Literary Executions
Depend upon it Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.

Samuel Johnson
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Chapter 1 first appeared, in a somewhat different form, as “The Anti-gallows Movement in Antebellum America,” in *REAL: Research in English and American Literature*, vol. 22, ed. Brook Thomas (Tübingen: Gunter Narr Verlag, 2006):
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Literary Executions
In hopes that these remarks may meet the attention of many who have hitherto considered it an innocent gratification to witness the death of a fellow being by hanging, they are respectfully offered to the public. They are the result of considerable reflection and careful observation during the scene of a late execution. It must be some uncommon and powerful motive which can impel multitudes to come from great distances, in a stormy season, and on a stormy day, avowedly for no other purpose than to witness such a scene.

The Record of Crimes in the United States (1834)

So begins “Observations on the Curiosity of Those Who Go to Witness Public Executions,” the 1833 preface to The Record of Crimes in the United States, a collection of biographical essays on America’s most notorious criminals that was one of Nathaniel Hawthorne’s favorite books.¹ Published anonymously but signed “Humanity,” the preface attempts to explain not only why people attend public executions but why some commit murder in the first place. For Humanity, both killing and watching lawful killing are interrelated phenomena; what compels people to do both stems from “the organ of destruction” in the human brain.² Linked to hunting and self-defense, this propensity for violence is a necessary evil. More pronounced in some individuals than in others, it is manifestly present at any execution scene, not only in the condemned but in the spectators attracted to the scene of lawful death.

Humanity’s phrenology-inspired “Observations,” written the same year Rhode Island became the second state to abolish the practice of public executions (Connecticut was the first in 1830), is one of hundreds of works that participated in a larger debate over “criminal jurisprudence”—what we would today call criminology—in the decades preceding the Civil War. Like much of that discourse,
these observations lent support to the campaign to abolish the death penalty: “I perhaps need not add,” Humanity later declares, as if it went without saying, “that I am opposed to all executions, for crime, and especially to those which are made public” (xi). Such a statement was far from radical for the period. Influential legislators and politicians, as well as prominent reformers, ministers, and writers, made such declarations in their published work. Once a cultural given, capital punishment thus became a major point of contention. For many, in fact, the practice was condemned rather than condoned by scripture, and it promoted rather than discouraged violent crime. Indeed, Humanity had precisely the latter argument in mind when he addressed his “Observations” to those who considered witnessing executions “an innocent gratification” and when he later objected to the death penalty “because,” he affirmed, “crime is increased by such spectacles” (v, xi).

If earlier opponents like Humanity in the 1830s implicated spectators in the inhumanity of the public execution, later ones around midcentury often stressed the individual responsibility that citizens bore each time an execution, although now largely removed from the public eye, was carried out. Walt Whitman drew from this argument in “Capital Punishment and Social Responsibility” (1842), one of his earliest anti-gallows writings published in New York’s The Sun. “In a democratic republican form of government like our own,” Whitman’s article began, “the people, all the people, all cliques, all classes, all professions, all religious sects are immediately and directly responsible for wrong, oppressive, inhuman, cruel and tyrannical laws.” Universalist minister George Washington Quinby developed such an argument at length in The Gallows, the Prison, and the Poor House (1856). Subtitled a Plea for Humanity, Quinby’s book provided an impassioned call for the abolition of capital punishment, a subject briefly touched upon in the preface to The Record of Crimes. In a chapter titled “Individual Responsibility” (and subtitled “Each Citizen’s Responsibility”), Quinby reminded readers that every so-called private execution was nonetheless a public act for which a given state’s citizens were collectively and individually responsible. He, in fact, began the chapter by foregrounding his own sense of responsibility as rationale for a principled stance against capital punishment: “Another reason why I labor for the abolishment of the gallows, is, that so long as men are executed in the State of which I am a citizen, I feel that as a citizen, I with others, am responsible for the act; a sort of particips criminis—‘accessory before the fact.’” Appropriating the language of criminal law, Quinby defined the death penalty as murder and charged himself and others as accessories to a crime they commit not “as individuals” but “as citizens of the State.” Citizens, he went on, commit-
ted these crimes not “with their own hands, but through the instrumentality of the hangman.” For his own part, Quinby concluded, “I desire not to participate in any such responsibility.”

Today, the United States stands alone as the only so-called First World nation that still imposes the death penalty. During the first half of the nineteenth century, however, America was a worldwide leader in the campaign to abolish capital punishment. A perennial topic in the fields of law and sociology, the death penalty has attracted the attention of historians in recent years. Important studies such as Louis P. Masur’s *Rites of Execution* (1989), Daniel A. Cohen’s *Pillars of Salt, Monuments of Grace* (1993), and Karen Halttunen’s *Murder Most Foul* (1998) have used capital crimes and punishment as touchstones for evaluating U.S. intellectual and cultural history from the colonial period to the Civil War, whereas Stuart Banner’s *The Death Penalty* (2002) provides the first comprehensive legal history of the subject. Two literary studies, Ann Algeo’s *The Courtroom as Forum* (1996) and David Guest’s *Sentenced to Death* (1998), look at the twentieth-century American novel (primarily after 1925) in conjunction with capital punishment, and Kristin Boudreau’s *The Spectacle of Death* (2006) explores literary and populist responses to well-known capital trials in U.S. history from the infamous 1833 “Haystack murder” (the subject of Catherine Williams’s 1833 “docudrama” *Fall River, an early nineteenth-century analogue to Capote’s and Mailer’s nonfiction novels, In Cold Blood and The Executioner’s Song*) to the 1998 execution of Karla Faye Tucker (whose story served as the basis for the 1996 film *Last Dance*, starring Sharon Stone). In addition to these studies in American literature, Mark Canuel’s *The Shadow of Death* (2006) examines British romanticism in light of capital punishment specifically and “the subject of punishment” more generally. Most recently, Paul Christian Jones has examined a range of antebellum writers in relation to the reformation of capital punishment in *Against the Gallows* (2011).

Building on this work, *Literary Executions* analyzes representations of responses to, and arguments for and against the death penalty in the United States over the long nineteenth century. It puts novels, short stories, poems, and creative nonfiction in dialogue with legislative reports, trial transcripts, and legal documents pertaining to criminal law, as well as newspaper and journal articles, treatises, and popular books (like *The Record of Crimes and The Gallows, the Prison, and the Poor House*) that participated in debates over capital punishment. The book focuses on several canonical figures—James Fenimore Cooper, Nathaniel Hawthorne, Lydia Maria Child, Walt Whitman, Herman Melville, and
Theodore Dreiser—generating new readings of their work in light of the controversy surrounding the punishment of death. It also gives close attention to a host of then-popular-but-now-forgotten writers—particularly John Neal, Slidell MacKenzie, William Gilmore Simms, Sylvester Judd, and George Lippard—whose work helped shape or was shaped by the influential anti-gallows movement. In this respect, I extend the project of David S. Reynolds and others in looking “beneath the American Renaissance” and bringing to light neglected or forgotten texts in order to read them alongside canonical or well-known works from the period.\textsuperscript{7} Whereas Reynolds, however, surveys such literature in terms of various reform movements and cultural trends of the day, I offer sustained readings of literary works in relation to a single reform movement that, until recently, has been largely neglected by literary critics and historians of American literature.\textsuperscript{8} Drawing from legal and extralegal discourse but focusing on imaginative literature, my study shows not only how novels, stories, poems, and creative non-fiction participated in debates over capital punishment but how this literature was often structured around the drama of the death penalty and the scene of execution.

I complement my analysis of how capital punishment influences the form and context of works of literature by giving sustained attention to the language and rhetorical form of important legal documents from the period. For example, I look closely at courtroom arguments and summations in famous capital cases delivered by Daniel Webster, Clarence Darrow, and others, as well as widely circulating legislative reports written by prominent lawyers and politicians, such as Edward Livingston, Robert Rantoul Jr., and John L. O’Sullivan. In this respect, I read law as literature as well as law in literature. If “Literary Executions” in my book’s title most obviously refers to dramatic renderings of or responses to the death penalty in imaginative literature, it also calls attention to the care with which many of the works I examine are themselves rhetorically executed—literary executions, if you will. Reading literature against law (and law against literature), my study raises larger questions about sovereign authority and responsibility—two interrelated concepts, I argue, that cut to the quick of any discussion concerning the (il)legitimacy of the death penalty in liberal democracies in which “the people” lawfully put to death a person. Still resonant today, these questions enlivened political debate and animated a surprising number of literary works over the long nineteenth century. An object of analysis in and of itself, capital punishment was also a crucial site or scene in larger cultural narratives about universal human rights as well as the civil rights and liberties of U.S. citizens. I argue, in
fact, that the death penalty for many of my writers dramatized the confrontation between the citizen-subject and sovereign authority in its starkest terms.

Formulating the conflict in these terms enables me to highlight what was for many a hypocrisy of American democracy: the execution of a citizen under a system of government in which citizens themselves are sovereign. In exploring this conflict, I give special attention to the subject position(s) occupied by what I call the “citizen-subject.” By compounding these terms—two discrete but by no means oppositional categories—I consider the individual before the law as both citizen, with certain protected civil rights and liberties, and subject, subjected not only to positive law and its ideological state apparatuses but to a psychological subject formation beyond an individual’s control. By the same token, I use citizen-subject to register the productive tension between the two terms in question, since for many of my writers the concept of U.S. citizenship was defined against an understanding of the European subject and traditional modes of political subjection under monarchical forms of government.

A prime example of this tension can be found in James Fenimore Cooper’s *The American Democrat* (1838), a political primer that presented a systematic review and defense of the republican institutions on which the United States was founded. In part a response to Whig critics and Cooper’s own fears of democracy run amok, *The American Democrat* begins by differentiating a true republic from false ones then existing in Europe which in practice were “aristocracies, limited monarchies,” or even outright “despotisms.” In chapter 2, titled “On Republicks,” Cooper identifies “direct representation” (15) as the fundamental basis for any republican form of rule, and in chapter 3, “On the Republick of the United States of America,” he finds that element only (albeit imperfectly) guiding the political structures of U.S. government. In a later chapter, “On the Duties of Publick or Political Station,” Cooper links “the private citizen” to the political processes carried out in his or her name, thus proclaiming that “American citizens are possessed of the highest political privileges that can fall to the lot of the body of any community; that of self-government” (84). Self-governance, made possible through direct representation in a true republic, is what “distinguishes the citizen from the subject” (85). Elaborating the differences between the two, Cooper continues: “The one rules, the other is ruled; one has a voice in framing the ordinances, and can be heard in his efforts to repeal them; the other has no choice but submission” (85). Such a definition of the citizen contra the subject raises important implications for any theory of popular sovereignty that necessarily underlies a republic—a term derived from the Latin, *res publica,*