

The representation of legal executions in American TV series: the paradox of an inaccessible public death

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Abstract

67 episodes, broadcast on American networks from 1950 to 2009, presenting the topic of legal execution are analyzed. Narrative and framing devices are described. During the Networks Era, access to the execution chamber is denied: as in real life, the public cannot see and judge executions, democratic review of this procedure is denied. The hero and the elite are the only worthy witnesses. In the more recent episodes, representations are diverse, access to the death chamber is common. Militant representations (retentionist and abolitionist), the adoption of the lethal injection (respecting the modern norms of the “good death”) and the reinstatement of the death penalty justified by the “super due process” probably account for these changes. While the paternalistic messages (defending a private execution) persist in the conservative programs, more liberal storylines stage and request access to the execution chamber to encourage the public to judge the procedure.

Keywords: execution, lethal injection, capital punishment, “good death”, violence on television

In December 1951, the National Association of Radio and Television Broadcasters adopted the Code of Practices for Television Broadcasters. The preamble reminds broadcasters “that television’s relationship with the viewers is that between guest and host.” Television content is then regulated by broad principles to make sure that programs provide entertainment for the whole family and avoid objectionable images and ideas – as any good guest would do. Thus, “the detailed presentation of brutality or physical agony by sight or by sound [is] not permissible.” Moreover, “[violence and illicit sex] should not be presented without indications of the resultant retribution and punishment.” These latter dispositions illustrate one paradox surrounding representations of legal executions in American TV series: capital punishment is at the same time required on-screen as a form of retribution and forbidden as a lethal violence. Despite this obstacle, legal executions and the death penalty are a common topic in American television shows, which is probably a result of another paradox. For its proponents, the legal killing is a moral lesson, deterring potential criminal activity. Consequently, this legal act has to be public, if it is to be efficient. Yet executions take place inside the prison, in front of a restricted number of authorized witnesses, including members of the press. So this death is private and, at the same time, symbolically public.

In this paper, we discuss the representation of politics, since capital punishment is the most severe expression of the state’s power on individuals. Legal executions are a specific case: this political event is invisible, since recording devices are strictly forbidden in the execution

chamber. This absence of visual support has led to the conduct of several studies on the translation into words of this procedure by journalists in the news and the press (Sarat, 2014; Fan, Keltner & Wyatt, 2002). However, representation studies of fictional executions are partial in the field of popular culture (Lesser, 1994), cinema (O'Sullivan, 2003) and television series (Wardle & Gans-Boriskin, 2004).

We propose to analyze televised fiction using a structuralist approach focused on the identification of narrative and framing patterns, and the interpretation of their political and social meaning. TV programs are treated here as a source material for the study of social values and norms, as well as public opinion, given their production conditions. In fact, exploring the specific framing of fictional legal killings is informative on social values through the distinction between shown and suggested content. Actions on-screen are considered appropriate, those left off-screen offending, violent or obscene (Prince, 2003). Framing is a selecting tool, and it defines what the viewer should not see. While dying characters and dead bodies appear on-screen, even in the early days of television, executions and executed characters seem less visible, indicating that this death is special. We will study this paradoxical death, which is legal but also premeditated and violent.

To perform this study, we determined a corpus of episodes meeting two criteria. We selected episodes of the top-30-rated series broadcast on networks. These programs are of particular interest because they are widely popular and have to propose consensual content. We investigated episode synopses on this list of shows and retained those depicting a character in a state of "imminent execution", i.e. planned in the next 24 hours. The corpus analyzed today is constituted of 67 episodes, aired from 1950 to 2009 during prime-time (7 to 11 pm)¹. It covers a period starting when television becomes a mass media, and ending after a 2008 Supreme Court decision (*Baze v. Rees*). Indeed, after a few months of moratorium, the Court allowed lethal injections to resume, considering this method respects the Eight Amendment of the Constitution (forbidding "cruel and unusual punishments"). We included episodes produced during the 2008-2009 season.

A preliminary analysis reveals two distinct periods: most of the corpus was aired during the Networks Era², between 1950 and 1974 (with 44 episodes for 24 years). Then, during nine years, no episodes met the two criteria. From 1984 to 2009, popular series presented once again imminent executions, but less frequently (23 episodes for 25 years). Interestingly, this chronology matches with state-sanctioned killings in the United States: between 1968 and 1976, there was no execution in the country, then this punishment was rarely used until 1984 (when more than ten prisoners were put to death). In 1972, with *Furman v. Georgia*, the Supreme Court declared capital punishment unconstitutional, but let the states reform their penal codes. With *Gregg v. Georgia*, decided in 1976, the Court validated the new codes, allowing the resumption of this practice. This reversal explains the decade-long *de facto* moratorium on executions in the United States (Bohm, 2012).

We will study the tension between the privacy of the convict's death and the public access to a legal killing, a political act and the most severe punishment in the American justice system. Often presented in the studied episodes, this conflict echoes the real-life debate on this issue. Moreover, the fictional representation of executions has evolved: whereas the execution would remain private during the Networks Era, privatization has been debated on-screen from the

¹ Although exhaustiveness was our goal, the method used to identify episodes is not infallible since synopses available are more or less detailed depending on the source.

² Before the creation of the first cable channels in the 1970s, American television was limited to three national networks.

1980s on, and access to the execution chamber has been given to the viewer. We will describe the representation of these deaths in the two periods and propose hypotheses to account for the differences. Beyond changes in the production and broadcasting conditions, access and request for access have become part of the conversation on capital punishment. Indeed, accessibility is a political issue.

From denying to granting access to the execution chamber

Narrative devices before and after the 1970s: non-deadly execution scenes tend to disappear

From the 1980s on, fiction has looked like reality, the social commentary has been more direct, contrary to the Networks Era, which was dominated by westerns. Episodes from the latter period in our corpus represent this pattern: 34 episodes fall into the western category. In total, 38 episodes, out of 44, take place in a non-contemporary setting. The context of the stories is contemporary in six episodes only, with detective shows (*Peter Gunn*, and *Checkmate*) and dramatic anthologies (*Alfred Hitchcock Presents* and *Climax!*). So, in most cases, access to contemporary executions is denied by the setting of the series itself: the procedure mostly unfolds in a mythical past.

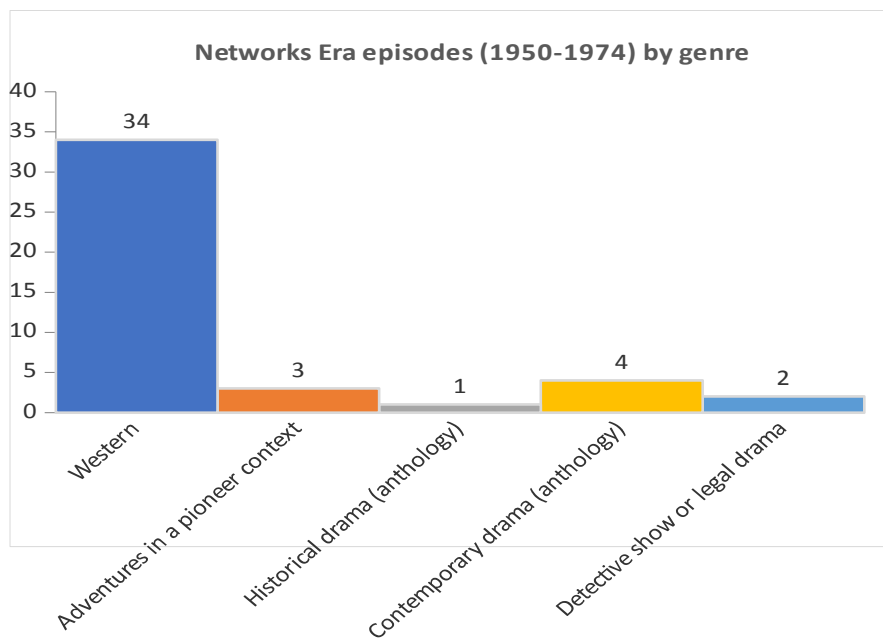


Figure 1 - Networks Era episodes (1950-1974) by genre

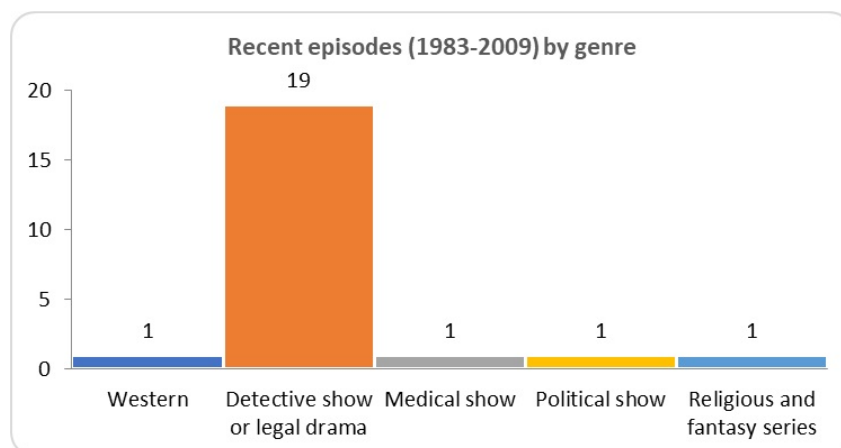


Figure 2 - 1984-2009 episodes by genre

On the other hand, the 1984-2009 episodes are set up in a contemporary context. Most of them are detective shows and legal dramas such as *LA Law* or *Criminal Minds*. Executions also take place in a medical series (*Grey's Anatomy*), a political drama (*The West Wing*) and in a religious show (*Touched by an Angel*), only two happen in a non-contemporary context³. Thus, since 1984, inmates have been put to death in a world similar to the viewer's world: they have had access to "realistic executions".

Apart from the setting, storylines are another device which denies or grants access to a legal homicide. From 1950 to 1974, a quarter of the episodes present no execution scene: the state-sanctioned homicide is canceled early in most cases. The 33 remaining episodes stage 35 execution scenes. We consider that an execution scene starts when a prisoner is taken out of their last place of detention to be brought to the place of execution, which is usually called the "last walk". The most common narrative device in those sequences is the "interrupted execution scene". The character is released on the spot, usually because their innocence is revealed at the last moment. The rescue of the convict occurs in 13 execution sequences. The promised death does not take place, even in the non-realistic western context, which in effect denies access to the viewer. This also suggests a reluctance to kill the prisoner. Another recurring narrative figure is the "non-fatal execution". The condemned is here subjected to the entire procedure but survives to it because the execution apparatus was sabotaged (blanks are placed in the firing squad rifles in *Zorro Fights is Father, Zorro*, 1958 for example), or malfunctioned (the rope breaks during a hanging in *An Occurrence at Owl Creek Bridge*, *Alfred Hitchcock Presents*, 1958). Four scenes are "non-fatal".

To summarize, 18 scenes on 35 (or almost half) do not result in death. The character in a state of imminent execution survives in 26 episodes. Consequently, narrative conventions of the Networks Era do not give access to the procedure or give access to it when nothing irreparable happens.

³ In *The Witch's Curse (Murder, She Wrote, 1992)* a convicted witch is burned at the stake by Puritans; *Abduction (2) (Dr Quinn, Medicine Woman, 1994)* presents a hanging in the context of a western.



Figure 3 - Typology of execution scenes for the 1950-974 period (left) and the 1984-2009 period (right)

During the 1984-2009 period, the inmate’s death is much more common. Out of the 19 execution scenes, one is “interrupted” and another “non-fatal”. The inmate only survives in five of the more recent episodes. Consequently, the figure of the timely rescue of the innocent almost disappears after the 1970s and the viewer has access to fatal executions.

Framing devices before and after the 1970s: more frequent explicit on-screen images since 1984



Figure 4 - Access is denied: the execution is behind the door (Death House Testament, Peter Gunn, 1958); copyright Peter Gunn - Season 1, Liberation, 2007

When the condemned men actually die in Networks Era episodes, they do it off-screen. Two devices render their dying inaccessible. The “cut execution scene” is the first one. We characterize a scene as such when the prisoner starts his “last walk” but the scene is abruptly cut, before they are killed, by the editing: another scene in another location or the credits start. The outcome yet is unambiguous; the character dies “behind the door of the death chamber” (or the symbolic curtain of the credits), whose threshold the viewer cannot cross. The most

violent part of the procedure is beyond their reach and this happens in one out of five execution sequences. The “behind the door” figure takes place for example at the beginning of *Death House Testament* (*Peter Gunn*, 1958) in a contemporary setting, and “after the credits” in western episodes such as *Born to Hang* (*Gunsmoke*, 1957).

The second device, which renders executions inaccessible, is the displacement at the moment of dying (notion defined by Prince, 2003). This framing convention we call “fatal execution with displacement” occurs in nine execution scenes (or about a quarter). By this convention, the camera’s point of view stays in the place of execution, but cannot capture the prisoner’s passing because reaction shots of the witnesses are on-screen. In most cases, a sound effect signals the moment the killing device is activated: the sound of a whiplash (*Tolliver Bender, Wanted: Dead or Alive*, 1960), the trap of the gallows being sprung (*Eight Hours to Die, The Rifleman*, 1958), or rifle shots (*The Prisoners, Daniel Boone*, 1966). This staging device is used in all fatal execution scenes of this part of the corpus, except for one in *An Occurrence at Owl Creek Bridge* (*Alfred Hitchcock Presents*, 1958).



Figure 5 - The displacement figure: the prisoner walks up the scaffold (left), followed by a reaction shot while the trap is being sprung (right) in *The Mescalero Curse* (*The Rifleman*, 1961); copyright Rifleman Season 3, volume 2, Team Marketing, 2016

So, with the “cut execution scene” and the “fatal execution scene with displacement”, the viewer does not have access to the actual dying. Framing patterns are more diverse in the latest part of the corpus, and grant access to the chamber and the moment of dying. Indeed, while the electric chair was “behind the door” in the Networks Era episodes, it is on-screen in three episodes, about to be activated in *Fry Me to the Moon* (*LA Law*, 1986) for example. We witness one asphyxiation in the gas chamber (*The Last Gasp, LA Law*, 1990). The viewer crosses the threshold of the execution chamber and shares the points of view of all people in attendance, inmate included. Moreover, fatal execution scenes are more frequent (10 out of 19). The classical framing with displacement is used in four sequences (in *Riding the Lightning, Criminal Minds*, 2006, notably), but we also observe new figures. The explicit view of the death-row inmate, shot with a face close-up when he dies (with or without focus) is the most remarkable one.



Figure 6 - The viewer enters in the execution chamber (Riding the Lightning, Criminal Minds, 2006, left, copyright Criminal Minds, Season 1, Disney, 2007); and they can sometimes see the moment of death (12:01 AM, Numb3rs, 2009, right, copyright Numb3rs Complete Boxset, Paramount, 2011)

Distance created by non-realistic genres like the western, “interrupted execution scenes”, “non-fatal execution scenes”, “cut execution scenes” and “fatal execution scenes with displacement”: the viewer cannot apprehend contemporary legal killings in televised fiction during the Networks Era. The most important part of the process is off-screen. This apparent reluctance to show the legal taking of life, performed in retribution for a serious crime (usually murder) raises questions. Were executions considered an objectionable content? On the other hand, is the disappearance of these devices in the most recent period a sign of changed social norms?

Changes explained by production and broadcasting conditions?

During the Networks Era, fiction faced production and broadcasting constraints; the content of the programs was restricted by the obligation to be a good guest, as evidenced by the Code of Practices. The “classical age” of television (1947-1975) was dominated by the monopoly of the three national networks (CBS, NBC and ABC). They benefitted from a “captive audience” but still had to attract the largest possible public to be profitable. Consequently, programming was consensual and conservative, usually based on the theory of the “least objectionable program” proposed by Paul L. Klein, a high executive with NBC in the 1960s (Edgerton, 2007). When choosing their shows, viewers allegedly favor those offering no offending content.

In this context, non-realistic genres seem to be ideal to tackle a controversial topic. The flawed western justice system could be seen as pure illusion in a fantasy world, or a fact of the past. It could also be construed as a metaphor of the contemporary justice system. This ambivalence enabled networks to air content satisfying every customer since public opinion has been divided on the retention of capital punishment, as the Gallup polls indicate (see figure 7). To our mind, the narrative conventions of this period suggest that punishment is necessary, since exacting retribution upon a guilty person is not questioned in the corpus – which could satisfy a conservative audience. However, the procedure is not deadly and the possibility of a miscarriage of justice is raised – which could satisfy a more liberal audience. There is no lethal

violence on screen: the show is suitable for families despite the topic. Seemingly, the networks tried to please everyone even when approaching sensitive issues.

The more realistic narrative conventions and the harsher tone described in the most recent part of the corpus match with the production context. From the Eighties on, cable channels have competed with networks. The audience has no longer been captive but more demanding and volatile. The advertisers have started to target “quality demographics” (a younger and more urban viewership, then teenagers in the 1990s), forcing networks to develop “niche marketing”. In this new competition, the cable channels have been exempted from FCC rules on nudity and obscene language, a seductive quality for a large part of the audience. Networks have had to offer edgier programs, and use controversies ripped from the headlines. The time to try to please everyone is bygone, networks can take the risk to alienate part of the public. Politically invested showrunners and series have found a new place on networks in this context (Boutet, 2010; Edgerton, 2007). Writers and showrunners such as David E. Kelley and Aaron Sorkin, for example, proposed episodes criticizing capital punishment while public support for this practice was at its peak during the 1984-2009 period. Studies of media accounts of executions show that reports are written assuming a pro-death audience (Niven, 2002). With this presumed general acceptance, it is possible that fiction does not need to be ambiguous anymore, and “pushing the envelope” is probably even necessary to offer engaging content, with more clearly politically-oriented programs. Furthermore, this issue appears in cop shows, legal and medical dramas, generally broadcast after 10 pm, intended for a more adult viewership. These series often claim to be realistic and educational (explaining forensic sciences, legal argumentation or medical conditions to the viewer). Accessing the death chamber is likely considered as part of the audience’s expectations, deriving from this formulaic unveiling of “hidden truths” (Jost, 2011). All these factors could account for more realistic and partisan representations of capital punishment.

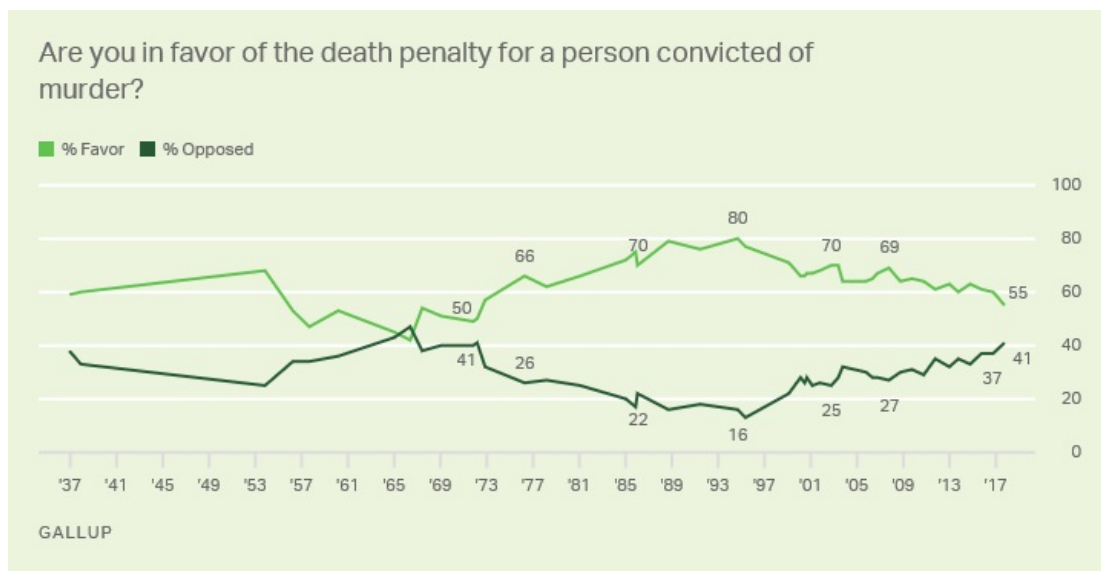


Figure 7 - Gallup historical trends: capital punishment as a divisive social issue (<http://news.gallup.com/poll/1606/death-penalty.aspx>)

Execution and the "good death"

An access limited in order to respect the principles of the "good death"?

The representation in the “classical age of television” episodes is very consistent and effectively conceals the dying of the convict. In the context of conservative programs, how could we understand this off-screen pattern?

We could conjecture that executions are off-screen because killing or dead bodies are considered too violent or repellent. Yet, an analysis of these 44 episodes invalidates this hypothesis. Indeed, episodes with a fatal execution scene show other deaths on-screen: murders committed by villains, as well as self-defense homicides committed by heroes. The viewer sees characters die, and then dead bodies, whereas prisoners just vanish sometime before their deaths. For example, in *Eight Hours to Die* (*The Rifleman*, 1958), we see two deaths by gunshot, but the condemned man standing on the gallows is the most explicit image of the hanging. This is also true for kids’ shows. In *Outlaw’s Revenge* (*The Lone Ranger*, 1950), the execution scene is cut, but we can see later a character being shot to death. There is a specific framing here: in all 44 episodes the legal killing is consistently less explicit than other forms of death.



Figure 8 - A non-explicit hanging (left) but an explicit murder (right) in *Eight Hours to Die* (*The Rifleman*, 1958); copyright Rifleman, Season 1, Volume 1, Team Marketing, 2014

Another hypothesis is that the execution does not respect the norms of the “good death”, and therefore it cannot be on-screen. Sociologists investigating practices surrounding dying and death describe in modern western societies an individualistic trend. Dying people are left to die in hospitals or hospices, which is considered as a sign of the taboo, or denial, of death. The event is less socially-constructed, controlled by traditions, but more intimate (Déchaux, 2004). Capital punishment is a political event, regarding the community, which is why executions used to be public. The withdrawal behind the prison walls is recent and can be construed as a part of this “intimate death” trend since the execution doesn’t occur in front of hundreds of people. In *The Executioners* (*The Virginian*, 1962), the two heroes express the social norm, staged and implicit otherwise, to justify their boycotting the hanging:

The Virginian. A man's dying, any man's belongs to himself, or any friends he wants close.

We find here explicitly the “intimate death” norm. In this part of the corpus, the convict’s passing in effect respects this norm. However, the concealment protects the interest of the

individual, while the interest of the community motivates the legal procedure. Preserving the murderer's privacy seems at odds with the purpose of the execution. This norm does not fully explain while the viewer is deprived of the specific moment of dying.

Maybe this hiding is due to the violence of these deaths, violating "good death" norms. In the matter, interpretations of the Eight Amendment by the Supreme Court are enlightening. In 1878 (*Wilkerson v. Utah*), the Court listed prohibited punishments (like being "emboweled alive"), in effect torturing the condemned. This definition was specified in *In re Kemmler* (1890): are forbidden penalties that "involve torture or lingering death ... something more than the mere extinguishment of life." (Bohm, 2012, p. 126) These decisions give a definition of the "good death": the body must be intact, and death immediate and painless. This could explain why deaths by gunshot or stabbing can be aired: their staging uses the "clutch and fall" convention (Prince, 2003). The character clutches their chest or upper body, then falls to the ground. The process is bloodless and immediate. In real life, electrocution, asphyxiation and hanging damage the body, the process lasts several minutes. Nevertheless, in fiction, those deaths could be made to respect those conditions. The exceptionally explicit hanging in *An Occurrence at Owl Creek Bridge* (*Alfred Hitchcock Presents*, 1958) confirms that depicting an immediate death, inflicting minimum damage is possible. The main character dies of a broken neck, we can see it in close-up shots, and hear his spine snapping. Therefore, fictional hangings could respect the "good death". A distorted depiction of deaths by other methods could have been created. Consequently, the concealment is not entirely the result of "good death" norm considerations.



Figure 9 - The moment of death emphasized by a color inversion in *An Occurrence at Owl Creek Bridge* (*Alfred Hitchcock Presents*, 1959); copyright: Alfred Hitchcock Presents, season 5, *Universal Studios* 2012

The reluctance to stage a premeditated and violent killing could be a third factor. However, episodes broadcast during this period represent most of the time the legal homicide as a ceremonial. People in attendance (crowd or witnesses, executioners, and the convict) are quiet and dignified. The execution ritual stages a unanimous consent, prisoner included, even when he is innocent. Characters who fight and scream are exceptions: only in *Cell 227* (*Alfred Hitchcock Presents*, 1960) do we see someone panicking and another resisting. The protocol controls attitudes and actions and insures all consent in the eyes of the viewer. It is also a

moment testing or revealing the manhood of participants. The prisoner shows his courage and reclaims his dignity, as in *Tolliver Bender (Wanted: Dead or Alive, 1960)*:

Tolliver. All my life I've been dirt, but just this once, when I hang, I want every man in this town to respect me.

The state-sanctioned killing is represented as a solemn spectacle celebrating law and virility (stoicism, courage, dignity), and not a violent moment. So, the execution protocol can be on the air.

One last hypothesis lies in the setting and legal status of the deaths. While a gallows is on-screen in a kids' western in 1950 (*Outlaw's Revenge, The Lone Ranger*), for the hanging planned in a contemporary setting (*The Hanging Judge, Climax!, 1956*), in a more adult-oriented program, it remains invisible. Concealment is more thorough when the fictional world is lifelike. In *Born to Hang (Gunsmoke, 1957)*, the legal hanging is invisible (the execution scene is cut by the end credits) but the lynching at the beginning of the episode is depicted with details. The killing method is the same, the legal status is the only difference. The viewer can grasp parts of a lynching, but they cannot see the execution.



Figure 10 - The body of the lynching victim is partially on-screen (left) while the legal hanging is cut early by the editing (Born to Hang, Gunsmoke, 1957); copyright Gunsmoke: Third Season, Volume 1, Paramount, 2008

The concealment of the dying convict may have a social component pertaining to the “intimate, painless and immediate” death, but a more political issue seems also to be at play.

The lethal injection: an "ideal" death?

Contrary to the very consistent representations of the classical age of television, the more recent episodes offer disparate depictions and messages, and the inmate's passing is much more accessible. First of all, the most common method used in real life, lethal injection, is also the most common in this part of the corpus, and the most visible on-screen. Indeed, about 86% of executions from 1983 to 2009 in the U.S. were by lethal injection (according to the Death Penalty Information Center). This is the method planned in 13 episodes and used in 11 execution scenes out of 19.

Chemically-induced deaths are filmed explicitly since the injection apparently respects the norms of the “good death”. The character seems to fall asleep, the body is not disturbed by convulsions or wounded. Dying looks painless and death occurs few seconds after the shot of

drugs. Human intervention is limited since generally a machine injects the products. The medical aspect of the procedure is highlighted by people wearing lab coats, clean and bright execution rooms, and medical equipment. This image is summarized and criticized by a fictional lawyer, Alan Shore, in *Death Be Not Proud* (*Boston Legal*, 2005):

Alan, to Zeke, the inmate. *If you want to be a hero, show people what it really feels like to be executed. We're led to believe it's peaceful, painless, humane even.*

The depiction of a longer agony is limited to one episode where the prisoner appears to suffocate (*The Execution of Catherine Willows*, *CSI*, 2002).

Therefore, the representation of death by lethal injection respects the “good death” norms, which could account for its visibility. It matches with the dominant images of dead bodies on television programs: “neat, sanitized decedents at rest” (Weber, 2013, p.11). Moreover, this method of execution provides also “intimacy” to the death-row inmate since he dies in front of few witnesses. This aspect also appears in several preparation sequences where the convict selects someone to be “his” or “her” witness, we could characterize this type of scene as a new convention (from *A Trip Upstate*, *In the Heat of the Night*, 1989 to *Stairway to Heaven*, *Grey's Anatomy*, 2009).

Accessing is judging

Privacy is defended, only the elite's judgment is worthy and authorized

In episodes aired during the Networks Era, the execution is reserved to a limited audience. Crowds and the viewer are excluded from the sight of the dying man. The viewer can only watch the main character (in most cases) watching the passing (through a reaction shot). For that matter, the hero is stoned-faced or he looks down to avoid staring at the corpse. We see no emotion: he does not judge the procedure, it is as if he just verified that the procedure is carried out. In *The Hanging of Aaron Gibbs* (*Have Gun – Will Travel*, 1961), the only character reacting to the execution is Gibbs’ wife, while Paladin, the hero, hardly blinks. Therefore, we could define a “heroic look”, emotionless, taking in only the facts, presented as a model to the audience. The ceremonial is also a teachable moment showing a community, and the main characters, submitting to the law. The viewer is thus encouraged to emulate the hero’s obedient attitude.



Figure 11 - The heroic look: Paladin does not react to the hanging (left) in *The Hanging of Aaron Gibbs* (*Have Gun – Will Travel*, 1961), Josh looks down (right, center) in *Tolliver Bender* (*Wanted: Dead or Alive*, 1960); copyright *Have Gun Will Travel: Complete Series Pack*, *Paramount*, 2013 and *Wanted: Dead or Alive, The Complete Series - Special Edition*, *Mill Creek Entertainment*, 2013

This figure reminds us in real life of the “gag laws” voted by different states to forbid the press from publishing detailed reports of executions at the turn of the 19th century (Bessler, 1997). Austin Sarat’s study of those reports confirms their factual content, resembling short necrologies (Sarat, 2014). The press testifies that the condemned die, nothing more, just like the fictional “heroic look”. The result is the same: knowing it happened is enough. In consequence, the privatization of executions is acceptable, seeing or reading details is not useful.

Whereas the hero does not judge the procedure, the viewer is judged. Indeed, the convergence of devices organizing the concealment of dying inmates relies on values that are not explained, except in the pilot episode of *The Virginian*. Judge Garth, the moral figure of the series, disapproves of the crowd’s attitude at the hanging:

Judge Garth. [...] *a man's death became a carnival with kids and lemonade!*
 [...]
 Sheriff. *Sorry it didn't happen like you wanted.*
 Judge Garth. *That time will come, a time of dignity.*

This conversation is telling when we confront it to the specific framing of the scene in this episode. The hanged man stays completely off-screen, we only see the scaffold, the rope tied to the trap being cut – and nothing more. Therefore, the viewer is enticed to scrutinize the screen to understand the action. However, there is nothing to see here, as there is nothing to see in all fatal execution scenes with displacement. With his comment, the character blames the crowd’s desire to see a spectacle, but the viewer tuned in for the same purpose. We are then led to look back on our own desire to see (and enjoy) this show. We are likely disappointed since we were promised a death but did not get to see it. The viewer’s voyeuristic drive is frustrated and punished, and they are encouraged to judge themselves for it.



Figure 12 – *The framing of the hanging renders the condemned invisible, throughout the entire procedure in the opening sequence of The Executioners (The Virginian, 1962); copyright The Virginian, The Complete First Season, Timeless Media, 2010*

As a result, the only instance when the right to see a hanging is explicitly discussed confirms that ordinary people are deprived of it for good reasons. The “private execution” norm is reinforced, publicity would make an entertainment out of this ceremonial, because the crowd cannot conquer its lower instincts. Each time we scrutinize a fatal execution scene with

displacement, and end up disappointed, we fail morally because we were trying to satisfy our morbid curiosity.

Fictional and real-life executions are not for the general public, but for worthy people (the main character, the elite). We find echoes of this phenomenon in 19th century writings advocating for the withdrawal of the gallows from public view. From the 1830s, the legal killing, performed in public view, gradually withdrew behind the prison walls. By the 1930s, it took place inside the death chamber, often at night, with a few witnesses. Hangings are gradually considered as bad taste spectacles and “as elites stopped going to hangings, they came to view the crowd as a rabble out for a good time, too caught up in a carnival spirit to appreciate the moral lessons that were being imparted.” (Banner, 2002, p. 146) Michel Foucault (1975) describes the same trend in Europe at the end of the 18th century. Authorities abandoned public executions because the reactions of the crowd could not be controlled and predicted, sometimes people sympathized with the prisoner and their crime (Foucault, 1975, p. 54).

The representations analyzed earlier derive, to our mind, from the same ideology. This privatization is not only rooted in concerns for dignity, it is also a political issue. According to Austin Sarat and Aaron Schuster (1995, p. 426): “At the heart of that debate are certain assumptions about the imagined audience and its capacities, dispositions, and inclinations, and about its prerogative to make judgment about capital punishment”. These recurring representations suggest that punishment changed “from a matter of politics to a matter of administration”, concerning only professionals and experts (Sarat and Schuster, 1995, p. 429), thus a review is not necessary, or even indicated. The viewer and the general public do not get to see, because “control over vision is control over execution itself” (Sarat and Schuster, 1995, p. 429). The concealed legal homicide in network series stages this conservative principle, justifying the lack of democratic oversight over capital punishment.

This is illustrated in this part of the corpus by the lack of images about largely used methods in real life. We noted earlier that only six episodes have a contemporary setting. The execution instrument is totally invisible in five of them (it is evoked in dialogues). *Cell 227* (*Alfred Hitchcock Presents*, 1960) is the exception: the gas chamber is actually on screen, but empty and inactive. The electric chair does not appear on camera, although it is the most common execution method at the time (about 72% of executions according to the DPIC). In two episodes, the method is not clarified at all⁴. The viewer does not get to see executions as they currently occur in their country. Even in fiction, what happens behind the door of the death chamber is not of their concern, those who want to see are voyeurs.

Privacy is discussed, a wide array of emotions and judgments are on-screen

Further evidence that seeing is judging appears in the most recent part of the corpus. Main characters adopt different attitudes during the execution. Emotionless heroes just taking in the dying as a fact can still be seen in several episodes, usually associated with a “law and order” storyline. For example, in *The Execution of Catherine Willows* (*CSI*, 2002), the eponymous character sits with the victim’s parents, signaling her support, and does not show any emotion. In other episodes, the main character is moved to the point of tears. In several cases, the hero shows empathy for an admitted murderer. The legal killing is staged like a

⁴ The inmates in *Night of Execution* (*Climax!*, 1955) and *Death House Testament* (*Peter Gunn*, 1958) die by means unknown.

moment of trauma for witnesses, revealing its violence by the very emotional reactions of main characters. The new model for the viewer is a compassionate figure. Emotions also overcome inmates: we can see them resisting (*Death Be Not Proud, Boston Legal, 2005*), panicking (*Fry Me to the Moon, LA Law, 1986*) or speaking their touching last words (*Death Penalty: Final Appeal, Cold Case, 2006*).



Figure 13 - Attitudes of main characters during executions: from lack of emotion (*The Execution of Catherine Willows, CSI, 2002, left*) to pain (*The Last Gasp, LA Law, 1990, right*); copyright CSI: Crime Scene Investigation Complete, Season 3, *Momentum Pictures, 2010* and *L.A. Law: Complete Collection, Revelation Films, 2016*.

The specific case of the staging of lethal injections calls for a commentary. In six executions, the convict is exposed in a crucifixion-like position. The comparison with the Passion is a striking religious image opened to many interpretations. In the more liberal storylines, this figure looks like the sacrifice of the innocent lamb (in *Cold Case*, the death-row inmate is actually innocent), or a criticism of the religious justification of capital punishment (*Take this Sabbath Day, The West Wing, 2000*, ends with a priest summarizing the episode: religions inspired by the Bible do not support the death penalty). In any case, this is a provocative staging, probably intended to spark a reflection on executions (their religious value, their violence).



Figure 14 - The recurring figure of the crucified death-row inmate; left *The Execution of Catherine Willows (CSI, 2002)* and right *Take this Sabbath Day (The West Wing, 2000)*; copyright CSI: Crime Scene Investigation

Complete Season 3, *Momentum Pictures, 2010* and *The West Wing - Season 1 - 7 Complete, Warner Home Video, 2006*

The staging and framing of all those emotions humanize the procedure, as well as the people involved, including the guilty inmate. In consequence, episodes without access tend to be conservative, and request for access is part of a liberal agenda. In *Sins of the Father (Touched by An Angel, 1996)*, the complete lack of information on the execution method, and the “behind the door execution” are associated with the acceptance of capital punishment for a convicted minor, expressed by an angel, with God’s approval. Access is totally denied in a pro-death program. On the contrary, in *Death Be Not Proud (Boston Legal, 2005)*, the lawyer begs the convict to show his feelings and help people form their judgement:

Alan Shore. *The humane thing to do here, is be afraid. If you want to be a hero, show people what it really feels like to be executed. [...] Whether a person is for or against the death penalty, he or she, should just know what it is. Best way for you to be a hero Zeke, is to be humane.*

Then he forces himself to watch his client resist. Despite the expressed will to inform both proponents and abolitionists, this storyline bets on human compassion. It suggests that the only possible reaction after such a violent sequence, cut before the actual killing, is a negative assessment of the lethal injection and therefore capital punishment.

This access granted more often probably results from the new context surrounding the death penalty. This institution was reinstated in 1976 after a major penal reform. The right to a better protection has been guaranteed to defendants and convicts, especially in capital cases. This “super due process” derives from the “death-is-different principle” formulated by the Supreme Court in *Furman v. Georgia* in 1972. Given the irreversibility of the punishment, the justice system has to be extremely careful and rigorous in order to avoid miscarriages of justice. We hypothesize that these episodes respond, in their own way, to a desire for a review of the “modern era” of capital punishment. In many ways, this reinstatement was considered an experiment aiming at demonstrating the possibility of a justice system free of arbitrariness and actually offering equal protection to vulnerable groups (minorities, disadvantaged people). In our corpus, actors of the justice system often reopen capital cases at the last minute when there is a shadow of a doubt on the legitimacy of a death sentence. Thus, these episodes enact the “super due process” and the experiment seems successful on-screen.

Similarly, the lethal injection was adopted for the first time shortly after *Gregg* (in 1977, in Oklahoma), and carried out for the first time in 1982, in Texas. Scholars and experts consider that this method is a major element in the continued practice of the death penalty (Bohm, 2012) and benefits from a positive image although it has actually been seen in action by a very few people. Access to the execution chamber in fiction probably derives from this situation: televised fiction seemingly offers a realistic depiction and a review to the public. But in conservative programs, the viewer witnesses an “ideal death”, which gives the impression that a review is useless in real life. In other episodes, the image is less positive, which reminds us of the on-going debate on this method in the 2000s. Several botched executions and critical publications in medical journals (such as *The Lancet* in 2005), led to the 2008-2009 moratorium. For example, the main characters of *Law and Order* witness the uneventful execution of a brutal murderer, who submits willingly to the procedure (*Aftershock, 1996*). Yet,

they all suffer from what they have just seen. This storyline emphasizes the hidden violence. Therefore, the debate on lethal injection takes place also in fiction, and both parties allow access to the execution chamber to spread their message.

Several experts on capital punishment consider that the privatization of executions is a key factor in its retention in the United States: “the average American literally does not know what is being done when the government, in his name and presumably on his behalf, executes a criminal⁵.” This conviction was also shared by Justice Marshall, when he formulated what is known today as the “Marshall hypotheses” in *Furman v. Georgia* in 1972: a well-informed public opinion would turn away from the death penalty (Bohm, 2012, p. 328). Accessibility to this state-sanctioned procedure is consequently a political matter.

Now, the patterns present in the corpus tend to conceal the legal killing from the sight of the viewer. Whether resulting from narrative or framing devices, or an explicit justification through dialogues, the norm of the “good execution” as a secluded procedure is reinforced in most of the 1950-1974 episodes and some recent ones. This private event is reserved to a worthy audience and professionals. Democratic overview (and judgement) is not warranted since executions are administrative tasks, demanding access is a sign of low morality and bad taste. In other cases, access is presumably granted to the death chamber to demonstrate that there is nothing to see; the lethal injection is efficient and respects the modern norms of a “humane” and medically-controlled death. Fiction fills a void, creating most of the time a positive image of this procedure, which could dissuade from requesting review in real life. These paternalistic representations and discourses are only challenged in a few episodes.

In this paper, we chose to describe the representation of legal executions in hit shows, widely popular at the time of their broadcast. Most have rerun, and are currently rerunning, on different channels through syndication. Some are available on streaming services or in DVD editions. Some are also cult series. The messages of these mainstream episodes are still being disseminated, and the question of their potential effects on the viewer-citizen is then raised. Indeed, studies show that a specific attachment to television series characters can develop, their opinion or attitude during an execution could serve as a reference (Cohen, 2001). The repetition of similar discourses, episode after episode, rerun after rerun (the drip-drip-drip hypothesis), could also influence the audience and their world view, according to the cultivation theory, leading to a “mean world syndrome” (Gerbner, 1994). Moreover, the realistic design and educational function embraced by the more recent programs could strengthen their persuasiveness. Investigations have demonstrated that a significant part of the public get their information on television, including from fiction (Podlas, 2012). Other researchers have highlighted the specific power of conviction held by fiction. People are less alert in front of a fictional content than when they deal with a material explicitly conceived to convince them (the peripheral route to persuasion hypothesis, defined by Petty and Cacioppo, 1986).

The question of the effects of fiction on the viewer is even more relevant for the most recent episodes since televised representations encourage a “reality effect”, as described by François Jost (2011). Series are a place of experimentation, they reveal human experiences generally unknown to the ordinary viewer (war, crime ... and dying and death), resulting sometimes in fiction being confused with reality. In the instance of executions, the “effect of reality” is made easier by the complete lack images of actual legal killings. Fictional scenes are not challenged by real ones. Therefore, studying representations can provide a better

⁵ Hugo Bedau, quoted in Sarat and Schuster, 1995, p. 401-402.

understanding of opinions on social issues by the way they are staged, and maybe formed, by mainstream fiction.

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Corpus

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Outlaw's Revenge, The Lone Ranger, 1950

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Friend in Need, The Lone Ranger, 1951

Night of Execution, Climax!, 1955

The Hanging Judge, Climax!, 1956

The Jean LeBec Story, Wagon Train, 1957

Born to Hang, Gunsmoke, 1957

Zorro Saves a Friend, Zorro, 1957

The Last Request, Alfred Hitchcock Presents, 1957

Garcia Stands Accused, Zorro, 1958

Zorro Fights His Father, Zorro, 1958

Noose at Noon, Cheyenne, 1958

The Day They Hanged Bret Maverick, Maverick, 1958

The Hanging of Roy Carter, Have Gun – Will Travel, 1958

Eight Hours to Die, The Rifleman, 1958

Death House Testament, Peter Gunn, 1958

The Black Hankerchief, Have Gun – Will Travel, 1959
Trooper Maverick, Maverick, 1959
An Occurrence at Owl Creek Bridge, Alfred Hitchcock Presents, 1959
Tolliver Bender, Wanted: Dead or Alive, 1960
Cell 227, Alfred Hitchcock Presents, 1960
Hour of Execution, Checkmate, 1961
Fandango, Have Gun – Will Travel, 1961
The Mescalero Curse, The Rifleman, 1961
The Hanging of Aaron Gibbs, Have Gun – Will Travel, 1961
The Gallows, Gunsmoke, 1962
The Gamble, Bonanza, 1962
The Executioners, The Virginian, 1962
The Judgment, The Virginian, 1963
With a Smile, Gunsmoke, 1963
Alias Joe Cartwright, Bonanza, 1964
Old Man, Gunsmoke, 1964
The Brothers, The Virginian, 1965
The Prisoners, Daniel Boone, 1966
Requiem for a Country Doctor, The Virginian, 1967
The King's Shilling, Daniel Boone, 1967
The Traitor, Daniel Boone, 1967
A Bad Place to Die, The Virginian, 1967
The Prisoner, Gunsmoke, 1969
The Price of the Hanging, The Men from Shiloh, 1970
Hostage!, Gunsmoke, 1972
Alethea, Kung Fu, 1973
Arrogant Dragon, Kung Fu, 1974
Mayo, Hold the Pickle, Hill Street Blues, 1984
Watt a Way to Go, Hill Street Blues, 1984
Fry Me to the Moon, LA Law, 1986
Forgive Us Our Debts, Miami Vice, 1986
A Trip Upstate, In the Heat of the Night, 1989
The Last Gasp, LA Law, 1990
Execution of Trust, In the Heat of the Night, 1991
The Witch's Curse, Murder, She Wrote, 1992
The Abduction (2), Dr. Quinn, Medicine Woman, 1994
Aftershock, Law and Order, 1996
Sins of the Father, Touched by an Angel, 1996
Obsession (1), Diagnosis: Murder, 1998
Take This Sabbath Day, The West Wing, 2000
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Execution, Law & Order: Special Victims Unit, 2002
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Two Families, Without A Trace, 2004
Death Be Not Proud, Boston Legal, 2005
Whacked, CSI: Miami, 2005

Riding the Lightning, Criminal Minds, 2006
Death Penalty: Final Appeal, Cold Case, 2006
Stairway to Heaven, Grey's Anatomy, 2009
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