

“[During the trial] the courtroom had been half-empty, but [after the verdict was announced] word must have passed through the coffee shop, for the Mitigation Hearing was crowded. A legal process would decide a man’s life— that had to be an awesome afternoon.”

-Norman Mailer, The Executioner’s Song (434)¹

The publication of Norman Mailer’s monumental work, The Executioner’s Song, in October 1979 raised new questions about the distinction between fact and fiction. Calling the work “a true-life novel,” Mailer drew attention to himself as both a fact-finding journalist and a shaper of fiction. Gary Gilmore’s trial and execution made headlines across the United States. During the thirteen and a half weeks he sat on Death Row, Gilmore gained a notoriety that captivated the American public and made him a household name throughout the nation. Yet Mailer’s rendition of his story added a dimension that was not previously there. Those who commissioned The Executioner’s Song and encouraged its production may originally have conceived of the book as a documentary project, but it eventually matured into a grand novelistic gesture. The work is an exercise in the blurring of lines. Law spills over into a realm of subjectivity. History and fantasy begin to overlap. Journalism and fiction are merged. In documenting the courtroom proceedings and the judicial process at large, Norman Mailer takes a certain amount of artistic liberty— liberty that allows him to transform the geographical space of the courtroom into a literary space where the characters and themes of his novel

¹ Direct quotations from The Executioner’s Song will be cited parenthetically throughout this text. Page numbers refer to the 1998 Vintage International edition.

are advanced. In The Executioner's Song, Mailer uses the courtroom as, on the one hand, an arena for the discussion of contemporary social/political issues and, on the other hand, a venue for character development.

The monumentality and innovative quality of Mailer's work can be better understood when taking into account his relationship to his literary predecessors. Since its publication The Executioner's Song has been cited as a work modeled after Truman Capote's In Cold Blood, a book published in 1965 about a multiple homicide in Kansas. Indeed the two works share a basic premise— novelists who investigate the details of brutal murders and document the events surrounding the crimes. But Mailer's work differs from its supposed model significantly in that Mailer, unlike Capote, focuses much more on the criminal than he does on the victims. According to literary critique Mark Edmundson, Mailer's scant treatment of Gilmore's victims reveals a bias in his work. Edmundson contends that Mailer "...makes [Jensen and Bushnell] seem small. They don't rate the tragic themes that Gary...get[s]." ² Mailer's intense interest in the wrongdoer (as opposed to the wronged) distinguishes his book from Capote's work and signifies an effort, on his part, to offer something new to the literary world. Granting such attention to the defendant necessitates his granting great attention to the defense; Mailer devotes a significant portion of The Executioner's Song to the process by which Gilmore is tried, convicted, and executed. The lawyers who work both to prosecute and to defend Gilmore become central characters in the book and the legal and personal backgrounds they bring with them to the case become issues of serious concern to the story. Mailer makes careful note of the legal rules that dictate courtroom proceedings and sentencing.

² Edmundson, Mark. "Romantic Self-Creations: Mailer and Gilmore in *The Executioner's Song*." *Contemporary Literature* 31 (1990): 442.

Mailer's intense interest in the law and in the system that carries it out distinguishes his project from the book that literary scholars commonly call its model but it also connects it to a larger body of American literature that treats the American legal system as a central theme.

In his discussion of the growing field of "Law and Literature," legal scholar Richard Posner notes that "...the trial— especially the Anglo-American trial, which is more adversary, more theatrical, than its Continental counterpart— [provides] a ready-made dramatic technique."³ Indeed, Gilmore's trial serves as the perfect tool for Mailer to underscore dramatic themes, advance the plot of the "novel," and offer insight into his protagonist. The fact that he is documenting a trial that did in fact take place in the real world does not diminish his skill in exploiting the courtroom for novelistic ends. Any reservations one might have about interpreting Mailer's work according standards of literary analysis may be disregarded in light of the widespread consensus that The Executioner's Song is, in fact, a novel. While Capote's In Cold Blood was catalogued under the Dewey Decimal System as a "Homicide Criminology," The Executioner's Song was listed under "Fiction."⁴ In her 1996 dissertation, "Courtroom as Forum," Ann Algeo asserts that the text is somewhere in between fiction and non-fiction and furthermore, that, "...all descriptions of trial proceedings are fictional whether completely imaginary or based on personal observation, trial transcripts, or newspaper accounts."⁵

³ Posner, Richard. Law and Literature. Cambridge, Massachusetts: Harvard University Press, 1988; 78

⁴ Kellman, Stevan G. "Mailer's Strains of Fact." *Southwest Review* 68. Dallas, Texas: Southern Methodist University Press, 1983; 127.

⁵ Algeo, Ann. The Courtroom as Forum: Homicide Trials by Dreiser, Wright, Capote, and Mailer. New York, NY: Modern American Literature, 1996; 3.

Despite Mailer's frequent claims that the account he offers is factual, he nonetheless admits to taking certain artistic liberties in writing the story. In the "Afterword" to the book, he notes that "...the cross-examination...of a psychiatrist who administers Proxlixin comes in fact from an actual interview by Lawrence Schiller and myself a couple of years later..." (1052) Mailer has actually taken information gathered through journalistic work and represented it as information revealed during trial proceedings. This deliberate skewing of facts reveals the way in which Mailer uses the courtroom to achieve certain novelistic ends. The inserted "testimony" of Dr. John Woods has a qualifying effect on the reader's perception of Gary Gilmore's criminal responsibility. Mailer presents Dr. Woods as testifying to the fact that given Gilmore's psychopathic personality and his consumption of both alcohol and pain-medication immediately prior to committing the murders, one might say that his "capacity to appreciate and to understand the wrongfulness of his conduct" was diminished at the time of the murders (437). This deliberate misrepresentation of a witness' account no doubt works to further Mailer's efforts to portray Gilmore in a more positive light.

Mailer's tendency towards fictionalization becomes more evident when comparing his descriptions of events with those published by the media at the time of Gilmore's trial. The *New York Times* and other major papers across the nation repeatedly reported Gilmore's efforts to thwart motions for appeal as being part of a campaign to "die as soon as possible because he [did] not want to spend the rest of his life in prison."⁶ According to the great majority of national news sources, Gilmore would not see through to an appeals process because he considered life imprisonment more painful than death.

⁶ [author unknown] "Utah Killer is Returned to Prison Infirmary to Recover." *New York Times*. November 19, 1976, pg 18.

Yet Mailer attributes to Gilmore's efforts the more lofty aim of seeking justice; quoting defense lawyer Dennis Boaz, Mailer writes that Gilmore did not have "some kind of perverse death wish. He is a man who is willing to accept the responsibility for his act, and...has accepted the judgment of the people." (533) Mailer takes pains throughout the book to present Gilmore's acceptance of death as a testament to his faith in the justice of the death penalty rather than as an expression of his selfish desire to avoid life imprisonment.

Mailer's accounts of actual statements made by Gary in the courtroom also differ, at times, from those reported by journalists covering the story at the time of its unfolding. The *New York Times* reported on December 1, 1976 that at a public hearing before the Utah Board of Pardons, Gilmore stated that he was willing to accept the death penalty, saying, " 'I've accepted sentences all my life...I don't know I had a choice.'"⁷ Mailer's account of Gary's statements during this hearing differs only slightly in content though the style of the edited speech is distinct from the original. In *The Executioner's Song*, Gary is quoted as saying " 'I simply accepted the sentence that was given to me... I didn't know it was a joke.'"⁷ (675) Mailer has actually corrected Gilmore's diction here, changing the "don't" to the proper "didn't." His editing signals a deliberate effort to present Gilmore as a more intelligent (or at least a more eloquent) man and thus to improve the public image of his protagonist.

Mailer's description of the behavior of other characters in court works to foster a positive image of Gilmore as well. Mailer describes Esplin's closing statement in Gary's defense, writing, "Esplin was feeling emotion. This closing argument became, to his surprise, the most emotional thing he had ever done." (433) After the closing statements

⁷ Nordheimer, Jon. "Gilmore Wins Plea for Execution." *New York Times*. December 1, 1976, pg A24.

are offered, people who had been present at the trial ask Esplin how he was able to give such a convincing performance and he assures them that it wasn't a performance at all. Such commentary on the lawyer's sympathy for Gilmore enhances the readers' own sympathy.

Mailer also uses the space of the courtroom as a tool for revealing his protagonist's unique personality. Having spent the greater part of his life moving in and out of the penal system, Gilmore is very well attuned to the way in which the system works. In his descriptions of Gary's demeanor during the trial, Mailer reveals Gilmore's unexpected level of confidence and comfort. After Gary takes the stand at his mitigation hearing, he is described as having been "...calm on the stand, probably too calm, too solemn, even a little remote..." (440) At other points, Gary's demeanor is outright threatening. When his cousin Brenda testifies against him at the mitigation hearing, "Gary glared at her...If a look in somebody's eyes could kill you, then you had just been killed. Wiped out like an electric shock." (436)

Mailer's interest in Gilmore as an individual, however evident and significant, is nonetheless heavily outweighed by his fascination with the symbolic and thematic importance of Gilmore's story. Detailing the legal battles of a single man allows Mailer to explore the problems of an entire nation. Mailer's coverage of Gilmore's primary trial adds up to 178 pages, occupying 17% of the overall text. His treatment of the appeals process is significantly more extensive; it covers 463 pages or 45% of the work.⁸ The attention Mailer devotes to Gilmore's appeals renders the justifiability of the death penalty an issue of central focus in the novel. By covering in such close detail the events that led up to the first execution after a ten-year moratorium on the death penalty, Mailer

⁸ Algeo, 116.

uses the courtroom as a venue for discussing the controversial issue of capital punishment. In 1967 the Supreme Court had declared all death penalty statutes at that time to be unconstitutional and had demanded that states wishing to maintain capital punishment rewrite their laws; Gilmore was the first to be executed under the new laws. His sentence thus renewed the heated debate between anti-death penalty activists, who thought their battle had been won after the 1967 Supreme Court decision, and death penalty supporters, who saw the case as an opportunity to reinstate their preferred method of punishing murderers.

While the ACLU stepped in on Gary's behalf to stay his execution sentence, Gary himself held fast to the demand that his sentence be carried out and that all attempts at an appeal be halted. In Mailer's account of Gilmore's testimony before the Pardon's Board, Gilmore reasons, " 'I simply accepted the sentence that was given to me...when I did accept it, everybody jumped up and wanted to argue with me. It seems that the people...want the death penalty but they don't want executions...Well, I took them literal and serious when they sentenced me to death...I thought you were supposed to take them serious. I didn't know it was a joke.'" (675)

In an article published by the *New York Times* on November 19, 1976, writer Tom Wicker supported Gary's interpretation of the public's stance on the death penalty. Wicker noted that among Gary's five executioners, there would be one whose gun was loaded with a blank cartridge so as to ensure that not one of them could be one hundred percent sure that his bullet killed a man. "Could there be more graphic evidence that no one really wishes to be an executioner?" wrote Wicker.⁹

⁹ Wicker, Tom. "The Fifth Cartridge." *New York Times*, November 19, 1976, pg 23.

Perhaps no one wanted to serve as executioner, but plenty of people in America wanted to see Gary Gilmore executed. A Harris Poll taken during Gilmore's appeal process indicated that 71% of Americans believed he should be put to death.¹⁰ The death penalty was (and indeed, still is) an issue of enormous contention and Mailer, no doubt, saw The Executioner's Song as an opportunity for him to treat this issue and offer his own subtle commentary on the debate. His focus on the issue throughout the book is extensive, yet the absence of any direct authorial voice in the novel precludes the reader's understanding of his personal beliefs. As literary theorist Steven Kellman asserts, "The author's own thoughts on capital punishment...never intrude into the represented discourse."¹¹ At best, one can examine his treatment of the subject and try to surmise what his own leanings might be.

There is a sense throughout the book that Mailer has great sympathy for Gilmore, and that he understands his predicament as being as much a result of society failing him as it is his failing society. Consequently it seems as though the author would wish that Gilmore, who has been stripped of every earthly freedom, at least be granted the freedom to accept his sentence and avoid the draining experience of a long appeals process. Acknowledging Mailer's support for Gary on this issue does not necessitate our understanding of Mailer as a death penalty supporter. It simply explains that he (like Gilmore) believes in the application of law as it stands. Mailer would likely support Gary's notion that the court loses integrity when its rulings are not obeyed and that the law becomes flimsy and meaningless if its execution is questioned.

¹⁰ Shorris, Earl. "Gilmore's Victory." *Harpers*. April 1977, pg 16.

¹¹ Kellman, 131.

But as to the justifiability of the death penalty itself, Mailer's position evades conclusive determination. Perhaps some insight might be gained from an examination of the book's title. While the vast majority of the novel is dedicated to the executed man, Mailer titles the work as "the *executioner's* song." So little attention is actually paid to the men responsible for carrying out the execution in comparison with the attention paid to the man receiving the death sentence, that one must wonder why the author chose such a title. It seems reasonable to assume that "executioner" here refers to the state, rather than to the precise agents who carried out the state's sentence (for if it referred to the five men who actually shot Gilmore, the term would be put in the plural). In what way, then, does Gilmore's epic become the "song" of the state? Throughout the book, Mailer implies that the legal, judicial, and correctional systems of the state have had a great hand in creating men like Gary Gilmore. And there seems to be a significant amount of irony in the fact that the state is also responsible for killing these same men. Perhaps Mailer's title means to place blame on the state. And if so, it is likely that he disapproves of state mandated executions.

This reading of Mailer's position follows nicely from an examination of the politics he expresses in his other works. In his war novels, Mailer focuses on the ways in which American "freedom-fighters" have employed methods of brutality that equal if not surpass the oft-criticized tactics of less "civilized" nations. Likewise, in many of his essays he has criticized U.S. domestic policies (for example, segregation) that are wholly at odds with the political values the country claims to uphold. While the authorial voice in The Executioner's Song is more subdued than it is in his other works, Mailer nonetheless find an opportunity here to convey his own leanings. The treatment of capital

punishment in the space of the courtroom allows him to insert some subtle commentary on the issue. Here, as in his other works, he finds fault with a nation that tries to treat violence with nothing but more violence. One might even argue that the expression of his politics in The Executioner's Song has greater impact than that of his more overtly political writings. By treating issues within the frame of a novel, Mailer does not simply describe his position; rather, he offers readers a new perspective. He might only have written an essay, like so many of his other essays, about Gilmore—about the failure of the system to reform him and the ineffectiveness of the death penalty. But he did not. He chose to imbed his views within the fabric of the novel. And his views are all the more forceful because of it. In this form, his political commentary is not only the impassioned rhetoric of a notoriously hot-headed writer. Rather, it is subtly conveyed through story—he brings readers into the relevant context, introduces them to the relevant characters, and leaves them with an odd mixture of fear and awe, disgust and sympathy. The feelings he arouses leave readers with the notion that something is drastically wrong with contemporary American society. His discussion of the death penalty in The Executioner's Song implies that American public policies are flawed and hypocritical.

In a *New York Times* editorial published just prior to Gilmore's execution, Psychology Professor Roger Johnson intimated that "Today, virtually all Western industrial nations have eliminated capital punishment...It is mainly Communist countries and totalitarian regimes that continue to execute citizens, and most Americans look with abhorrence upon these events when we learn about them."¹² Indeed, adherence to capital punishment seems to distinguish the United States from nearly all other free democracies around the world and is often seen by other Western powers as strangely barbaric and

¹² Johnson, Roger. "The State and Death." *New York times*. December 12, 1976, pg NJ44.

outdated. Mailer's desire to expose this barbarism and the hypocrisy that underlies it serves as motive for his devoting such attention to the issue of capital punishment in this book. The courtroom becomes a space where Mailer treats the contemporary debate over capital punishment and implicitly offers his own assessment of the issue.

Mailer's interest in the death penalty and in criminal responsibility is but one component of his fascination with the broader subject of violence in America. In A Vision of American Law: Judging Law, Literature, and the Stories we Tell, Judge Barry Schaller identifies violence as a theme characteristic of American culture and popularly depicted in the national literature. Mailer's courtroom serves as an arena for the gruesome descriptions of Gilmore's violent behavior. When Gary takes the stand during the Mitigation Hearing his honest (and remorseless) description of how he forced his victim to lie down on the floor before bringing a gun directly to the man's head and firing reveals the courtroom as a space for the treatment of violence. Schaller is careful not to identify violence as something that is unique to America. He acknowledges the fact that there has been large-scale violence throughout Europe, Asia, and Africa. But Americans, he explains, have "...translat[ed] the violence into symbolism or myth" and that translation has, in turn, created a sort of cultural approval for such behavior.¹³ Mailer's narrative is evidence of the way in which acts of violence can achieve mythic status in American history. Gilmore's role as a symbol is two-fold. He is, in one sense, a symbol of decaying American values, an example of what happens to a man raised without the support of a loving family and thrust into a world that has been overrun by chemical stimuli and a disdain for authority. Yet, for his refusal to appeal his case and his

¹³ Schaller, Barry R. A Vision of American Law: Judging Law, Literature, and the Stories we Tell. Westport, Connecticut: Prager, 1997; 56-60.

insistence that his death sentence be carried out, Gary is also held up as a kind of hero, a man who put dignity (both his own and that of the system) ahead of his own life.

Richard Slotkin's Regeneration Through Violence also explores the theme of violence in American literature; he relates the frequent reappearance of this theme to the perpetuation of the mythology of frontier expansion. Slotkin argues that "the myth of regeneration through violence became the structuring metaphor of the American experience," because the nation was founded on a desire to forge new ground and new community by violently conquering the nearly untamable wilderness.¹⁴ Slotkin tracks the theme of violence through over two-hundred years of American letters. In light of Slotkin's study, it may be tempting to view The Executioner's Song as merely a continuation of an established literary trend. One would not be wholly mistaken to view the work within the larger American canon, but one should be mindful of its innovation in treating the common theme of violence. The violence Mailer explores in this book is not a natural outgrowth of the violence described in Slotkin's study. The violence Slotkin tracks through early American literature was performed as an act of conquest; Gilmore's violence does not conquer or even aim to conquer anything. It is this purposeless violence of the modern generation that Mailer wants to explore. It is a violence particular to American modernity. The problem with the mythology of violence of which Slotkin writes is that once the foundation of the myth on which it is based has played itself out, the culture of violence remains despite the absence of the factors that brought the culture about. The Executioner's Song's coverage of Gilmore's trial forces

¹⁴ Slotkin, Richard. Regeneration Through Violence: The Mythology of the American Frontier, 1600-1860. New York, NY: HarperCollins, 1996; 4-5

readers to consider one of the great problems of a modern America: what should we do with our aggressive temperaments once there is nothing left for it to conquer?

Another issue that Mailer raises in his documentation of the trial proceedings is the nature of the modern-day trial as a site for media frenzy. The Executioner's Song is, in some respects, as much a story about “getting the story” as it is a story about Gary Gilmore. The entire second half of the book (entitled “Eastern Voices”) focuses on the arrival of journalists from the East Coast who come to Utah to cover the Gary Gilmore trial. Mailer himself did not take part in this mad rush to the West, though his collaborator, Lawrence Schiller, was said to be the “ringmaster” of the media carnival that occurred outside the Provo City courthouse.¹⁵ Because Mailer did not actually participate in the frenzy but was able to gain access to information about the coverage, his commentary on the media here is particularly useful; he simultaneously plays the role of insider and outsider— inside enough to have valuable insight into the events, but outside enough to offer a more objective perspective. With such a perspective, Mailer is able to expose the ways in which the overbearing media presence has a powerful impact on the carrying out of justice in America.

Under Mailer's interpretation, the media interferes with the unbiased presentation of evidence in the court case. Mailer suggests that journalistic coverage of the trial influences not only the verdict but the sentencing as well— for, in creating a public discourse on the death penalty, the media inspires heated debate and public outcries of emotion that, in turn, effect the mood in the courtroom. Mailer, assuming the perspective of Gilmore's lawyers, writes, “If the case could be conducted with decorum, and the

¹⁵ [author unknown]. “Ringmaster at the Circus: L. Schiller's selling of the media rights to the G.M. Gilmore Execution.” *Newsweek* v. 89, Jan. 31, 1977; 77.

proceedings kept calm, the atmosphere might give a jury pause. It would be hard to sentence a man to death if no strong feelings were flowing.” (423) In his depiction of the story, Mailer implies that “the proceedings” are NOT “kept calm” because the intrusion of news media personnel creates an atmosphere of absolute chaos. Mailer seems to imply that efforts made by the original defense team to avoid the death sentence are thwarted, to a great extent, by the enormously “strong feelings” that the media inspire.

While public and literary discourse frequently make lawyers the focus of criticism and derision, Mailer’s coverage of the legal process offers a critique of the media instead. Algeo notes that “the lawyers in The Executioner’s Song are admirable in comparison to the media representatives.”¹⁶ Mailer makes a concerted effort to present all of the lawyers (both defense and prosecution) as complex and relatively good-hearted individuals who are each, in their own ways, trying to serve the cause of justice. Mailer’s documentation suggests that where the cause of justice is impeded, it is the media culture that is largely to blame.

In her dissertation Ann Algeo is concerned with the way in which Gilmore’s lawyers, because of the case’s high profile, must necessarily work towards fostering a certain public image. She writes that Mailer’s depiction of “...the attorneys...try[ing] to do their best for their client [while] still manag[ing] to maintain their professional images...emphasizes Mailer’s view that in the end, the outsider and the insider are equally trapped in the system.”¹⁷ Mailer’s treatment of the lawyers as vital characters in the story reveals his concern with their role in the carrying out of justice. He writes, “Esplin and Snyder had been offered a crack at distinguishing themselves in a big

¹⁶ Algeo, 139.

¹⁷ Ibid., 128.

case...a young lawyer could do service or injury to his reputation among colleagues.”

(373) Certainly it is significant that Gilmore’s lawyers must use the courtroom not only as an opportunity to justify and explain Gilmore’s behavior and lifestyle, but also as a stage for the demonstration of their professional skill. Mailer shows how the overwhelming presence of the media can distort the judicial process and transform the court from a space of professional judgment into one of public spectacle. In essence, Mailer’s work suggests that the large-scale involvement of the media in the judicial process removes the court’s geographical boundaries and places it within the limitless expanse of the public’s imagination.

Within this public realm, American society at large comes to serve as Gilmore’s courtroom— the journalists act as lawyers (offering evidence for either the defense or the prosecution) while American readers and TV viewers come to serve in place of a jury. If the media can be said to offer Gilmore an alternative trial, Mailer’s portrayal of the media as a foreign (“Eastern”) presence invading the West suggests an interesting relationship between the two coasts of the United States: it is as if the East (and the ‘establishment’ it represents) is conferring justice upon the comparatively lawless West. Mailer’s writings in general reveal a fascination with the American West as a land outside the province of traditional civilizing forces. His focus on the Eastern news teams that comes over to place judgment on Gilmore and the society that bred him signifies Mailer’s desire to use the setting of the trial to explore themes that extend far beyond Gilmore himself.

Indeed, under Mailer’s construction of events, Gary Gilmore’s trial comes to document not only the life of a man, but also the life of a nation. As Algeo perceptively notes, “What an examination of the trial process in this narrative reveals is that the

struggle in the courtroom to interpret events, explain behavior, and assess blame reflects the struggle going on in society at large.”¹⁸ The trial, she claims is reflective of the historical era from which it emerges and in documenting the trial Mailer’s writing reflects “the spirit of the 1970’s.”¹⁹ Algeo’s argument, while perceptive, is largely unsubstantiated. To understand this claim one must identify the said “struggles going on in society at large” and relate them to the activities described in the book. The “spirit” to which she refers (but neglects to define) was one of rootlessness and disorder, shaped largely by the impact of the war in Vietnam. Gilmore’s generation was profoundly effected by the disastrous participation of the United States in the Vietnam War. The consequential sense of dissolution with government and authority that pervaded the era no doubt had (at least *symbolically*) a profound impact on Gilmore’s relationship to the law. Mailer’s documentation of Gilmore’s experience under the penal system raises questions about the functional capacity of a court of law in an era where rule of law has been aggressively violated.

How exactly does “the struggle...to interpret events, explain behavior, and assess blame” in the courtroom “reflect the struggle going on in society at large”? During the trial, Gilmore’s murderous activities constitute the events that demand interpretation by both the jury and the reader. The question of greatest concern is “*why?*”, i.e. why did Gary Gilmore take the lives of these two men? Despite the acts of robbery involved, the motive of monetary reward is quickly dismissed (the amount of money gained in the murders was too small to be considered true motivation). How then, can we interpret Gilmore’s purposelessness violence? How can we explain his bizarre behavior when

¹⁸ *Ibid.*, 139.

¹⁹ *Ibid.*, 106.

medical experts fail to find him insane? And once we place blame for the murders on Gilmore, whom can we then blame for the creation of a man such as Gilmore has become? These are the very question that, in their broader sense, plagued America at large during the 1970's, an era where the proliferation of senseless violence baffled the country's leaders and citizenry. In a 1977 interview with *Esquire* magazine Lawrence Schiller (the journalist who bought the rights to Gilmore's story and subsequently encouraged Mailer to take on the project) remarked that "Gary Gilmore is merely a window that you look through to see the broader picture of life and death in the 1970's."²⁰ Mailer's writing opens that window and underscores how the violence that plagued a single American man was largely representative of the violence that confronted the nation as a whole.

While the legal setting of the trial can be said to provide Mailer's literature with a venue for the discussion of important social issues, Mailer's literature can, in turn, be seen as a venue for exploring issues involved in the legal setting. Mailer's portrayal of Gilmore's trial offers him the opportunity to explore the criminal justice system and publicize a critique of the legal rules that shape it. During Gary's sentencing, Mailer quotes the prosecuting attorney as saying, "The system has really failed with this man, just miserably failed." (447) Thus readers get the sense that even those who were committed to convicting Gilmore had their reservations about his personal responsibility in the crimes for which he was charged. Mailer repeatedly underscores that the failures of the system at large are primarily to blame for Gary's sociopathic behavior. His description of arguments offered in court further strengthens the perception that Gilmore, at his core, is a good man— a man who, but for the misfortunes encountered in childhood

²⁰ Friedman, Robert. "Hell's Agent." *Esquire*. October 1977, pg. 144.

and the subsequent years spent strangled by a system that was meant to correct him—would have been a likeable, upstanding citizen.

In his book, Schaller points out that one of the fundamental precepts of the American legal system is that the individual is meant to be “an equal opponent of the entire society, in the form of the state.” This precept, he continues, is embodied in the canon of American literature where the theme of the individual versus society reappears with great frequency.²¹ The Executioner’s Song is certainly one such example. Under Schaller’s understanding of the thematic importance of the individual in opposition to society, the courtroom becomes a site of confrontation, a sort of borderland where the autonomy of the individual comes into conflict with the needs of society. For Gary Gilmore the court serves as the locale for an official standoff between him and the society whose rules he seems incapable of obeying. In Gilmore’s case, the notion of the individual as an equal to the state is somewhat validated. Gary’s acute understanding of the inner-workings of the court system and his ability, at times, to manipulate it according to his own desires demonstrates his positioning as society’s equal. His discussion of early trial proceedings in his letters to Nicole illustrate Gilmore’s courtroom savvy. He writes, “All [my lawyers] want to do is leave themselves a good case for appeal. That’s the way they’re paid by the state to think...they are court appointed lawyers, they don’t have the resources to do the proper job. I’ll get no more than a token defense from them.” (403) His deep understanding of the judicial system and the forces working within it render him not merely a subject of the system’s rulings but rather, an active player in the proceedings. Gilmore exercises a considerable amount of control over his own defense. He deliberately withholds information his lawyers request from him so as to prevent them

²¹ Schaller, 13.

from assuming complete command over his defense. He denies his lawyers' request to call his girlfriend Nicole as a witness despite the benefit her testimony may have in serving as a character witness in his defense. And he hires and fires his lawyers with frequency when they do not accede to his demands to make no efforts towards an appeal. According to Mailer, Gilmore's original defense team (Esplin and Snyder) is extraordinarily frustrated by their client's assumption of power and view his behavior as disadvantageous to his cause. In Gilmore's case, it appears as though the closer he comes to being an equal to the state, the greater the risk is that he will accelerate his own downfall.

Schaller suggests that themes related to law reappear with great frequency in the nation's literature because law is "an unusually dominant force in American society [i.e. as opposed to the societies of other nations]." ²² The dominance of law within America as both a cultural and political force, Schaller argues, occurs because the U.S. lacks "other prevailing systems of moral or ethical values" and thus adherence to the law is more binding on the structure of American society than is adherence to personal morality. ²³ Schaller attributes the lack of a cohesive, national code of ethics to the diversity of races, ethnicities, and religious groups in the country; in the absence of a shared system of values, law becomes a binding force, a "source of unity" for an otherwise divided people. ²⁴

Under Schaller's understanding of the law, legal proceedings should have a single objective— to determine culpability and issue appropriate punishment. After all, it cannot be a "source of unity" if it does not represent a single, unified purpose. Yet the

²² Schaller, 1.

²³ Ibid.

²⁴ Ibid., 2

story of Gary Gilmore implicitly challenges this notion. A January 1977 article in *Time* magazine described Gilmore's trial as "a many-sided legal battle," indicating that his case was not a mere matter of determining facts and implementing a shared view of proper punishment.²⁵ The justice system is traditionally thought to be defined by binary oppositions— truth vs. lies, right vs. wrong, defense vs. prosecution, etc. But here, the traditional scheme is mangled; the defense and the prosecution are often fighting for the same thing (i.e. the carrying out of the death sentence) while seemingly unaffiliated third parties (e.g. the ACLU) are intruding in order to stay the execution. And there is a greater irony at work here as well, one to which Gilmore himself is well-attuned: because he is not wealthy enough to afford private lawyers, Gilmore is represented by lawyers whose salaries are paid by the state, i.e. the institution that provides his defense is the very same one that eventually sentences him to death.²⁶ Mailer's coverage of the multiple points of view involved in the saga reveals the way in which legal proceedings, despite their supposed basis in scientific reasoning are remarkably susceptible to emotion, opinion, and political games.

The trial scenes in The Executioner's Song are clearly about something much larger than the mere man who is on trial. They are about the American legal process, the values that underlie it, and the social problems that make it necessary. A story of a single man who captivated America at a distinct historical juncture is remodeled by Mailer into one that captures the essence of an era and the struggles of a nation at large. In an interview with *Esquire Magazine* in October 1977, Lawrence Schiller predicted that any book written on this story was "going to have a broader scope than just Gilmore. It has

²⁵ [author unknown]. "Death Watch in Salt Lake City." *Time*, January 24, 1977, pg 51.

²⁶ Algeo, 119-20.

to.”²⁷ Having formulated this expectation, Schaller was wise to finger Mailer as the most appropriate writer for the project. A man with extensive experience in both journalism and fiction and an incisive understanding of how to blend the two genres, Mailer stood poised as a figure who could take the Gilmore story and broaden its scope. In a review of The Executioner’s Song shortly after its publication, literary critic Joan Didion declared, “...no one but Mailer could have dared this book.”²⁸

The book was, indeed, a massive undertaking. But the Gilmore story itself, did not demand this. Written by any other author it might have been a simple biography, a mere retelling of Gilmore’s criminal activities and the resultant execution. But Mailer had loftier aims in mind and greater skill at his disposal. A review written shortly after the publication of the book asserted that, “...instead of asking us simply to behold Mr. Gilmore, Mr. Mailer suddenly poses a series of questions that far transcend the puniness of his protagonist.”²⁹ Mailer’s personal essays reveal his life-long desire to produce the “great American novel.” While he had written a number of popular novels prior to The Executioner’s Song, none of them quite achieved the stature for which he was hoping. When Lawrence Schiller asked him to take on the Gilmore project, Mailer must have seen this as an opportunity to write the book he had always wanted to write. It was not that Gilmore’s story in and of itself provided the plot-line for his great literary project; but it did provide the themes that Mailer could explore in order to write a novel that captured a certain essence of America and captivated a sizeable readership. He saw an opportunity to transform the product of Schiller’s journalism into the basis for a novel of extraordinary proportions. In Mailer’s own words: “The tension between journalistic

²⁷ Friedman, 144.

²⁸ Lennon, Michael. Critical Essays on Norman Mailer. Boston, Mass: G.K. Hall, 1986; 80

²⁹ Leghamann-Haupt, Christopher. “Books of the Times.” *New York Times*, September 24, 1979; C16.

aspects of the book and the novelistic aspects of the book I thought were ideal for getting at a certain twentieth-century mood.”³⁰

The mood to which he refers here is one which news becomes the stuff of entertainment— news and news *scandal* in particular. Gilmore’s crime and punishment was newsworthy and in his battle to carry out the death sentence there certainly was an element of the scandalous. The way that scandal played itself out in the courtroom was not only entertaining but also profoundly reflective of the era in which the events took place. The issues that were raised by the trial were indicative of the period during which the trial occurred. And Mailer’s documentation of the trial process underscored the relevant themes and made them visible for the reading public.

In his selective writing of the trial scenes and his periodic embellishments, Mailer offers his readers a glimpse of a court case that was slightly different from the one that actually took place in November 1976. The case he describes concerns a defendant much larger than Gilmore himself. In many ways, it places America on the defensive. And reading Gilmore in this context, one cannot help but feel more sympathy than one would generally like to feel for a convicted murder. By writing The Executioner’s Song, Mailer essentially gives Gilmore a new trail. So while he uses the courtroom as a literary tool he also uses literature as an alternative space of judgment.

Barry Schaller suggests that works of American literature are as crucial to our understanding of law and society as are the Declaration of Independence and the Constitution;³¹ The Executioner’s Song seems to support that suggestion. While the Declaration of Independence and the Constitution express the ideologies behind the

³⁰ Fishkin, Shelley Fisher. From Fact to Fiction: Journalism and Imaginative Writing in America. Baltimore, Maryland: Johns Hopkins, 1985; 209.

³¹ Schaller, 5.

system and the rules for carrying out those ideologies, books, such as The Executioner's Song offer vital commentary on how the values expressed in these foundational documents have been interpreted and articulated throughout time. Mailer's skillful writing (or one might argue, *rewriting*) of Gilmore's trial challenges the readers' understandings of justice and forces them to reevaluate the effectiveness of the American judicial system. It is a system that both shapes and *is shaped by* changes in the cultural norm. Just as the legal battles involved in the Gilmore saga provide rich material for Mailer's novel, so too does Mailer's novel provide rich material for thinking about the nature and future of the legal field. By blending fact and fiction in The Executioner's Song Mailer is able to use the courtroom as a literary device while simultaneously using his literature to contribute to legal thought.