austin does not discount the productive force of a performative utterance – it is instead to say that its power is *reflexive*, that is, it draws from and then subsequently suppresses previously existent webs of practices in order to constitute itself and its meaning afresh.

This means, on the one hand, that Commissioner Michel and President Bush's utterances exist within a never-ending series of utterances and, on the other hand, that they make sense only when taking into account the ensembles of practices, meanings, and values that gave rise to them. When the meaning of the war was rendered narratively and politically rudderless in the face of the unframed image

³⁹ Judith Butler, *Bodies that Matter* (New York: Routledge, 1993), 2.

⁴⁰ Martschukat, "Nineteenth-Century Executions as Performances of Law, Death, and Civilization," 50.

⁴¹ Martschukat, "Nineteenth-Century Executions as Performances of Law, Death, and Civilization," 50.

of Hussein's execution, their statements sought to recapture and recreate rhetorical stability through a "citation" to other recurring performative speech acts.⁴² In this sense, their references to the "barbaric" and "democratic" natures of capital punishment recall nothing more than "historically specific compressions of meaning, brought about by the repetitive citation of utterances, attitudes, and behaviors within a culture."⁴³ Thus, when Commissioner Michel and President Bush assign ostensibly normative and perlocutionary descriptions to the act of capital punishment in the unframed image, they are, in fact, seeking to remedy the image's dissonance and dislocation by appealing to words and meanings that are already in possession of an illocutionary impulse. On this account, the productive distance between perlocutionary and illocutionary acts shrinks, and Hussein's execution emerges reframed.

Thus far, this section has sought to advance a portrayal of Commissioner Michel and President Bush's statements that locates their performative power in the interdependency between their respective descriptions of the act the unframed image captures and the productive force contained within their articulation of such descriptions. If, however, these statements are to be evaluated for any transatlantic abolitionist potential, the norms to which they appeal – and how they themselves are meaningfully constituted – must be understood in greater detail. It is now possible to ask: What is particular to the European and American experiences with capital punishment such that Commissioner Michel and President Bush may appeal to their normative differences in pursuit of a performative utterance – and have such utterances successfully render a volatile image popularly sensible? The answer to this question is both expansive and complex, but by narrowing our focus to the curious histories of transatlantic capital punishment practices following the conclusion of World War II, it will be easier to see just how the terms used by Commissioner Michel and President Bush are, as Butler argues, subjective compressions of historical meaning that can be deployed to expansive performative effect.⁴⁴

Performing Cultural Capital Punishment

In September 1977, a Tunisian immigrant convicted of the torture and murder of a female acquaintance had the dubious honor of being the last person executed in Western Europe in the twentieth century.⁴⁵ Hamida Djandoubi's death by French guillotine generated no particular accolades or condemnations; indeed, for what would later be hailed as a major turning point in the history of Western civilization, the execution was remarkably uneventful. In the year of its final execution, Europe

⁴² Martschukat, "Nineteenth-Century Executions as Performances of Law, Death, and Civilization," 50.

⁴³ Martschukat, "Nineteenth-Century Executions as Performances of Law, Death, and Civilization," 51.

⁴⁴ For an altogether different account of how discourses of civilization and barbarism operate transatlantically, please see Andrew Hammel in this volume.

⁴⁵ Franklin E. Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford University Press, 2003), 16.

did not differ drastically from the political climates found elsewhere in the world. Most noticeably, Europe and the United States were exceptionally similar in their approaches to and amount of executions. As Franklin Zimring observes, “In 1977, only one person was executed in the United States: Gary Gilmore became the first offender put to death in a decade. But that same year, France beheaded two homicide offenders.”⁴⁶

Given what we know about Commissioner Michel’s statement following Saddam Hussein’s execution, the general silence that greeted Hamida Djandoubi’s death – at least to our anachronistically situated ears – seems decidedly underwhelming and odd. Yet Zimring locates a specific reason for the lack of fanfare following Europe’s final civilian execution: During times of political unrest and social instability, any popular debates over the merits of retaining or abolishing state-sanctioned executions noticeably recede.⁴⁷ Accordingly, in the late 1970s, during a period in which Europe was still reeling from the economic and cultural fallout of World War II, political elites held closed-door policy meetings with the intent to eradicate the death penalty through “leadership from the front.” This intent was radically at odds with the prevailing popular mood; indeed, at the time in which political support for the death penalty began declining, the general European public was still in favor of its retention: When the death penalty was formally abolished in Germany, for example, over 74 percent of the populace supported its use for crimes relating to murder.⁴⁸ Although public approval of the death penalty would remain high in European countries for the next several decades, political elites firmly held to the belief that the practice of the death penalty was inherently incompatible with the direction and mood of the new, post-Holocaust Europe. Unyielding leadership from the front appeared the only way in which to ensure Europe remained on the path to achieve its civilizational *telos*⁴⁹; in other words, the first steps in eradicating the death penalty were understood to be significant leaps away from the barbarism epitomized by the Holocaust.

In light of the lack of European discourse concerning capital punishment’s gradual but steady elimination, it is all the more surprising to witness the sharp shift in policy objectives and the growth of international, European-led abolitionist movements. From the closed-door meetings of Europe’s political elite has sprung an almost *de rigueur* belief in the necessity for capital punishment’s worldwide eradication. But, again, nothing of this attitude was witnessed at the execution of Hamida Djandoubi. How are we to reconcile the disconnect between these two capital punishment realities? Furthermore, what lends the latter reality its lasting normative power? These questions can be resolved through a quick glance at the historical rise and

⁴⁶ Zimring, *Contradictions of American Capital Punishment*, 16.

⁴⁷ Zimring, *Contradictions of American Capital Punishment*, 26.

⁴⁸ Zimring, *Contradictions of American Capital Punishment*, 23.

⁴⁹ For more on this, please see: James Tully, “The Kantian Idea of Europe: Critical and Cosmopolitan Perspectives” in *The Idea of Europe*, ed. Anthony Pagden (New York: Cambridge University Press, 2002).

political influence of the European Union and the Council of Europe. By the mid-1980s, every Western European nation had formally abolished the death penalty. At approximately the same time, human rights activists were lobbying to strengthen the European Convention on Human Rights' (ECHR) commitment to the "right to life." Almost through coincidence of circumstance, Protocol No. 6 to the ECHR emerged as a means to ensure that no European citizen would ever come under the penalty of death again.⁵⁰ In 1983, the ECHR was opened for signature and ratified with astonishing speed. Within months of its ratification, the human rights framework was "extended to provide for mandatory abolition of death penalties for all of the European nations involved in the Council of Europe."⁵¹ Abolition had become, in other words, naturalized under international and transnational law – in order for aspiring and would-be Council of Europe countries to apply for and gain access to the wealth of the politically consolidated European nations, they would need to demonstrate a commitment to the right to life by removing the death penalty from their punitive practices.

Thus, we can see that the right to life vocabulary has become an integral aspect to the framework of Europe's governing bodies. What makes Protocol No. 6's lasting influence important for this chapter's purpose is the realization that the rhetoric surrounding human rights has increasingly become equated with the normative qualities associated with civilization. Zimring argues: "Once a group of nations agrees that the standards governing the death penalty policy of individual states should be international, this creates the mandate to judge other countries on the death penalty, whether or not those other states agree with the standard imposed."⁵² To paraphrase Zimring, the total and unequivocal abolition of capital punishment becomes the standard against which all other nations' judicial practices are assessed. But, as demonstrated earlier, the civilized standard takes on a new and coercive aspect: It is codified under supranational, international, and transnational European law. On this account, human rights, the death penalty, and the rejection of barbarism emerge as conflated notions under the institutional framework provided by the EU and the Council of Europe.

In the same year that Hamida Djandoubi became the last person to be executed in Western Europe, Gary Gilmore became the first person to be executed in more than a decade in the United States. Incongruously, in the eleven years prior to his death, public support for the death penalty had reached an all-time low; indeed, a Gallup poll reported that opponents of the death penalty outnumbered its proponents, 47 percent to 42 percent.⁵³ During this time of unprecedented abolitionism, citizens began pressuring their state legislatures to pass formal legislation that would explicitly

⁵⁰ Zimring, *Contradictions of American Capital Punishment*, 29.

⁵¹ Zimring, *Contradictions of American Capital Punishment*, 29.

⁵² Zimring, *Contradictions of American Capital Punishment*, 39.

⁵³ James R. Acker, "The Death Penalty: An American History" *Contemporary Justice Review* 6 (2003), 171; see also: Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002).

outlaw the punishment of death for any crime. As James Acker notes, by the end of the 1960s, fourteen states had largely complied with their citizens' demands.⁵⁴ By all accounts, it appeared that the United States in the mid-twentieth century was moving closer – albeit at a glacial speed – to the complete and total eradication of the death penalty, buoyed in large part by a wave of public support.

This push for the permanent elimination of capital punishment as a tool for dispensing justice culminated in the landmark 1972 Supreme Court decision in *Furman v. Georgia*.⁵⁵ The justices, in a lengthy five-to-four decision, determined that the practice of capital punishment *as it stood in the cases before them* violated the Eighth Amendment's cruel and unusual punishment clause. Indeed, one of the more vocal justices on the bench for *Furman*, Justice William Brennan, declared that capital punishment is "unusual in its pain, its finality, and in its enormity. [. . .] Death is truly an awesome punishment. The calculated killing of the human being by the State involves, by its very nature, a denial of the executed person's humanity."⁵⁶ Echoing this sentiment, Justice Potter Stewart wrote:

The penalty of death differs from all other forms of criminal punishment, not in degree, but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.⁵⁷

Taken together, these two statements appear reminiscent of the "right to life" vocabulary that emerged in the European Union's own turn toward abolition. But instead of being a marker of civilization and the rejection of barbarism, the "right to life" terminology seen in *Furman* takes on a decidedly populist bent. Not only did the cases considered in *Furman* come before the Supreme Court as a result of legal action claims spearheaded by civilian organizations such as the National Association for the Advancement of Colored People (NAACP), but throughout the written opinions in this case, the justices rely heavily on the perceived public opinion on the legitimacy of the death penalty by analyzing state legislation and jury behavior.⁵⁸ The justices' reliance on public opinion demonstrates how the rule of the majority – raw democracy – was a crucial factor in America's early experiment with abolition. As Justice Brennan concluded, "The objective indicator of society's view of an

⁵⁴ Acker notes that these states were all located outside the American south: Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, New Mexico, New York, North Dakota, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin. In "The Death Penalty: An American History," 6.

⁵⁵ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁵⁶ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁵⁷ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁵⁸ For more on this argument, please see: Austin Sarat and Neil Vidmar, "Public Opinion, the Death Penalty, and the Eighth Amendment: Testing the Marshall Hypothesis" *Wisconsin Law Review* 171 (1976).

unusually severe punishment is what society does it with it.”⁵⁹ Thus, to extend the logic of Justice Brennan, if a democratic society deems capital punishment to be cruel and unusual through its incompatibility with its social standards, then its continued practice is no longer constitutional.

The popular support evinced for the abolition of the death penalty in 1972 makes Gary Gilmore’s death by Utah firing squad a mere five years later particularly jarring. What produced such a dramatic shift in public and judicial opinions? The answer, for David Garland, is surprising. He argues that the period of abolition in American history was artificially supported by sustained periods of growth in the domestic economy; following World War II, crime rates decreased, standards of living increased, and consumers felt relatively safe in their homes and lifestyles. Accordingly, public support for criminal rehabilitation waxed at the same time as support for capital punishment waned.⁶⁰ With the advent of the 1970s and 1980s, however, the United States entered a period of persistent economic hardship as the nation entered a recession, unemployment rates skyrocketed, prices on basic goods were artificially inflated, and crime rates increased dramatically. Furthermore, shifting gender and familial roles shook the foundations of society, contributing to an anxiety-laced social sphere in which the appeal of conservative values grew greater every day. Garland writes, “The new social and cultural arrangements made late-modern society a more crime-prone society, at least until such new crime-control practices could be put into place to counter these tendencies.”⁶¹ Thus, when the Supreme Court reconsidered the constitutionality of capital punishment in 1976’s *Gregg v. Georgia*,⁶² the Justices determined that the principles of crime deterrence and victim retribution provided sufficient and rational cause for the reinstatement of state-sanctioned executions. Consequently, the reinstatement and retention of the American death penalty became intimately tied to the needs and desires of the nation’s constituents.

The preceding paragraphs sought to make explicit how the competing terms of barbarism, civilization, and democracy became associated with culturally and historically specific understandings of the death penalty. At crucial points in both the United States and the European Union’s evolving relationship with capital punishment, legal decisions were made that became conflated with *normative* choices. The development of Protocol No. 6 alongside the European Union’s political predecessor of the Council of Europe imbued its institutions and practices with the valuation of the “right to life” doctrine – a doctrine that emerged from historically specific experiences with barbarism. Correspondingly in the American case, the Supreme Court’s reliance on public opinion is evident in its thorough evaluation of state legislative documents, jury practices, and more, a practice that infuses the

⁵⁹ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁶⁰ David Garland, *The Culture of Control* (Chicago: University of Chicago Press, 2001), 88.

⁶¹ Garland, *The Culture of Control*, 91–92.

⁶² *Gregg v. Georgia*, 428 U.S. 153 (1976).

retention of capital punishment with a seemingly democratic nature. Thus, with the conflation of legal choices and normative values, the practice of capital punishment materializes as a repository of cultural beliefs and can function as a “touchstone” for their later performative enactment by Commissioner Michel and President Bush.

CONCLUSION: TOWARD AN UNFRAMED VIEW OF THE DEATH PENALTY AND THE POSSIBILITIES OF ABOLITION

Following the release of the torture photographs taken at Abu Ghraib, Henry Giroux wrote:

Meaning does not rest with the images alone, but with the ways in which the images are aligned and shaped by larger institutional and cultural discourses and how they call into play the condemnation of torture (or its celebration), how it came about, and what it means to prevent it from happening again.⁶³

Allowing for the appropriate substitution of capital punishment for torture and an Iraqi military bunker for Abu Ghraib, Giroux’s argument prompts us to realize that the American and European struggle to impose interpretative boundaries onto an unframed and dislocated image does not simply derive from a blind – although politically pressing – need to recover their narrative authority on matters relating to the regulation of the Iraq war. Instead, we see that the manner in which Commissioner Michel and President Bush seek to reclaim this authority from the hands of sub-state actors and individual witnesses is intrinsically tied to their respective society’s cultural, political, and legal norms relating to the status of capital punishment. In calling upon terms like “civilization,” “barbarism,” and “democracy,” Commissioner Michel and President Bush drive a wedge between the transatlantic experiences of capital punishment, effectively differentiating one punitive culture from the other; this differentiation allows both Commissioner Michel and President Bush to totalize their cultural capital and performatively “forget” that their historical narratives of the death penalty share significant overlap in its popular support (which still remains high in both the European Union and the United States), status as abolitionist (the United States, however short-lived, preceded some states in the contemporary European Union in the formal abolishment of civilian executions), and its derivation in Western liberal traditions. In each instance, the performative forgetting of the similar aspects of the other state’s relationship to capital punishment by declaring it either barbaric or democratic only serves to both prematurely stagnate any dialogue on the eventual possibility of global abolition and negate the opportunity to develop tangible transatlantic policies that could unite the European

⁶³ Henry Giroux, “What Might Education Mean After Abu Ghraib: Revisiting Adorno’s Politics of Education,” *Comparative Studies of South Asia, Africa, and the Middle East* 24 (2004), 9.

Union and the United States with respect to the legitimacy of capital punishment as a penal practice.⁶⁴

Thus, by way of concluding, I want to take up Giroux's final clause and transform it into a politically salient question: How do the ways in which both Commissioner Michel and President Bush engage with the image tell us something about the possibility of abolition? In other words, how may we, as abolitionists, use this event to illuminate the potential for preventing such punitive displays of state power "from happening again"?

One compelling answer to these questions recalls the interdependency of perlocutionary and illocutionary acts. When we utilized Butler to determine that the historically constituted description of an action possesses the necessary force to compel a specific understanding of an image, could we not also utilize her again to bring about the converse? That is to say, could not these performatively constituted

⁶⁴ This vast transatlantic divide on discursive matters of capital punishment retention and abolition is well illustrated by the uproar surrounding Texas' four-hundredth execution. On the eve of Johnny Ray Connor's execution, the European Union issued a special declaration denouncing capital punishment and its role in the American judicial system. The Portuguese then-president of the twenty-seven-nation governing body issued this statement on August 21, 2007:

The European Union strongly urges Governor Rick Perry to exercise all power vested in his office to halt all upcoming executions and to consider the introduction of a moratorium in the state of Texas. [...] There is no evidence to suggest that the use of the death penalty serves as a deterrent against violent crime and the irreversibility of the punishment means that miscarriages of justice, which are inevitable in all legal systems, cannot be redressed.

This statement displays all the earmarks typical of present-day dialogue between the United States and the European Union regarding the application of capital punishment. What is particularly intriguing about this specific instance of dialogue, however, is the response offered by Texas. Robert Black, the spokesman for the governor of Texas, responded to the European Union:

Two hundred and thirty years ago, our forefathers fought a war to throw off the yoke of a European monarch and gain the freedom of self-determination. Texans long ago decided the death penalty is a just and appropriate punishment for the most horrible crimes committed against our citizens. While we respect our friends in Europe... Texans are doing just fine governing Texas.

In the U.S. capital punishment system, the situation of Texas is unique. Following 1976's *Gregg v. Georgia* and the Supreme Court's subsequent reintroduction of capital punishment after its experimentation with abolition failed, the United States executed 1,090 death-row prisoners. Of these, Texas carried out approximately a third. When Robert Black's response to the European Union is viewed in conjunction with Texas' history as the most prolific instigator of juridical executions in the United States, the image of the United States he creates is one of radical democracy. In choosing to employ words such as "forefathers" and "yoke of a European monarch" and "death penalty" within the same sentence, Black evokes a mental image of capital punishment in America: of frontier justice, citizens gathering to deliberate on the harms done to them as a whole, and an American judge sentencing hardened criminals to death just as easily as his forefathers had thrown off the rule of European colonialism. This parallel that Black drew between the current American (Texan) legal system and the vision of democracy as tied to the death penalty haunts contemporary European conceptions of and relations to capital punishment, prompting statements like the one issued by the European Union immediately above and, more generally, Commissioner Michel's statement in the wake of Saddam Hussein's execution.

meanings of capital punishment practices be susceptible to being stood on their head simply through the invocation of yet another performative utterance or action? Butler, it seems, would agree with this potentiality:

By understanding false or wrong invocations as *reiterations*, we see how the form of social institutions undergoes change and alteration and how an invocation that has no prior legitimacy can have the effect of challenging existing forms of legitimacy, breaking open the possibility of future forms. When Rosa Parks sat in the front of the bus, she had no prior right to do so guaranteed by any of the segregationist conventions in the South. And yet, in laying claim to the right for which she had no *prior* authorization, she endowed a certain authority on the act, and began the insurrectionary process of overthrowing those established codes of legitimacy.⁶⁵

In applying Butler's admonitions to the work contained in this chapter, it is possible to see that one way in which to challenge (and subsequently move past) the domination of the "barbaric" versus "democratic" rhetoric pervasive in contemporary capital punishment discourse is for lay persons to forcefully assume performative authority. This means that, in the face of Commissioner Michel and President Bush's attempts to reframe Hussein's execution, subaltern witnesses to the photo must openly push back against their invocations of particular perlocutionary terms.

But if we do so, what performative or affective avenues are open to us? Put differently, what can be more effective in producing abolition than appeals to barbarism, democracy, and civilization? In assessing this subset of questions, a return to the image with which we started is necessary. Indeed, when both Commissioner Michel and President Bush performatively engage with Hussein's execution, they occlude one prominent component of the image: Saddam Hussein himself. Instead of responding to the depiction of the imminent death of a very real and tangible person, both governmental authorities choose to speak in broad terms about the historical meaning and political consequences infusing the practice of capital punishment. In order to claim performative authority à la Rosa Parks, abolitionists must engage defiantly and openly with contemporary portrayals of capital punishment and the occlusion of human life as a means by which to render palpable the undignified technologies of death that our current discourse supports.⁶⁶

Along this vein, it is fitting to close with a return to Susan Sontag who, at the outset of this chapter, provided the initial impetus toward the discursive dissection of Hussein's execution and the performative utterances that followed in its wake. In *On Photography*, Sontag writes: "Photographs state the innocence, the vulnerability of lives heading toward their own destruction, and this link between photography and

⁶⁵ Butler, *Excitable Speech*, 147; emphasis in original.

⁶⁶ My determination that we must engage with the presence of a *person* in the unframed image of Hussein's execution coheres to a certain degree with Timothy Kaufman-Osborn's appeal in this volume to the dignity of an individual in assessing the methods and modes of execution.

death haunts all photographs of people.”⁶⁷ As Butler points out, Sontag’s evocative lament bears a striking resemblance to Roland Barthes who, in *Camera Lucida*, argued that all photographic images capture a future potentiality for the continuation or destruction of life. He writes of how a particular photograph he encountered “bespeaks of Lewis Payne in jail waiting to be hanged”:

He *is going to die*. I read at the same time: *This will be* and *this has been*. I observe with horror an anterior future of which death is at stake (*dant le mort est l'enjeu*). By giving me the absolute past of the pose (aorist), the photograph tells me death in the future.⁶⁸

Photographs of imminent executions, on these combined readings, have the power to make manifest to the viewer the inevitability of human death. Although Barthes ultimately concludes that this affective quality of photographs is not limited solely to images of the juridically condemned, his treatment of Lewis Payne’s death nonetheless reveals much about how modern death penalty abolitionists can engage with images that capture imminent expiration to advance performative interpretations of their subjects that can break free from the dominant modes of transatlantic discourse. By focusing on the “absolute pastness of life”⁶⁹ captured in the celluloid representation of Hussein’s execution, abolitionist rhetoric itself can emerge as an unframed – and discursively and radically dissonant – alternative to state-based articulations of barbarism, civilization, and democracy that only serve to maintain the transatlantic status quo.

⁶⁷ Sontag, *On Photography*, 70.

⁶⁸ As cited in Butler, *Frames of War*, 97; emphasis in original. Original quotation can be found in: Roland Barthes, *Camera Lucida: Reflections on Photography*, trans. Richard Howard (New York: Hill and Wang), 85.

⁶⁹ Butler, *Frames of War*, 97.