

Chapter 4

The Metaphysics of the Hangman

Prior to introduction of the electric chair in 1890, hanging was the principal and, more often than not, the exclusive method of state-sponsored killing in all of the United States (Drimmer 1990). Indeed, of the nearly twenty thousand documented executions conducted since the founding of the first permanent English settlement at Jamestown, close to two-thirds have been accomplished by this means (Macdonald 1993). Today, however, this practice stands poised at the brink of extinction. Eliminated by Congress for civilians convicted of federal crimes in 1937 and by the army in 1986, hanging is still prescribed in only four states.¹ The members of this quartet have performed a total of three hangings since its revival, following a twenty-eight year hiatus, in 1993. Yet even these states now prescribe lethal injection as their default method of execution; and, in all likelihood, they will retain hanging as an option only so long as it is necessary to foreclose legal challenges by persons sentenced under earlier statutes. In short, the noose is quickly passing into obsolescence and so, like the rack and the gibbet, is destined to vanish—except perhaps as a curiosity of historical inquiry and museum exhibition.

What are we to make of the virtual demise of state-sponsored hangings? To offer a partial response to this question, in this chapter, I explore a neglected dimension of what is arguably the most sustained judicial inquiry into hanging ever conducted in the United States. In February 1994, a bitterly divided eleven-member panel of the Ninth Circuit Court of Appeals rejected Charles Campbell's challenge to hanging's constitutionality (*Campbell v. Wood*, 18 F.3d 662 [9th Cir. 1994]); and, on May 27 of that same year, after he was subdued by means of pepper spray, dispossessed of the homemade weapon he had

inserted into his rectum, immobilized on a wooden restraining board, and hauled to the gallows, Campbell was hanged by the neck until dead. *Campbell v. Wood*, and especially the impassioned dissent submitted by Stephen Reinhardt, has attracted considerable attention from students of capital punishment (e.g., Denno 1994, 1997; Nagy 1994; Hood 1994–95; Adolf 1995; Harding 1996; Beard 1997; Sarat 1999a). That decision, however, is not my object of concern. Rather, my concern is with the evidentiary hearing conducted on remand by the federal district court in Seattle one year prior to *Campbell*. In that four-day hearing, the question of whether hanging is a form of cruel and unusual punishment is curiously absent; and it is precisely because the gritty realities of hanging are not reworked within the rarefied discourse of constitutional principle that this hearing's transcript can tell us much about why, today, the rope is so problematic as an instrumentality of state violence.

In the first section of this chapter, I elaborate one dimension of the theoretical context that informs my reading of the evidentiary hearing's transcript. That dimension is informed, first and foremost, by the work of Friedrich Nietzsche. In his *Twilight of the Idols*, Nietzsche coins the phrase from which this chapter's title is taken. Although Nietzsche himself never expressly elaborates these claims, I suggest that his oblique reference to the "metaphysics of the hangman" (1964, 42) effectively evokes a cluster of presuppositions whose taken-for-granted intelligibility is indispensable to our contemporary practices of punishment. These include, to cite but a few, belief in discrete selves who can be considered the autonomous causal sources of the acts for which they are punished; the conviction that the law's technical instrumentalities, including the noose, are so many neutral means that inertly do the bidding of its officers; and the assurance that legal discourse does not constitute either the law's agents (e.g., legislators, judges, police officers) or those they compel (e.g., criminals), but merely gives expression to the decisions of the former and affixes so many labels to the misdeeds of the latter. Together, these presuppositions help sustain our collective construction of state-sponsored killing as the technical effectuation of a dispassionate command authored by an impersonal legal order, as it is brought to bear on a freely willing subject who deserves what he (or, in rare instances, she) ultimately gets.

To call this conceptual matrix into question, again drawing on

Nietzsche, I suggest that the reified fiction we dub “the law” is an internally complex and always at least potentially unstable relational artifact. Among others, its mutually constitutive ingredients include human bodies, a specialized discourse, and the technical instrumentalities that mediate between the law’s pronouncements and the bodies they speak of and to. If the law is to sustain the conditions of its own authority, it must maintain a coherent and mutually reinforcing relationship among these various elements. To do otherwise is to fail to sustain the hangman’s metaphysic and so to risk disclosure of the law’s status as a contingent and therefore contestable artifact. That the noose is now so often characterized as a “barbaric relic” indicates, I take it, that the contemporary conduct of judicial hangings jeopardizes the law’s achievement of a happy concordance among its corporeal, technological, and discursive ingredients.² But what is it exactly about the noose that engenders this histrionic response?

That question, I suggest in the chapter’s second section, cannot be answered absent a return to Weber’s concept of rationalization, which I introduced in the previous chapter. The attempt to rationalize the infliction of capital punishment in the United States, I argue, is informed by and effectively projects an image of the technically perfect execution, one that is defined by the certainty of its results and, more specifically, its accomplishment of an instantaneous and so painless death. The impossibility of realizing that ideal, caused in the last analysis by the peculiarities of recalcitrant human bodies, renders hanging ever less able to participate in a satisfactory coalition of the law’s principal ingredients and so ever more anachronistic; and that, in turn, cannot help but unsettle the legal order’s struggle to secure its own legitimacy. Under these circumstances, when practical accomplishment of the hangman’s work subverts the metaphysic to which he is committed, the noose must in time be eliminated from the law’s arsenal.

In this chapter’s final and longest section, I turn to the evidentiary hearing that preceded *Campbell v. Wood*. It is here, in the law’s trenches, that the state seeks to perfect its articulation and defense of the metaphysics of the hangman, as that metaphysic is informed by the ideal of unqualified rationalization; and it is here that Campbell’s attorneys seek to contest the state’s ability to live up to that self-representation. More precisely, the state must seek to persuade the presiding judge that the Washington State protocol governing the conduct of judicial hang-

ing eliminates the possibility of error and so guarantees a pain-free death, whereas the attorneys for Campbell must seek to undermine the state's pretense to practical certitude and so make apparent, if only as a hypothetical possibility, the body in pain. As I suggest in my concluding remarks, this strategic contest poses an awkward dilemma for the presiding magistrate, Judge Coughenour. On the one hand, if he endorses the state's pretense, he must at the same time embrace an archaic instrumentality of violence that cannot easily be folded within the rationalizing narratives of the late liberal state and so cannot help but undermine the authority of its law. On the other hand, if he rejects the state's pretense, he will effectively proclaim its inability to sustain the seamless conjunction of technological, discursive, and embodied ingredients that is essential to those same rationalizing narratives and hence to the law's legitimacy. Negotiation of this troubled terrain generates an opinion, one that Nietzsche would no doubt relish, that saves the noose, but does so at the cost of embarrassing the law.

Unraveling the Noose

The coherence of the metaphysics of the hangman requires postulation of discrete autonomous legal subjects, equally discrete but perfectly heteronomous means of violence, and a representationalist view of language as a composite collection of labels for these disjointed entities. The relational ontology with which I hope to trouble that metaphysic takes its starting point from Nietzsche's contention, in his *Genealogy of Morals*, that "there is no 'being' behind doing, effecting, becoming; 'the doer' is merely a fiction added to the deed—the deed is everything" (1967a, 45). A proper explication of this ontology and its relationship to law would require an extended recapitulation of Nietzsche's reading of the origins of our basic moral categories including responsibility, autonomy, free will, conscience, guilt, and so forth. From this larger complex of ideas, I abstract only those that are indispensable to the present argument.

Nietzsche's claim about the fictional nature of doers allegedly standing apart from and behind their deeds is predicated on his more general ontological conviction, first, that everything that exists does so in a condition of perpetual becoming; and, second, that the interconnections each sustains with others are essential to the character of all.

Nothing in the world, in other words, has any intrinsic features, for all existents are thoroughly constituted by their interrelations with, and differences from, everything else. Every existent, we might say, is an event, and every event's distinguishing features are inseparable from the other events that condition and articulate those features. What an existent *is*, in sum, is the confluence of events in which "it" relationally participates.

Because all existents are so constituted, it is only via an act of suspect abstraction that any one "thing" is unambiguously distinguished from the other events to which "it" is now related. What we call "subjects" and "objects" are, therefore, so many fictions invented to stand as foundations, as grounds, for what we then take to be the essential attributes of these substantial beings. Our felt compulsion to manufacture such fictions, Nietzsche proposes, is a product of grammatical structures, which, in accordance with the logic of subject and predicate, impel us to speak not simply of effects and their configurations, but also of "things" that bear such properties; we are seduced, that is, by "our grammatical custom that adds a doer to every deed" (1967b, 286). However, if it is true that every such thing is merely "the sum of its effects" (296), then there is no good reason to posit its separate existence as the antecedent substance that produces those same effects. "The properties of a thing are effects on other 'things': if one removes other 'things,' then a thing has no properties, i.e., there is no thing without other things, i.e., there is no 'thing-in-itself'" (302).³ (Although I will not elaborate the point, I trust it is clear that, although the conceptual apparatus differs somewhat, the point Nietzsche is making here is essentially congruent with that which I made in the preceding chapter when I rejected Weber's reified representation of the state in favor of a reading of it as a relational effect.)

If Nietzsche's argument on this score has merit, then we ought not to assume the existence of a unified subject who, as determinate substance, somehow grounds the various deeds it performs (just as we ought not to assume the existence of a unified state that is the sovereign author of its deeds). And yet that assumption is crucial to the coherence of our legal order. If the metaphysics of the hangman is to function as it should, legal discourse must fashion and sustain through time and in space those allegedly autonomous selves who can be deemed unequivocally culpable for the (mis)deeds they freely commit. Elaborating the

discursive relationship between the hangman's ontology and the ethical premises that undergird the law, Nietzsche writes:

Our usual imprecise mode of observation takes a group of phenomena as one and calls it a fact: between this fact and another fact it imagines in addition an empty space, it *isolates* every fact. In reality, however, all our doing and knowing is not a succession of facts and empty spaces but a continuous flux. Now, belief in freedom of the will is incompatible precisely with the idea of a continuous, homogeneous, undivided, indivisible flowing: it *presupposes that every individual act is isolate and divisible*. . . . Through words and concepts we are still continually misled into imagining things being simpler than they are, separate from one another, indivisible, each existing in and for itself. . . . Belief in freedom of the will—that is to say in *identical* facts and in *isolated* facts—has in language its constant evangelist and advocate. (1986, 306)

Accordingly, if it is to justify the pain it inflicts, the legal order must abstract the individual subject from the constitutive relational contexts "it" inhabits and then, retrospectively, identify the autonomous will of that deracinated being as the first cause of the harm for which it is blamed and then punished. Only a subject so framed is fit for the hangman's noose.

While it might at first appear that claims of this sort can only be made of those caught within the law's punitive snares, as I indicated in my discussion of J. L. Austin and the conventions that guarantee the efficacy of all performative utterances, they are equally true of those who posture as the law's authoritative agents. If he is to fulfill the imperatives of the hangman's metaphysic, in pronouncing sentence on Charles Campbell, the presiding judge in Snohomish County Superior Court, Dennis Britt, must appear as a sort of sovereign voice, an unconditioned author whose words, backed by the state's coercive power, initiate a linear chain of cause-and-effect connections that culminate when an anonymous employee of the Washington State Penitentiary triggers the steel mechanism that releases the trapdoor below Campbell's feet. But, of course, that appearance is itself a complex production in the sense that the judge in question, qua judge, is altogether a creature of the legal apparatus within which he is installed. So located, Britt

is indeed an authoritative speaker, but the scripted sentences he utters are themselves so many historically saturated reiterations, so many conventional citations of a language for which he is now the designated mouthpiece. In sum, to quote Judith Butler, Judge Britt is the unwitting beneficiary of “the operation of that metalepsis by which the subject who ‘cites’ the performative is temporarily produced as the belated and fictive origin of the performative itself” (1997, 49).

The metaphysics of the hangman also presupposes a very specific construction of the law’s objects and, of special concern here, its technological means of violence. Better still, it presupposes a very particular way of deflecting attention from those means. To begin to specify that way, consider the following editorial claim, included in the *Union-Bulletin* of Walla Walla, where Campbell was executed, shortly after the state of Washington switched from hanging to lethal injection as its default method of execution: “When an inmate is sentenced to be executed, death is the punishment. The process or method of execution is not, in itself, the punishment. . . . It is essentially irrelevant—so long as the method of execution is deemed to be humane—how the condemned prisoner is put to death” (August 23, 1996, 4). Implicit within this quotation is the conviction that the instrumentalities of state violence are so many neutral means whose import is entirely dictated by the autonomous subjects who employ them. On this account, as so many acquiescent servants who do only what is demanded of them, such means do not actively participate in giving significant form to the reality that is an execution (and, by extension, the law more generally). If death is the end result no matter what means are employed, then the specific technologies employed to extinguish life do not merit independent inquiry (except, as this editorial concedes, when their employment imposes gratuitous pain and so raises Eighth Amendment concerns).

That this representation of the state’s instruments of violence appears superficially plausible testifies to the fact that, as a rule, the manufactured things we lump together within the reified category of “means” are wedded to linguistic and human beings within familiar situations whose customary imperatives specify how the members of each class of being are to relate to the other two. Within the context of a routine drug bust, for example, a pair of “handcuffs” is unproblematically intelligible because this largely scripted event normatively speci-

fies its role vis-à-vis the other parties to this unfolding incident. Barring a contravention of that routine (for example, by a suspect who proclaims that he finds deployment of this device titillating), there is little chance that this apparently clear and distinct entity will dissolve into referential instability and so come to be regarded as a puzzle rather than as a “mere” means. In sum, as so many artifactual analogues to the self-contained egos that employ them, made “objects” customarily acquire a taken-for-granted status analogous to the “things” of nature, and so appear to invite their own construction in the terms mandated by the hangman’s metaphysic. That construction, however, says little about the true nature of these things, but much about their stabilization within so many streams of routinized conduct.

All regimes worthy of the name seek to transform the contingent relations called into being by the intercourse of linguistic, embodied, and technological artifacts into congealed facts, inexorable features of the political landscape to which all simply accommodate. To quote Butler (1993) once more:

Insofar as power operates successfully by constituting an object domain, a field of intelligibility, as a taken-for-granted ontology, its material effects are taken as material data or primary givens. These material positivities appear *outside* discourse and power, as its incontestable referents, its transcendental signifieds. But this appearance is precisely the moment in which the power/discourse regime is most fully dissimulated and most insidiously effective. (251)

More specifically, the authority of the complex artifact we call “the law” is at least in part a function of its apparent incontestability, the inability of those whom the hangman interpellates to unravel and so to recognize as optional the dense network of connections that cements words to bodies, bodies to things, things to words. The law’s stabilization as an authoritative complex is most self-confident, in other words, when its discourse, its bodies, and its technological instrumentalities are so seamlessly interwoven that none can undermine the others’ contribution to the production of juridical truth. At least some measure of the grim satisfaction generated by an execution that proceeds without a hitch is, therefore, a function of its achievement of an exemplary syn-

thesis of the law's basic ingredients. The coroner can place a period at the end of a death sentence only when the law's word becomes flesh, and it can achieve such incarnation only when the means of violence have realized and made real the full sense of that proleptic judicial performative.

When, however, the ordinarily unmarked relations among these constituents come unfastened, as they sometimes do, the law's facts may begin to dematerialize and, in consequence, announce their status as so many made-up things, so many fictions. This can happen for any number of reasons, ranging from those that do not undermine a legal order in any fundamental way (e.g., routine evasion of income tax provisions), to those that harbor the potential to render visible truths the law's agents would rather keep hidden (e.g., an electrocution that goes awry), to those that threaten its very existence (e.g., a state's failure to maintain monopolistic authority over determination of who may and who may not engage in acts of permissible violence). Accordingly, if we are to understand how and why the noose now disturbs the law's matter-of-fact authority, we must first reject the metaphysics of the hangman and, more particularly, its representation of the means of violence as so many neutral and self-contained tools deployed by and brought to bear on so many autonomous and self-contained subjects. Instead, we must adopt a theoretical perspective that highlights the legal order's status as a more or less stable relational artifact whose basic constituents—legal discourse, human bodies, and the means of violence that materially manifest the law's claim to legitimate force—may or may not facilitate that order's quest to secure the conditions of its own facticity and hence its presumptive authority.

In insisting that the three elements I have abstracted from "the law" are mutually constitutive, I mean to suggest that the law should never be reductively equated with any one; and, to say much the same thing in reverse, that none should be denied its crucial role in making the law what it is. The law, for example, cannot be exclusively identified with the human bodies whose conduct it regulates, for their identities cannot be grasped apart from the discourse that constitutes them as specifically juridical subjects. Never, to illustrate, is the state's use of physical force a matter of unmediated violence between extradiscursively naked human bodies. While the "long arm of the law" may sometimes materialize as a human limb, as in a resisted arrest, that

appendage is never an arm *per se*. Rather, it is the arm *of* a police officer; and it is only as a creature of the discourse that identifies it as such that it can serve as a means of legitimate coercion, an instrumentality invested with the authority to halt another member of the body politic. To think otherwise—to think that the body exists antecedent to and independent of its construction by the historically variable categories of legal discourse—is to permit the law to deny its complicity in fashioning the bodies its officers claim to discover already fully formed.

Such considerations, pressed to their logical terminus, might tempt us to adopt the sort of desiccated discursivism that equates the law with the sedimented meanings of legal language. But to consider the rhetoric of law as its exclusive constituent, to think of the hangman's rope as merely a trope, is to forget that the terms of this discourse are insufficiently materialized absent the tangible things, whether human or otherwise, they inform. In making this claim, I do not mean to deny what I have already acknowledged, that is, that the act of pronouncing Charles Campbell guilty and sentencing him to die simultaneously presupposed and occluded the discursive processes through which he was fashioned into an autonomous legal subject who, precisely because he was so constituted, could be held uniquely responsible for the deeds ascribed to him. However, I do mean to remind us of the simple but nontrivial point that, absent the palpable body that was so shaped, the execution of his death sentence, some twelve years after it was imposed, would bring little relief to the kin of Renae Wicklund, her eight-year-old daughter, Shannah, and her neighbor, Barbara Hendrickson, all of whom bled to death after Campbell slashed their throats with a kitchen knife in order to avenge his conviction for first-degree assault and sodomy in 1976.

It is the concrete technologies of political violence, whether taking the form of handcuffs, service revolvers, barred cells, or whatever, that mediate between the law's authoritative pronouncements and the human bodies of which and to whom they speak. To ignore these instrumentalities, as legal scholarship does when it confines itself to constitutional controversy about the hypostatized legal category of "capital punishment,"⁴ is to permit this reified abstraction to ride roughshod over the grim particularities of state-sponsored killing and, in so doing, to act as the hangman's unwitting accomplice. On the contrary account I mean to recommend here, what the law essentially is

cannot be dissociated from the hood placed over Campbell's head, the shackles fastened around his ankles, the oversized eyehook securing the rope that ends in a noose encircling his neck. Each of these things, I wish to suggest, is not the artifactual equivalent of one of Michel Foucault's docile bodies, but rather an immanent ingredient within a rationalized performance whose contribution to the constitution of political authority will be effectively reconfigured should any of its other components be significantly reshaped.

In attempting to redeem the conceptually disenfranchised in this fashion, in suggesting that the means of violence be given legal standing, it is not my aim to endorse some sort of inverted materialist reductionism. Recall my contention that no participant in the constitution of law's reality can be invoked without simultaneously calling on the others as well. The manacles around Campbell's wrists, for example, gesture back toward their human creators and, more specifically, to the distinctive configuration of their bodies; in shape as well as function, those restraints are in effect metal surrogates for the hands that would otherwise find it necessary to leash his unruly arms. At the same time, this device is what it is only because it has been rhetorically stabilized via the name, one term within the more comprehensive vocabulary of bureaucratized justice, that identifies its proper task within the network of events that is a "judicial hanging." Were it to be situated within the complex of events we dub a "lynching," these metal ovals would become something quite different.

What we discriminate as a specific means of violence, say, a noose, is an abstraction, an apparently self-sufficient entity, torn from a heterogeneous field of events that is itself more or less stabilized by the obduracy of convention. If, as I have recommended here, that "object" is necessarily constituted by its relations to other existents within this field, then we must look beyond its apparently fixed edges in order to determine what "it" truly is. And yet the spatial dynamics suggested by the term "beyond" will mislead unless we recall that every "object" is at one and the same time a matter of "now and then," a mobile affair with a history that is equally essential to its identity. A noose cannot be understood, therefore, unless it is relocated within its constitutive context, and that context, as I shall suggest in the next section, is itself subjected to genealogical inquiry. In sum, as things whose effects are dispersed hither and thither in time and space, we should perhaps say that

the means of violence “happen.” When they appear not to happen, when they appear as the unproblematic referents of factual discourse, much like the legal subjects required by the hangman, we should recall that this too is a political fiction whose accomplishment testifies to the consolidation of very specific relations of force.

The Impossible Dream

Thus far, my invocations of the hangman’s metaphysic have been primarily metaphorical in the sense that they have referred not to the literal practice of hanging, but to the cluster of interrelated presuppositions that sustain our belief in the law’s rightful authority to punish. In this section, I seek to show how the form of punishment from which this metaphor is derived becomes problematic when its technological means come to appear discordant with other ingredients of the liberal legal order. To begin to specify the nature of that discordance, recall how in the preceding chapter I suggested that the rationalization of hanging in England achieves its apogee in the construction of a mathematical table correlating the weight of the condemned and the length of the hangman’s rope. Recall also that appended to this table was the committee’s assurance that executions conducted in accordance with its imperatives “may be fully depended upon to produce instantaneous loss of consciousness and the speedy death of even the most robust” (*Report of the Committee* 1886, x). That hubristic guarantee, joined by scientific specification of the means of its accomplishment, articulates the quixotic goal toward which all subsequent Anglo-American judicial hangings have necessarily aspired.

Absent this table, neither the Ninth Circuit’s consideration of *Campbell v. Wood*, nor the execution of Campbell (who at 223 pounds was dropped a distance of five feet seven inches), would have assumed the form it did. During the evidentiary hearing that preceded both, the superintendent of the Washington State Penitentiary in Walla Walla acknowledged that the *Field Instruction Manual* (Washington State Department of Corrections 1992) detailing the procedures to be followed in the event of a hanging had been copied verbatim from a 1959 manual of army regulations titled *Procedure for Military Execution*. That manual in turn includes a table that is nothing other than a slightly modified version of that generated by the committee of 1886. While the

range of weights is a bit narrower than in the English chart and the distance of the drop prescribed for any given weight is a bit shorter, the two tables as well as the metaphysics they presuppose are otherwise identical; together, they stand as consummate symbols of the rationalized terrain occupied by all of the parties involved in contesting the fate of Charles Campbell. That terrain, however, is not nearly as untroubled as the pristine cells of these tables might appear to suggest.

As this capsule history intimates, progress in the science of judicial hanging effectively came to a halt a little over a century ago. That such stagnation cannot help but prove problematic in a nation that prides itself on relentless technological innovation was recognized long before *Campbell*: "The present mode of executing criminals by hanging has come down to us from the dark ages, and it may well be questioned whether the science of the present day cannot provide a means for taking the life of such as are condemned to die in a less barbarous manner." So declared David Hill, governor of New York, in his annual message to the legislature in 1885 (quoted in *Campbell v. Wood*, 692), as he called for creation of a commission to explore more modern instrumentalities of execution. In 1888, tacitly acknowledging that the discursive, technological, and embodied constituents of capital punishment no longer cohered, the members of that commission complained that the gallows "is the only piece of machinery that has stood stock-still in this era of progress. There it stands, the same clumsy, inefficient, inhuman thing it was when it first lifted its gastly [*sic*] framework into the air of the dark ages." Moreover, the commissioners asked, should not the contemporary state seek to discover a way of killing that does "not so very closely resemble the revolting act which the criminal expiates?" (*Report of the New York State Commission 1888*, 35). That is to say, if the state is to succeed in neatly differentiating its acts of violence from those it regulates and punishes, which is an essential condition of its claim to monopolistic control over the means of rightful force, should it not develop a technique that is uniquely its own? Should it not secure a method whose dependence, for example, on the abstract reason of science unambiguously denotes an absence of the passions, the caprices, and the pathologies that animate common murderers?

In New York, and shortly thereafter in most other states as well, the fruit of this line of inquiry was adoption of electrocution as the pre-

ferred method of accomplishing the hangman's ends. Matters proved more complicated in the comparatively small number of states that, for one reason or another, elected to retain the noose, as did England. For them, the 1886 table, or some variant of it, has had to bear virtually all the burden of rationalization, a task that in other states has been assumed by the adoption of ever more refined instrumentalities of dealing death. Accomplishment of that end has entailed extracting the noose from the complex of premodern collective rituals that had hitherto afforded it sense. This artifact has then been resituated within a structure of secularized bureaucratic procedures, so many complements to the table's austere logic, in the hope that doing so would mitigate its refusal to cohere satisfactorily with distinctly modern understandings of the right relationship between state power and human bodies.

A detailed history of this transformation, as it played itself out in New York prior to its shift from hanging to electrocution, has been nicely told by Michael Madow (1995); here, I recapitulate only that which is necessary to set up my reading of the *Campbell* evidentiary hearing. Prior to 1835, Madow notes, the legislature in New York prescribed the mode of killing, that is, hanging, but provided no procedural guidance to county sheriffs concerning the actual accomplishment of this end. This void was filled by the rituals constitutive of public hangings, rituals whose performance sought to deploy the body of the condemned to tell a political narrative about state power as well as a religious narrative about the hereafter. Echoing Foucault, Madow suggests that the typical antebellum hanging in New York

was a richly ceremonial civico-religious spectacle. It was designed and staged by political officials and clergymen whose purpose it was to display their own authority, strengthen communal order, reaffirm central values, and deter wrongdoing. For this reason, the spectators heard a great deal of talk, both from clergymen and the condemned man himself, about mortality, about the sole power of God to redeem the sinful, about the need for repentance, and about the "slippery slope" that carried men and women from small vices to vile crimes. This moral and religious discourse was not a marginal or ancillary element of the event: It was essential in upholding the social meaning of hanging. In the early nineteenth century,

a hanging was more than a utilitarian crime-control measure or a retributivist settling of accounts. It was also a drama of salvation and a ritual of reconciliation between the criminal and the community, which had to be publicly enacted and declared. (1995, 479–80)

However, beginning in the 1830s, but gaining much greater momentum in the second half of the nineteenth century, the conduct of executions in New York and most other states was transformed in three interrelated ways, first, as they were moved behind the walls of penitentiaries; second, as science and state joined forces in an effort to devise what were invariably billed as less painful methods of killing; and, third, as the rituals that afforded meaning to capital punishment performed in public were supplanted by the imperatives of technical routine. By the end of that century, consequently, the body of the condemned had been more or less denied its participation in any larger cosmological or political drama and so was well prepared for its imminent reconstitution along the thoroughly profane lines dictated by the table prepared by England's 1886 committee and subsequently exported to the United States.

As that body is reconfigured as a quantitatively measurable mass, an entity that is otherwise indistinguishable from all other condemned bodies, it begins to anticipate the utopian construct that haunts today's hangmen. To make sense of this dream, recall Weber's argument about the irrationality that lurks at the heart of rationalization. On his account, the advance of formal rationalization becomes substantively irrational when instrumental technique becomes an end unto itself. When that happens, the net effect is to "disenchant" the world or, in the case of capital punishment, to strip the body of the values that once sustained the dramatic spectacle of premodern hangings. Rationalization's advance thus intimates the possibility of an execution in which the body is so thoroughly evacuated of substantive meaning that it can no longer generate any independent capacity to inform, let alone contest, its incorporation within the machinery of state violence or, better still, an execution in which the body effectively disappears altogether. Granted, the technical procedures that now give form to an execution can themselves assume a ritualistic cast, as when they serve to soothe the conscience of a public whose support for the death penalty may

well be conditional on its status as a sanitized abstraction. But at best, to borrow terms from Herb Haines, the ends secured by such bureaucratized ritual are “defensive” rather than “demonstrative”: “Rather than a demonstration of power, the modern orchestration of death lends assurance that everything is in order, everything is human and civilized and that we aren’t, after all, barbarians” (1992, 126). The fact that such reassurance is sometimes produced does not compromise my claim that, within the modern bureaucratic state, execution becomes an end in itself in the sense that its telos is nothing other than the efficient accomplishment of life’s termination.

The reverie of a perfectly rationalized execution stipulates the criteria contemporary state agents must seek to meet in order to secure felicitous agreement among its discursive, technological, and embodied ingredients. I shall mention only two here, each of which will prove differentially realizable depending on the method employed. The first is that of celerity. As Madow (1995) points out, antebellum executions were leisurely affairs typically involving formal prayer sessions, lengthy processions to the gallows site, and often extensive speeches on the part of various officials as well as the condemned. Distinctively modern executions, precisely because they are not ritualized affairs whose time-consuming purpose is to evoke and reinforce substantive collective norms, seek to extinguish life as rapidly as possible or, in the best of all possible worlds, instantaneously.⁵ That goal, however, is akin to Zeno’s paradox; it may be ever more closely approximated, but it can never finally be achieved. In 1953, for example, as I noted in chapter 3, England’s Royal Commission on Capital Punishment recommended retention of hanging as the nation’s principal method of execution, at least in part because it was best able to satisfy the norm of celerity: “the time that elapses between the entry of the executioner into the cell” of the person to be hanged “and the pulling of the lever is normally between 9 and 12 seconds” (*Report of the Royal Commission 1953*, 250). Less than four decades later, that boast received its categorical comeuppance when Fred Leuchter, the preeminent builder of execution equipment in the United States, announced in his *Modular Executions System Manual* that, “under ideal circumstances, an inmate should lose consciousness in 4.16 milliseconds ($1/240$) of a second, 24 times faster than the subject’s conscious nervous system can record pain” (quoted in Denno 1997, 355). But even this bit of hyperbole, so

often mocked by the gruesome realities of botched electrocutions, betrays an anxiety that can never be altogether relieved. For if capital punishment has no meaning beyond its own accomplishment, and if technical efficiency is the sole criterion that can be invoked in assessing its success, then the conduct of executions will be perpetually haunted by the ideal of a death that is, quite literally, timeless. What will forever frustrate the achievement of such transcendent perfection is, of course, the recalcitrant human body. So long as it remains an unfortunate but indispensable party to state killing, capital punishment will be teased by a phantasm, conjured up by the promise of rationalization unbound, that it can never quite dispel.

What Leuchter's bravado also intimates is the dream of an execution that involves no pain, and that is a second criterion imposed upon modern executioners by the relentless march of rationalization. Narrative accounts of early-nineteenth-century executions, Madow argues, displayed what to us must seem a surprising indifference to the duration and intensity of the pain suffered by the executed; or, if that pain was a subject of discourse, it was rendered intelligible via its incorporation within a narrative of sin and salvation (see also McGowen 1987). Enfolded within ritual, the anguish of the condemned always gestured beyond itself, whether above toward hierarchies of power transcending the temporal or below toward eternal punishments whose horrors rebellious mortals can only dimly grasp. By the close of the nineteenth century, however, the experience of pain was dislocated from these more global contexts and located squarely within the disenchanting body of the individual subject. To an ever greater extent, accordingly, the primary if not the only questions asked following an execution were how quickly had the condemned died and, correlatively, how much suffering had he or she endured in the process. No doubt, part of the explanation for the increased salience of these questions stems from what Nietzsche (1967a) considered the West's ever more pronounced inability to endure pain, especially among the members of its more refined classes. But it is equally important to recognize that the goal of a pain-free death is an immanent part of the dream of a perfect execution. Once again, if bodily suffering has been stripped of whatever substantive meaning it once communicated, and if the absence of pain is what now principally distinguishes the law's punishments from torture, and if, therefore, the aim of capital punishment is to extinguish life instantaneously,

neously, the persistence of appreciable pain cannot help but pose awkward questions about its import, questions that cannot be answered within the paradigm furnished by the logic of rationalization.

Pain's irrational tenacity, its refusal to bow before the requirements of rationalized killing, cannot help but disturb the law's struggle to secure a seamless coupling of its technological and embodied components. That trouble is aggravated by pain's resistance to discursive formulation, for this has the effect of fixing attention on precisely that which the state must seek to occlude: the concrete instrumentalities of violence and the palpable injury they do to human bodies.⁶ Pain, argues Elaine Scarry (1985), is peculiarly nonreferential in the sense that, alone among interior states, it has no object beyond the body toward which it gestures (in contrast, say, to desire which is always desire *for* something). For this reason, when we seek to make sense of another's pain, often we do so by identifying it metaphorically with either its external cause (e.g., a weapon) or with its embodied sign (e.g., a wound). "Physical pain," Scarry points out, "is not identical with (and often exists without) either agency or damage, but these things are referential; consequently we often call on them to convey the experience of pain itself" (1985, 15). Weapon and wound, then, are kin in the sense that both concretize and so render intelligible what is otherwise unseen because objectless.

To see the pertinence of Scarry's argument about pain and its resistance to discursive formulation, which is the final ingredient in the theoretical matrix that informs my reading of the *Campbell* evidentiary hearing, recall that contemporary execution practice is committed to the ideal of a killing that involves what the Supreme Court, in *In re Kemmler* (136 U.S. 436 [1890]), labeled the "mere extinguishment" (447) of life. The palpable metaphors, whether wound or weapon, that help us to objectify the interior experience of pain when we find ourselves suffering bodily distress turn politically problematic when they offer visible confirmations of the reality of the pain imposed on and suffered by the condemned. In these terms, I would suggest, should we understand the invention of technologies of execution—most notably, that of lethal injection—that leave no trace on the body. Such marks—for example, the abrasions left by a noose's strictures—are so many signs that cry out for interpretation, for ascription of meaning to the pain they appear to signify. Lethal injection, by way of contrast, is to be com-

mended not because it (allegedly) kills humanely but because it is most successful at leaving the body unsigned. The contemporary executioner, that handmaiden of the disenchantment that accompanies rationalization's advance, must seek to fashion a corpse that thwarts intersubjective acknowledgment of the pain it endures and, in consequence, frustrates all attempts to fashion a narrative that speaks of anything but that body's expiration. Or, to put this in Weberian terms, the contemporary state must seek to reinforce its claim to monopolistic control over disposition of the means of legitimate violence by eliminating any signs that might otherwise invite challenges to its hegemonic construction of that violence's sense.

If lethal injection is superior to hanging because it produces no evident wound on the body's surface, so too must the needle, qua weapon, be deemed superior to the noose. Just as handcuffs are intelligible in virtue of their tacit structural reference, first, to the shape human hands must assume in order to restrain another and, second, to the distinctive contour of the wrists to be bound, so too is the noose meaningful in virtue of its unspoken reference to the shape and structure of a human neck as well as the oval formed by the hands that, absent this technological surrogate, are required in order to strangle it. As the noose metaphorically connects the human source of the harm it is to do and the human being it is to hurt, it effectively objectifies the pain that must be obscured, if not denied altogether, in an era of aggressive rationalization. The needle, by way of contrast, gestures toward the body's interiority, where it will do its work imperceptibly. To the extent that pain can in this way be deprived of its visible signs, to that extent can the contemporary executioner secure a (comparatively) unproblematic synthesis of capital punishment's discursive, technological, and embodied ingredients.

Foucault, I think, was not quite right when he claimed that, with the disappearance of public executions, there followed a "slackening of the [law's] hold on the body" (1979, 10). What the law's imaginary ideally requires, at least with respect to capital punishment, is not a looser hold on the human frame, but rather the wholesale eradication of corporeality. That, I would suggest, is the fantasy that informed the editorial, published in the January 11, 1889, issue of Georgia's *Greensboro Herald-Journal*, that celebrated New York's adoption of electrocution on the grounds that, with this method, there was "no last speech; no mock

heroism; no great curious crowds gathered at the death, but the criminal vanishes from the sight of men as swiftly and completely, as though the earth had opened and sucked him in" (4). Only such a miraculous disposal, one that electrocution was thought to intimate and lethal injection more closely approximates, can unconditionally realize the dream of today's hangman. That ideal will forever be frustrated, however, by the obdurate realities of animate corporeality; and in that sense the real anachronism in capital punishment is not so much the noose, but the human body. Yet, because the noose is an optional constituent of the law's machinery, whereas the guilty are not, it has been the primary target of rationalization's efforts, whether by folding its coils within a network of bureaucratic proceduralism or, better still, by dispensing with it in favor of some less problematic method. My concern in the next section is not with the latter strategy but with the former. How will the state, in response to one who exploits its dilemma by refusing to choose the needle, even though that option is statutorily available, minimize the noose's capacity to highlight the imperfect union of its discursive, embodied, and technological elements?

Decerebrate Twitching

One year after the U.S. Supreme Court warned the Ninth Circuit that additional delay in Charles Campbell's case would be subject to rigorous scrutiny, but one year before he was finally executed, an evidentiary hearing was conducted by the federal district court in Seattle, under the direction of Judge John C. Coughenour, in order to determine whether hanging constitutes cruel and unusual punishment. In this strategic contest, the attorneys for Washington State seek to show that the conduct of judicial hanging can be rendered compatible with the metaphysics of the hangman and, more particularly, that it can be folded within a rationalized version of that metaphysic. To do so, they must domesticate the noose by demonstrating that it is not an atavistic remnant whose deployment is incompatible with the norms of the contemporary liberal state. The attorneys representing Campbell seek to contest that construction, principally by demonstrating that judicial hanging is indeed anachronistic in the sense that it cannot be rendered consistent with the state's dream of a perfect execution. The task for the state's attorneys is complicated by the fact that they must defend a

method of execution that, for over a century, has been rejected as “barbaric” by one after another political jurisdiction. The task for Campbell’s attorneys is complicated by the fact that they must articulate their claims in the discourse preferred by their opponents, that of modern science, especially as that language is given more specific form by physicians and physicists. In sum, while the former are haunted by the nagging memory of bodies “dancing at the end of a rope,” the latter find it necessary to construct the steps of that dance as so much “decebrate twitching” (*Campbell v. Blodgett*, No. C89-456C, W.D. Wash. [1993], 151-52).

As these opposed constructions suggest, the foremost site of conflict within the evidentiary hearing is the human body, as it is to be fitted within this particular death-dealing apparatus. But whose body, we might ask, and what is the nature of that body? One of the more striking features of the hearing’s 574-page transcript is the utter absence of the body of Charles Campbell, and this is so both in the sense that he is not physically present at the hearing and in the sense that he is almost never the subject of its discourse. The specter of Campbell appears once when Judge Coughenour reminds the hearing’s participants that its purpose is not to retry him on the charge of murder, a second time when one of his attorneys invokes his name as a hypothetical subject of a possible future hanging, and a third time when, toward its close, another states: “Until the end of time I will try to keep him alive” (*Campbell v. Blodgett*, 542). Because this final invocation comes at the close of hundreds of pages of mind-numbing clinical discourse about human anatomy and its susceptibility to injury, this desperate effort to conjure up the reality of Charles Campbell qua embodied human subject cannot help but appear sentimental, an irrelevant humanistic intrusion that distracts from the real question at hand. For the body at issue here is not this or that body, but rather the body that has been rendered suitable for incorporation within the procedural confines of the field instruction manual prepared by the Washington State Department of Corrections.

There is, however, one named body that makes a sustained appearance at this hearing, and that is the corpse of Westley Allan Dodd, who, as I indicated in chapter 2, in 1993 achieved the distinction of being the first person to be executed by hanging in the United States in twenty-eight years. As I shall show in this section, much of the evi-

dentiary hearing can be read as a contest over the construction of Dodd's corpse, as attorneys on each side offer rival readings of the markings left by the noose on his neck as well as by the autopsy reports that relate these external signs to his body's interior. The preliminary point I want to make here is that the being dubbed "Dodd" appears in the hearing not as a subject who has been killed by the state, not even as a corpse *per se*, but as an ambiguous precedent whose precise import is up for grabs. His dead body is accorded the privilege of evidentiary reality only insofar as it can help solve the legal dilemma now before the court; and, in that sense, although unique because it bears a name, the abstract form of corporeality ascribed to Dodd differs only in degree from that which predominates throughout the hearing.

Both sides to the hearing, in short, accept the construction of the human body that accompanies the triumph of rationalization. For each, the body appears as a homogeneous reification that is altogether deindividualized in the sense that it is stripped of all the distinctive markings that otherwise enable us to identify unique physiognomies with particular human subjects. To wit: "The force applied to the neck or force transmitted to the structures of the neck is dependent on two variables, the weight of the body as it drops and then how far it drops. The further it drops the more velocity there is" (*Campbell v. Blodgett*, 235). To note this construction's undifferentiated character is not to say that the hearing's body is always the same. But it is to say that the distinguishing features it is permitted to display (e.g., the number of pounds it weighs) are only those that can be understood through reference to the scientific discourse that is the condition of its appearance; and in that sense, to quote a penitentiary spokesperson, any given hanging "is a math problem" (Japenga 1989). The body incorporated within this equation can appear to be something other than a discursive construction, that is, it can appear to be an antecedently real object that is simply described by this discourse, only because its terms have now achieved the sort of facticity, a taken-for-granted status, that no longer characterizes the noose.

Bilateral acceptance of the body qua secularized finite biological entity bearing no meaning beyond itself dictates the issues that will prove of moment in this hearing. That hearing, as I read it, revolves around two interrelated issues, each of which centers on the question of whether human bodies and the instrumentalities of violence necessary

to a judicial hanging can be successfully incorporated within the rationalized ideal intimated by the executioner's table of body weights and rope lengths. The first issue of strategic contest concerns the question of certainty, and the second concerns the question of pain. In a nutshell, whereas the state's attorneys must render persuasive the table's implicit claim to eliminate the possibility of error and so guarantee a death that entails no detectable suffering, Campbell's attorneys must seek to trouble these claims by undermining the table's pretense to practical certitude and so rendering the body a site of possible pain.

With respect to the first issue, that of certainty, the state secures its most convincing articulation of the ideal to which it aspires when the chief medical investigator of New Mexico, Ross Zumwalt, answers the following garbled question: "Doctor, do you have an opinion with a reasonable degree of medical certainty regarding whether a person that is hanged in accordance with the Washington state hanging protocol, whether that person's death or whether that hanging will result in a swift and painless death?" (*Campbell v. Blodgett*, 239). Affording expression to the hangman's metaphysic, Zumwalt's unambiguous affirmative response links in direct linear fashion a discrete cause, that of hanging, to an equally discrete effect, that of death. What enables cause and effect to be joined with such confidence are the regulations that, in conjunction with the table correlating weight and drop length, envelop the body and the state's means of violence within the folds of rationalization. Those regulations specify, for example, that the rope is to be soaked and stretched in order to remove all spring, that the noose proper is to be fashioned by wrapping its running end around the shank of the rope exactly six times, that the resulting ligature is to be fitted snugly around the condemned's neck and behind the left ear, that restraints are to be placed on his or her legs and arms just prior to the drop, and so forth and so on. Echoing the guarantee provided by the 1886 committee when it assured Parliament that adherence to the terms of its table would cause a "speedy death of even the most robust," the checklist prepared by the Washington State Penitentiary just prior to the hanging of Dodd promises that all nonhuman components of its killing machine will be ready for "flawless operation" (*Execution Procedures and Assignments*, Washington State Penitentiary, adopted December 3, 1992).

In one sense, the state's appeal to these procedures, the conditions

of its claim to certainty, is complicated by the paucity of experienced hangmen, of a class of agents whose embodied skills can translate these abstract imperatives into concrete practice. As Delaware's chief deputy attorney general noted not too long ago, and apparently without tongue in cheek, "hangmen are a dying breed" (quoted in Denno 1994, 683). For this reason, it becomes all the more important that the attorneys for the state establish the expert qualifications of every witness it calls. In the absence of a contemporary equivalent of William Marwood, their certified competence in the fields of forensic pathology, biomechanics, and traffic safety engineering must stand as a surrogate for the sort of craft-knowledge that was once conveyed from master to apprentice. Yet, in another sense, the absence of qualified hangmen serves the interests of the state all too well. For if its agents, to quote from the majority opinion in *Campbell v. Wood* (1994), can successfully demonstrate that their "reliance on the Field Instruction to perform judicial hanging obviates the need for employing a specific person trained to perform the execution" (688), then the state can do away with yet another reminder of the complicity of embodied human beings in the act of killing. Just as condemned bodies are transformed into so many homogeneous entities whose sole differentiating feature is the number of pounds they weigh, so too is the persona of the hangman absorbed within the abstract regulations that first efface and then displace him.

Equally central to the state's claim to certainty is its effort to distinguish the conduct of judicial hangings from its accidental and suicidal kin. For example, in questioning Boyd Stephens, the chief medical officer for San Francisco, the state seeks to draw an unambiguous line of demarcation between its hanging of Dodd and the inexpert suicide of an unnamed individual who died of asphyxia after attaching a rope, noosed about his neck, to a refrigerator that was not itself fixed in place, sliding off a window ledge, and falling approximately eighteen feet. In amateurish cases of this ilk, as in instances of accidental hangings, it is impossible to measure the precise amount of kinetic energy generated by the drop, and so no evidence elicited from such cases can shed any light on or, for that matter, cast any doubt on the state's proclamation of its capacity to produce a speedy and painless death. Zumwalt again: "In suicidal hanging most of the forces have to do with the constriction of the neck and the blockage of the blood flow either to the brain or

from the brain and to a minor degree some obstruction of the air flow. In contrast, in judicial hanging, where there is a drop associated with a constriction around the neck, there's a blunt force injury to the neck which can, and generally does, damage the deep structures of the neck, including the spinal column, the bones of the neck and the ligaments connecting the bones of the neck and also to the brain stem and spinal cord itself" (*Campbell v. Blodgett*, 226–27). Mistakes, in sum, are a contingent rather than an inevitable accompaniment of this way of killing. They occur when laymen attempt a task that is better left to professionals, albeit in this instance professionals whose competence is vested not in acquired skills, but in scrupulous adherence to abstract procedures that, at the time of Dodd's hanging, had never been tested by the army from whose manual they were cribbed.

In yet another effort to fix all judicial attention on these formal procedures and so obscure anything that might mar the undefiled universe they self-referentially project, the state seeks to have excluded from the hearing all evidence of bungled hangings conducted in England or in the United States prior to Washington's adoption of its present protocol. "We would submit to the Court," asserts the state's chief attorney, "that if the issue pending was whether past executions were in violation of the Eighth Amendment perhaps some of those documents would be admissible and would be relevant if that were the issue. But what the Court has got to decide is not whether past executions were in violation of the Eighth Amendment, but whether future executions, utilizing judicial hanging, is cruel and unusual punishment" (*Campbell v. Blodgett*, 6). The net result of this argument is to confine the evidence deemed germane to an assessment of Washington's protocol to the one instance of hanging conducted in accordance with it: "The best evidence of—probably the best evidence of what will happen under Washington's policy—is the example of Westley Allan Dodd. Everyone agrees that Mr. Dodd died very swiftly, humanely and that there was respect for his dignity" (548). Reducing its data set to a single body, one whose voice it stilled, the state seeks to render literally impossible any challenge to its epistemological and technological pretensions.

The foremost aim of Campbell's attorneys, by way of contrast, is to hoist the state with its own petard. Their task, that is, is to take seriously the state's self-representation and then raise doubts about its capacity

to make good on the ideal to which that representation commits it. To do so, Campbell's counsel seeks to undercut the claim to certainty professed by the state, first, by expanding the number of identifiable corpses admitted into the courtroom and, second, by demonstrating that the state's protocol cannot accommodate the individual physiological variability that, in the last analysis, will dictate just how any given person expires at the end of a rope. In both, his attorneys focus on the irreducible and obdurate reality of the particular, that which cannot be unproblematically subsumed beneath the homogeneous form of corporeality validated by the rationalized state.

To accomplish the first of these two moves, Campbell's attorneys begin by establishing the historical linkages joining Washington's field instruction manual to the army manual of 1959 from which its procedures were adopted, and from there to the English committee of 1886 from which the army's table is ultimately derived. To do so is in effect to affirm the relevance of all judicial hangings, successful as well as botched, conducted in accordance with the procedures specified in these three texts. While this is a potentially promising move with respect to hangings performed in England, it might appear less so with respect to those conducted in the United States since, as I have already intimated, the total number of persons executed under the terms of the army protocol is zero. In fact, however, this is a highly propitious move since it enables Campbell's principal attorney, James Lobsenz, to raise questions about the state's altogether uncritical appropriation of and exclusive reliance on the army's guidance. When Lobsenz asks the superintendent of the penitentiary in Walla Walla why she elected to adopt the army's procedures, Tana Wood responds artlessly: "Because it came from the military" (*Campbell v. Blodgett*, 178). But does this imply that the indirect authority Washington State hopes to derive from the military's reputation for efficiency in the art of killing is ultimately predicated on nothing other than so much unconfirmed speculation? That this suspicion may be well founded is corroborated when, later in the hearing, one mathematically inclined witness indicates that he has been unable to determine why the weight and length correlations in the penitentiary's table depart from those contained in that of the committee of 1886 and, still more important, that he has been unable to derive from the former table the formula that was presumably used in determining its numerical values: "It's not based on foot

pounds of energy alone or on kinetic energy and it does vary if you try any of those formulas from one end of the chart to the other" (423). Mocking rationalization's claim to render all things transparently calculable, the emblem of Washington's claim to scientific certainty now begins to appear as something akin to an enigma.

Although Campbell's attorneys do succeed in establishing these troublesome links between Washington's table and its predecessors, they are able to derive very little benefit from this minor coup. Almost without exception, Judge Coughenour rules in favor of the state when its attorneys contend that strangled and decapitated corpses generated by methods that are not in every particular identical to those stipulated in the Washington protocol are inadmissible: "Absent a showing of circumstances of a hanging that are demonstrably the same as the Washington protocol," he explains, "in my view it's not relevant" (*Campbell v. Blodgett*, 320). Evidence excluded by the district court on these grounds include photographs of a New Mexico execution in 1901 that resulted in an apparent decapitation; newspaper accounts of an execution in 1910 in Washington that left the condemned thrashing at the end of his rope, begging to be raised up and dropped anew; the testimony of Clinton Duffy, who, while serving as warden of the prison at San Quentin, witnessed a judicial hanging that resulted in death by protracted asphyxiation; and research materials compiled by Watt Espy, an independent scholar who has reviewed virtually all published accounts of executions performed in America since 1608. The cumulative effect of these rulings is to purify the court record of whatever embarrassing evidence had not already been rendered unavailable by the state's agents via other methods. Specifically, prior to 1993, no autopsy was ever performed on anyone hanged in Washington; no official records were kept of the seventy-three hangings conducted by the state since it expropriated this function from the counties in 1904; and, from 1909 to 1982, Washington State had on its books an obscenity statute that provided for the prosecution of any person who published a detailed account of an execution conducted within its borders.

In a desperate but ultimately misdirected effort to counter the state's monopolistic control over information concerning its consummate act of premeditated violence, Campbell's attorneys call Father Alvin Harry to the stand. A Jesuit priest from Jamaica, Father Harry claims to have ministered to seventy-one casualties of judicial hanging

since 1968. Not surprisingly, the state's attorneys immediately seek to exclude his testimony on the grounds of irrelevance, since he cannot say whether the procedures that govern hangings in Jamaica are identical to those specified in Washington's protocol. Indeed, his sole claim to qualification stems from the fact that, immediately after the trapdoor is sprung, his official duty consists of sprinting down the steps of the gallows in an effort to anoint the culprit as a Catholic before he or she expires. Should he arrive too late for that purpose, his task then becomes one of administering what the court reporter, with peculiarly liberal irony, transcribes as the condemned's "last rights" (*Campbell v. Blodgett*, 377). Surprisingly, Judge Coughenour permits Father Harry to testify, although that testimony soon backfires. It does so at least in part because Harry's grasp of English is poor and so much of the exchange between him and Campbell's attorneys takes shape as a halting and sometimes comical effort to establish the precise sense of the questions put to him as well as the answers they elicit. Still more fundamental deficiencies emerge when he is asked, "When you would run down the steps, did you ever see the person who had been dropped through the trap door, the man who had been hanged, did you ever see any movement of his body?" Although this is clearly the moment when the true horrors of hanging are finally to be given voice, the best that Father Harry can muster is the claim that, on two or three occasions, he witnessed "violent trembling" (380).

In a hearing whose discursive terrain is already well defined, one in which only the languages of law, natural science, and professional medicine are deemed credible, it takes little effort on the part of the state's attorneys to discredit the somewhat bewildered Father Harry. Far more damaging than his lack of proper epistemological authority, however, is his description of the instrumentalities of Jamaican state violence. As Father Harry explains, judicial hangings in Jamaica take place in an open courtyard; the principal implement employed is known as a "jackass" rope (so-called because it is used to lead burros through fields); the body of the condemned falls into a dirt pit; and the corpse, absent an autopsy, is then transported in a cart to the prison yard, where it is buried by none other than Father Harry himself. The net effect of this testimony is to sharpen and reinforce the state's distinction between amateurish and professional hangings. It may be true that Washington lacks an experienced hangman, and it may be true

that it compensates for this absence by relying on bureaucratic procedures that have been tested only once. These departures from the imperatives of rationalization lose much of their capacity to embarrass, however, when contrasted invidiously with killings that appear so demonstrably primitive. In short, the Washington protocol is the unintended beneficiary of Father Harry's testimony, and that benefit is all the more powerful because, in this instance, it draws its force not from its opposition to suicidal or accidental hangings, but to a crude form of state-sponsored execution.

The second effort made by Campbell's attorneys to undermine the state's claim to certainty involves contesting the contention, implicit within the executioner's table, that the variable of weight exhausts the features of embodiment that are relevant to a judicial hanging. "It makes sense," asks one, "does it not, to adjust the drop length based upon specific anatomical differences that a person might have?" (*Campbell v. Blodgett*, 425). Such differences, which can be caused by age, disease, exercise, drug and alcohol abuse, as well as countless other factors, all have a bearing on the capacity of the spine, the musculature, and even the arteries of the human body to facilitate or frustrate the summum bonum of judicial hanging, that is, the fracture that dislocates the upper cervical vertebrae and then snaps the spinal cord in two. Reluctantly acknowledging these complications, the protocol adopted shortly before the execution of Dodd includes a provision stipulating that a medical "examination will be conducted of the inmate to determine any special problems, i.e., collapsed veins, obesity, etc. that may affect the execution process" (Washington State Department of Corrections 1992). But this terse concession to individual variability, which grows ever more problematic when it is recognized that many of the relevant variables (e.g., bone mineral density) cannot be determined via a standard medical examination and when it is learned that the inspection in question is to be conducted not by a physician but by a physician's assistant, fails to specify how, if at all, these idiosyncratic features are to modify the uniform imperatives of the table. Opting for one horn of the dilemma before her, at first, the penitentiary superintendent indicates that under no circumstances will she depart from the drop length specified by the table (*Campbell v. Blodgett*, 183–86). However, only moments later, grasping the other horn, she insists that it is within her authority to respond to the peculiarities of this or that body

by departing from the table's dictates in any way she deems appropriate (190). As the promise of rationalism is subordinated to the claims of unlimited discretion, discretion that is itself predicated on little more than guesswork, the state's characterization of hanging as a "math problem" rings ever more hollow.

The net result of such concessions may be to suggest a truth that the late liberal state cannot afford to admit: there are finite limits to the extent to which the human body can be rendered a fully rationalized participant in a judicial hanging. For example, placement of the knot on the left side of the neck near the chin has the effect of throwing the head backward and so increasing the likelihood that the condemned's spinal cord will be severed. But this asymmetrical placement almost certainly will not occlude both carotid arteries, and so, should the hangman's fracture not occur, may leave the victim acutely conscious of the process of dying. The achievement of instantaneous unconsciousness, which is not at all certain under the Washington protocol, is best accomplished by placing the knot squarely at the back of the neck so as to achieve an even distribution of pressure on right and left arteries. But that position will throw the condemned's head forward and so almost certainly will not cause cervical dislocation. By the same token, elimination of the rope's elasticity enhances the likelihood of achieving the hangman's fracture, but it does so at the cost of increasing the likelihood of decapitation. "You're walking a very fine line here," observes Allen Tencer, professor of orthopedic surgery at the University of Washington, "between having enough energy and enough force to pull things apart, but not too much to create a catastrophic, quote, injury, which would be the neck—the head actually coming off" (*Campbell v. Blodgett*, 490–91).

As these examples suggest, the conundrums generated by the human body are additionally compounded by the fact that the causal constituents in a judicial hanging, when emancipated from the hangman's metaphysical simplifications, are multiple and infernally ambiguous. Recall that if the law is to punish with a clear conscience, it must manufacture the clear and distinct subjects who can be found unequivocally responsible for the deeds for which they are then condemned. These subjects find their Cartesian technological equivalents in discrete instrumentalities of execution whose causal operation can be specified with equal certainty.⁷ This understanding is afforded apt

expression when the New Mexico medical investigator is asked: "What, in your opinion, will be the cause of death in a judicial hanging in accordance with the Washington state policy?" To which he responds tautologically: "Well, the cause of death is the injury that leads to death, so the cause of death is hanging" (*Campbell v. Blodgett*, 237). What this legal-medical obfuscation hides, of course, is the fact that death will be the last effect accomplished by the combined operation of a host of mechanisms interacting in ways that, as we shall see when we turn once more to Westley Allan Dodd, cannot be fully specified even after an autopsy has been performed. These may include, to mention but a few, occlusion of blood flow to the brain, spinal shock, actual damage to the spinal cord or brain stem, asphyxiation, strangulation, and so on. As the medical examiner from San Francisco insists, "Hanging in itself is a very general term and covers any type of suspension or pressure that is applied in or about the neck. . . . Hanging represents a *gamut of effects* upon the neck and the structures, leading to some type of neuro or cardiogenic shock" (412–13; emphasis added). Construction of hanging in these terms, as a complex of mutually constitutive effects that thwarts our grammatically induced desire to posit any one as death's singular cause, cannot satisfy the state's urgent need for certainty. Just why that is so is made apparent when this closeted Nietzschean draws the appropriate practical conclusion from his unwitting repudiation of the hangman's metaphysic: "I've said several times there are a number of variables that will always be hard to control or uncontrollable in any type of human endeavor, and when a procedure like a judicial hanging takes place, there are going to be a number of factors that are either difficult to control or cannot be controlled completely" (448).

If the first major bone of contention in the evidentiary hearing circles about the issue of certainty, the second revolves around that of pain. The character of the strategic dilemma confronted by the state's attorneys is dictated by the fact that they cannot altogether disavow the technological instrumentalities that participate in a judicial hanging. No doubt, the state can hide these artifacts, as it effectively does by prohibiting public access to the death chamber; and no doubt it can destroy them, as it did by burning the rope that was used to hang Dodd. Within the confines of this hearing, however, if only as so many dematerialized objects of legal discourse, these things must be given their due. Yet, as I

noted earlier, a noose is problematic because it stands as a palpable objectification of the pain inflicted by the state and suffered by the condemned, and it is precisely for this reason that it is anachronistic. Much more transparently than a syringe does this irksome thing proclaim the harm it is destined to perform, thereby overcoming what is otherwise the solipsism of pain and so troubling the ideal of the rationalized hangman. The strategic task for Campbell's attorneys, accordingly, is to aggravate this trouble by giving voice to the pain thus disclosed.

The question of pain's palpable reality takes shape, first and foremost, as a struggle over the meaning of the one corpse, all others having been denied admission, that is permitted to make a sustained appearance in this hearing. The basic context for that struggle is established by Superintendent Wood, who explains how, six minutes past midnight on January 5, 1993, Westley Allan Dodd was removed from one of two holding cells and escorted to the adjoining gallows room, how a leather restraining belt was placed around his waist and wrists, how he mumbled an apology to those assembled in the witness room below, how the curtains in the upper chamber were closed, how he was moved several feet backward to one of the chamber's twin trapdoors, how additional restraints were placed around his ankles, as a black hood was placed over his head, how the noose was secured around his neck, how the trapdoor was sprung, using a steel release mechanism embedded in the wooden floor, how he fell exactly seven feet and one inch (because he weighed just 135 pounds), how the curtains of the chamber's lower level were closed, and how Dodd was pronounced dead several minutes later, thereby officially completing his journey from the status of a liberal juridical subject, one whose body is irrelevant to his standing before the law, to that of a corpse, an object now exclusively identified with that same body.

This inert entity, however, refuses the state's effort to cast it in the role of a clear and distinct Cartesian object. The contest to resolve its ambiguity, to overcome its referential instability, fixes on three issues: first, how to interpret the very slight movements Dodd's body displayed upon stopping short at rope's end; second, what to make of the abrasion created by that rope on the right side of his neck; and, third, how to read the results of the autopsy conducted one day after his execution. The first raises questions about the relationship of bodily activity to volitional consciousness. The second invites inquiry into the rela-

tionship between the appearance of marks on the body and the reality of suffering. And the third asks us to consider the veracity of causal connections that can only be inferred because observation of the internal harm done by external mechanisms is obscured by the opaque barrier that is human skin. Like a taunting question mark, Dodd arises from the dead in the guise of an epistemological quagmire.

“Do you have an opinion,” asks the chief attorney for the state, “as to whether Mr. Dodd suffered prior to his death when he was executed on January 5, 1993?” To this question, with refreshing frankness, the medical examiner who performed the autopsy on Dodd replies: “I don’t have an opinion because, to me, just the notion of suffering is pretty open-ended. I suppose it’s a question of definition” (*Campbell v. Blodgett*, 321). It is precisely what Donald Reay refers to as suffering’s “open-endedness” that renders corporeal pain so well suited to the sort of legal disputation in which each side seeks to maximize its freedom to fashion reality as it will. To see how that semantic struggle takes shape in this context, let us begin with Dr. William Brady, an Oregon physician who was retained by the state of Washington for the purpose of examining Dodd immediately after his descent into the lower half of the death chamber. Asked by a state attorney just what he saw at that moment, Brady reports as follows: “When Mr. Dodd’s body dropped through the trapdoor there simply was no significant activity, there was no twisting, turning, no swinging. I carefully observed his chest and abdomen and I believe that there was one minimal effort at inspiration, breathing in, and following that, within several seconds, there may have been a small second inspiratory action” (203–4). While the body remained suspended, Brady climbed the steps of a movable staircase and, reaching beneath the two shirts worn by Dodd, laid a hand on his chest in order to determine whether his heart was still beating or his lungs were still seeking air. Detecting no movement, he confirmed this judgment with a stethoscope and, on the basis of this investigation, declared Dodd dead.

What, though, is to be made of those faint efforts at inspiration? As the institutional representative of the hangman’s metaphysic, the state’s assignment is to present as certain that which no one can know for sure. Its task, that is, is to rhetorically fashion those shallow intakes, via so much expert testimony, as the involuntary motions of a body that no longer bears any traces of consciousness and so can neither

grasp that it is being killed nor suffer any pain. The unenviable task of Campbell's attorneys is to present those same signs as so many indicators of acute suffering and, if possible, terror. However, in the absence of a body that more dramatically invites this interpretation, the best his attorneys can do is to attempt to undermine the epistemological confidence of the state; and to do that they must introduce as evidence that which did not occur as well as that which was never seen. "The problem with describing and interpreting movements made," says Deryk James, whose report on hangings conducted in England I cited in the final section of chapter 3, "is that with somebody pinioned it's difficult to know whether any movement made is volitional, purposeful movements or whether it is automatic reflex activity" (*Campbell v. Blodgett*, 95–96). More pointedly, he might have said, the state can sustain its interpretation of these inspiratory motions only by veiling the fact that its leather restraints deprive Dodd's body of all opportunity to say anything other than what the executioner will allow.

The possibility of contesting the state's reading of these motions is additionally frustrated by the hood placed over Dodd's head. Not surprisingly, Tana Wood contends that, although she cannot account for its historical origins, the purpose of the hood is to protect the dignity of the condemned and to spare the sensibilities of the witnesses. For the purposes of this hearing, however, far more important is the fact that the hood denies to witnesses the facial evidence that might otherwise enable them to challenge the state's ascription of meaning to the movements in Dodd's chest. "If a person was hanged without a hood on," asks one attorney, "their facial expressions, eye movement, could be some further indication of consciousness which we don't have if the face is shielded, is that correct?" "That," responds the medical examiner from Seattle, "becomes a problem of interpretation" (*Campbell v. Blodgett*, 345). To forestall the emergence of such a problem, the state deploys various technological means, including the hood and the pinioning straps, in order to manufacture the sort of body that can then be discursively offered at this hearing as an unproblematic fact, a thing whose unequivocal import is simply given.

A similar but not identical issue emerges when the hearing takes up the question of the markings on the surface of Dodd's body. Arguably, for the state, the irregular furrow etched into the right side of his neck is the most problematic evidence it must address. Dodd's

inspiratory efforts vanish into the realm of the dimly recalled, the unrecorded, as soon as they cease, but the groove cut by the state's rope endures in the body as well as in the photographs taken prior to its autopsy. If the noose is an artifactual objectification of the otherwise invisible pain caused by the state's technologies of violence, this wound is its all too visible proclamation in the flesh. In an execution by lethal injection, there is no such sign, and in the absence of a sign there is no signification and so nothing to be explained away. When the noose leaves its mark, however, it transports the hurt body, so often silenced by the irrefutable reality of pain itself, into the domain of the discursively contestable.

"The body of the condemned is a text," writes Maeve O'Connor, "that tells the story of physical punishment with brutal honesty. In the aftermath of an execution, the corpse remains to give meaning to the event. The executed body thus has potential to threaten the legitimacy of the punishment" (unpublished paper) and, by implication, the state that imposes it.⁸ Unable to deny the palpable presence of this mark, the state discounts its import by insisting that, because Dodd instantaneously lost consciousness when his neck snapped backward, this is a sign that says nothing. On this account, what would ordinarily be taken as a manifest indicator of felt pain, an open wound, is figured instead as a token of the state's efficiency in bringing about the condition that renders questions of pain immaterial. To contest this reading, Campbell's attorneys must once again appeal to that which is unseen. For reasons already indicated, absent a body that writhes, this abrasion is not easily read as a sign of acute suffering. To establish that possibility nonetheless, the lack of any comparable mark on the left side of Dodd's neck is duly noted. At least arguably, that absence intimates that neither the supply of arterial blood nor the supply of oxygen was altogether cut off to Dodd's brain; and if that is so, then it is not entirely implausible to speculate that he may have retained consciousness after completing his fall; and, if that is so, then perhaps the furrow on the right side of his neck can be read as pain's obdurate residue.

Because neither party to this conflict is able in any conclusive way to overcome the referential instability of this mark on the body's surface, attention turns at last to its interior. Following the official declaration of death, Dodd's body was stuffed into a body bag, which was then placed in an official vehicle destined for the medical examiner's office

on the west side of the state. To facilitate the inquiry to be conducted there, the corpse's head was left hooded and the noose remained tightly cinched around its neck. Once in Seattle, Dodd's remains were subjected to computerized tomography studies, magnetic resonance imaging, and finally to anatomical dissection. All were performed in the hope that these inquiries would determine the exact cause of death (which, in turn, would dictate the right reading of Dodd's final efforts at inspiration as well as the crimson crease in his neck). For this purpose, what the state most urgently requires is definitive evidence of the hangman's fracture, that most sublime articulation of the metaphysic he champions. Should this autopsy demonstrate that Dodd's spinal cord split in two on impact, a simple effect caused by a singular cause, the ideals of celerity and painlessness will be as perfectly accomplished as the marriage of this method of killing and the human body will permit.

Baiting the law as he did when he first "volunteered" to die and then insisted that the state hang him (as he had done with his final victim, four-year-old Lee Iseli), once again Dodd refuses to play the part required of him. What the autopsy does make unambiguously clear is that Dodd did *not* die as a result of cervical dislocation and spinal disjunction. What, then, did kill him? Dodd's body will not say; and it is not at all clear that, were it to do so, it would furnish an answer that would satisfy the hangman. When asked by one of Campbell's attorneys to specify the causal mechanism of death in Dodd's case, echoing the claim made earlier by one of the state's witnesses, Deryk James provides what is at one and the same time the most truthful but also the least helpful answer. Dodd, he says, "died from judicial hanging." This answer is truthful because it refuses the temptation to abstract a single biomedical cause from this complex of effects, but it is also quite unhelpful insofar as it fails to provide the state with any means of overcoming this ambiguity. When pressed to indicate what did in fact happen to the uppermost portion of Dodd's spine, James proceeds: "Well, that leaves a sudden pulling on the spinal cord. Now, that may have occurred. There was a small amount of bleeding seen around the cord, but despite microscopic sections and gross examination, no injury was seen to the cord, but that doesn't exclude an injury being present. It's a problem that if somebody dies shortly after an injury of this sort, then there would be no morphological markers of it having occurred"

(*Campbell v. Blodgett*, 104). But if at least some of death's pathways do not always leave such markers, then in the last analysis specification of its causal mechanisms must be largely speculative. Not surprisingly, therefore, when James is asked whether Dodd's autopsy can be used to define how death will occur in future hangings, he responds in the negative, thereby denying the state the epistemological confidence it requires in order to sustain its strong predictive claims about its ability to kill Campbell swiftly and painlessly. Even the state's own expert witness, Donald Reay, cannot help but confess that, more often than not, the best medical science can do by way of explaining death is to "reason back," after the fact, "to the best explanation of what happened, what probably happened" (315). But if the state can do no better than the owl of Minerva, then the promise of rationalization, which presupposes science's ability to articulate exhaustively and conclusively the precise relationship between this particular technology of killing and the human frame, is either so much pretense or an outright sham.

Propping up the Scaffold

In his closing argument on Campbell's behalf, James Lobsenz contends that Washington State "came close to pulling Mr. Dodd's head off," and he then confidently declares that there is a "25 percent risk that this procedure will produce a slow, torturous and lingering, painful death" (*Campbell v. Blodgett*, 544, 541). In light of the evidence produced at this hearing, this pseudoscientific prediction seems neither more nor less plausible than the state's claim that Dodd was executed with surgical precision and that the hanging of Campbell is certain to produce the same happy result. Unable to revel in this condition of epistemological ambiguity, what is a judge to do?

What Judge Coughenour must do, of course, is to fashion this inconsistent array of competing claims, generated within a broader political context whose imperatives he himself did not create, into so many authoritative findings of fact and conclusions of law. That this context is now vexed, that what was once taken-for-granted is now contestable, is indicated by the very occurrence of this evidentiary hearing: "Can one," Coughenour asks, "read into the fact that the issue [of hanging's constitutionality] has never been presented to a federal court in over 200 years of history that no litigant ever thought it was an issue

that was worth presenting because the answer was so clear?" (*Campbell v. Blodgett*, 535). Were the mutually constitutive technological, discursive, and embodied dimensions of the hangman's metaphysic still seamlessly interwoven, he might have said, the noose would never fold itself into the shape of a question mark. That it has now done so is indicative of trouble in the relationship between violence and the law of the late liberal state.

Violence, as I noted in chapter 3, is the indispensable premise of liberal law in at least two familiar ways. First, law is that which overcomes the threat of warfare that is always present in liberalism's fictive state of nature; and, second, according to the contract that removes persons from that condition, political order becomes possible only when each individual transfers to the state his or her natural right to deploy violence. What distinguishes that state's exercise of violence from its anarchic source is precisely its lawful character, its exercise in accordance with established rules. That distinction, however, is never simply given; it must be constantly manufactured as a condition of the state's claim to rightful authority. The rationalization of state violence is one means of securing that distinction, and in this chapter I have explored the struggle to spare the noose from the dustbin of history by perfecting the bureaucratic and technical conditions of its deployment. Today, however, and especially in light of the emergence of more refined methods of killing, the noose cannot help but appear an anachronism and, more specifically, an anachronism that is problematic because the harm it does to human bodies too vividly recalls the sorts of violence from which the law must be extricated. The gallows, in sum, must be forsaken in order to save the law.

Yet Judge Coughenour, demonstrating that the rationalization of state violence is never inexorable, never exempt from local accident and aberration, does not draw this conclusion. To evade it, in the time it takes to generate a mere seven pages of transcript, he must fashion a self-contained juridical universe, one from which all complicating evidence is either excluded or denied legal import. This exercise cannot help but involve some measure of cognitive strain since his endorsement of the state's claims at the expense of *Campbell* is necessarily tainted by considerable arbitrariness. That strain is most absurdly evident when Coughenour notes that Washington's hanging protocol is derived from the 1959 army manual and then, in order to show how

this derivation substantiates the state's present case, announces the following as one of his twenty-nine findings of fact: "Petitioner presented no evidence that a judicial hanging carried out under the United States Army execution regulation ever resulted in a decapitation, torture, lingering death or the unnecessary and wanton infliction of pain" (*Campbell v. Blodgett*, 567). This claim is demonstrably true, but it is so not because of the manifest perfection of those regulations, but because no hanging was in fact ever conducted in accordance with their dictates.

Less obvious but hardly absent is the strain generated by the judge's conclusion that the evidence presented over the course of this hearing establishes that the Washington protocol "has eliminated virtually all possibility of decapitation," of a "tortured or lingering death," and of "unnecessary and wanton infliction of pain" (*Campbell v. Blodgett*, 568). These conclusions are reinforced by the finding that "any discernible bodily movement following the drop in judicial hanging will in all likelihood be a decerebrate movement," which in turn becomes the premise of the conclusion that "the execution of Westley Allan Dodd resulted in death without suffering" (570, 572), which in turn becomes the premise of the conclusion that the execution of Campbell will prove equally consonant with the hangman's dream. Crucial to the success of this legal syllogism, as we have seen, is the systematic exclusion of all evidence that might call it into question. And yet, or so it seems, the slowly suffocating bodies and decapitated corpses Coughenour has deemed inadmissible, evidence of the noose's uncertain ability to validate the distinction between legal and extralegal violence, continue to haunt him, and so these demons must be exorcised once again: "The Court made numerous rulings excluding evidence of alleged 'bungled' hangings for various evidentiary reasons, including hearsay, lack of foundation, and undue prejudice under Rule of Evidence 403. However, even if this evidence had been admitted, these findings of fact would not be changed" (571). In short, no concrete bodies bearing specific names and determinate biographies will be permitted to disturb the state's metaphysical faith in the abstract certainty of its protocol, even though that protocol's centerpiece, its table correlating weight and rope length, is itself predicated on an untested military manual whose scientific warrant is suspect at best, and even though that certainty is grounded in nothing more than the contested and arguably fortuitous execution of Westley Allan Dodd.

Once this closed universe of "facts" has been fashioned, its translation into constitutional form is presented as a virtual afterthought. In its entirety, Judge Coughenour's conclusions of law consist of (1) the claim that it is petitioner's burden to prove that judicial hanging is cruel and unusual punishment; (2) the insistence that the pain involved in "the extinguishment of life" does not itself constitute such punishment; and (3) the declaration that judicial hanging, presumably because the facts demonstrate that it causes no pain other than that necessary to extinguish life, does not violate the Eighth Amendment (*Campbell v. Blodgett*, 572). Lest this act of judicial alchemy prove suspect, it is imperative to demonstrate that these conclusions are dictated by the law itself. Its majesty, and hence the subordination of personal predilection to its impersonal authority, must be emphatically affirmed: "My role," states Judge Coughenour in his final remark, "is to carry out the law, whether I agree with it or not, and I will say for the record today, I do not believe in capital punishment" (573). No champion of the law, I submit, could ask for a more cunning adherent of the hangman's metaphysic.

Whereas John Coughenour speaks, Charles Campbell does not. "Mr. Campbell," announces Superintendent Tana Wood at 12:07 A.M. on May 27, 1994, "has declined to give any last words" (Broom 1994b). Exactly what we are to make of this pronouncement is unclear, especially when we recall that Campbell had spent twenty-three hours of every day over the course of the past twelve years in a seven- by eight-foot concrete cell, that he was forcibly subdued prior to his removal to the death chamber's holding cell, that he was carried to the gallows lashed to a restraining board, and that unexplained traces of the anti-depressant drug Elavil were found in his bloodstream after his death. Yet this final deed must be figured as the unconstrained action of a self-governing agent if the hangman's metaphysic is to remain secure. As a consequence of this "choice," the superintendent informs those in attendance, the curtains veiling the upper portion of the split level gallows will not be parted, as they had been when Dodd muttered several incoherent phrases about the power of Jesus into a microphone mounted into the wall; and so the witnesses below, much like those chained to the wall in Plato's cave, are treated to nothing other than flickering silhouettes and shadows. "It appeared," some later reported, that "there were difficulties at a few points just before Campbell dropped to his death, although they disagreed whether he was strug-

gling against the officers" (Broom 1994a). Was Campbell grabbed by the hair in order to ready him for the hood? Did he jerk his head as guards sought to fix the noose around his neck? Why were several tugs apparently required in order to tighten its knot? None of these questions can be answered definitively, thereby leaving a penitentiary spokesperson free to construct Campbell as a being who has chosen to be what the state has mandated that he become: "He was conscious but he was being passive, like, 'If you want to move me, move me'" (*Los Angeles Times*, May 28, 1994, 19). Thus does the state announce its discovery of just what it requires: a subject who voluntarily elects to assume the role of a docile body awaiting incorporation within this archaic killing machine.