

BOOK REVIEW: Arthur Koestler, Albert Camus 2008, *Reflecții asupra pedepsei cu moartea*, (Reflections over death penalty) translation by Ioana Ilie, Humanitas Publishing, Bucharest⁹

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The death penalty was an ample debated subject over time and unfortunately, the present failed to conclude its existence. We kill in the name of law and we raise our shoulders when we get wrong. The reflections over death penalty written by Arthur Koestler and Albert Camus, with a strictly reference to their countries, England and France, are meant to justify XVII, XVIII, XIX and XX centuries. But, because, we do use the capital punishment nowadays, it is extremely important to overlook at what these great moralists have said and to wonder how truly necessary is death penalty.

‘At about 5 o’clock, the prisoner was placed on a eight and a half foot squared scaffold. He was tied with thick ropes, trapped in iron hoops, which fixed his arms and legs. One of his hands was burnt in a heating dish filled with burning sulfur; then he was skinned with large red hot tongs, on arms, legs and chest. They shed molten resinous pitch and boiled oil on all wounds. These tortures, repeatedly, snatched terrible screams from him. Four strong horses, whipped by four aid executioner, pulled the ropes that were rubbing the bleeding and swelling wounds of the sufferer; the drawee of the ropes in all parts and the tugs lasted an hour. The limbs were elongated, but weren’t separated; thus, the perpetrators cut some muscles; the limbs were separated one by one. Damiens, who had lost two legs and an arm, was still breathing and he gave his last breath only when they got separated, from his bleeding torso, his last arm.’¹²

The author’s note

The interest for death penalty persists even during the years of study in the field of criminal justice, even if, being a Romanian student, I wasn’t connected to an applied phenomenon. This is because the death penalty was abolished in Romania in 1989, once communism fell. I do not agree with the death penalty as long as I

⁹ The present article is a translation of the Romanian article ‘Recenzie: Arthur Koestler, Albert Camus 2008, *Reflecții asupra pedepsei cu moartea*, trad. Ioana Ilie, editura Humanitas, București’, by Cecilia Popa, published in PROBATION junior, vol. IV, no. 1, 2012.

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¹² The description of Robert-Francois Damiens’ execution from 1757 by Voltaire in *Histoire du Parlement de Paris*, (The history of the Paris Parlement) cap. 67. (p. 176) Damiens was the valet of the King Ludovic XVI of France, and on 5 January 1757 he tried to assassinate the sovereign with a knife, and he managed only to hurt him. For the deed he was accused of regicide and his execution stayed in the history of the death penalty being one of the most horrific executions.

believe in human potential and in the power of rehabilitation and reintegration into society of those who have broken the law. The reason why I do empathize with the writings of the two great authors regarding the subject of the death penalty, deciding, thus, to review this book.

In 2008, Humanitas publishing launched these reflections over death penalty, written by these great moralists, Arthur Koestler and Albert Camus, appeared for the first time in one volume in 1957.

A short presentation¹³ during TED conferences convinced me that the volume needs to be reviewed. David R. Dow, a lawyer in the United State of America (Texas, the state with the highest death penalty rate in the US) who in the past 20 years had defended over 100 death row inmates, spoke about death penalty.

In looking for ways to reduce death penalty cases, David R. Dow realized that a surprising number of death row inmates had similar biographies. These similarities teach us how to prevent death penalty.

Reflections over death penalty

The book, given its scale, is divided into three sections, in addition to the written entries by Jean Bloch-Michel the 1979 and 1957 editions contains annexed documents. The first section captures the reflections on hanging by Arthur Koestler, the second presents the reflections over guillotine by Albert Camus, and the third section by Jean Bloch-Michel reflects over death penalty in France. The volume synthesizes the death penalty issue all over the world, using a chart with world death penalty study, containing data provided by Amnesty International – organization ‘engaged in a relentless struggle against the death penalty’ (p. 10).

The death penalty has always been subject to allegations for the following reasons: moral, economical, educational etc.

In 1976 a ‘reversal’ of the jurisprudence allows the reintroduction of death penalty into American law for 38 of the 50 States and for the Federal Government. Even today, in the United States executions take place in the presence of relatives of the victim, which prints a family revenge inspired by the Biblical formula ‘eye for an eye and tooth for a tooth’ (p. 8) or by the retaliation law, as it is known. At the same time, in many American States today most condemned to death were juveniles at the time of committing the crime.

Thanks to new techniques in criminal justice, in particular the identification of DNA, it’s been reached to prove the innocence of a significant number sentenced to death – 90 cases starting with 1973 – after they have spent many years on so called ‘death’s rows’. Pronouncing a death penalty makes a judicial error to be irreparable.

¹³ http://www.ted.com/talks/david_r_dow_lessons_from_death_row_inmates.html – accessed on 13th August 2012

Introductions to the editions from 1979 and 1957 – Jean Bloch-Michel

France

The death penalty has seen both ardent abolitionists and incurable supporters who expressed their beliefs through both campaigns and political and legal actions. In '80s, in France, there was kind of such actions to draw attention to the death penalty's abolition. In 1976 it was created a committee to study violence, crime and delinquency under the supervision of the Minister of Justice at that time, Alain Peyrefitte. A report was published called *Response to violence* that proposed the abolition of death penalty in the 103th recommendation. Surprisingly or not, the Minister of Justice has concluded that France was not prepared for abolition – 'I do not think this is the time for death penalty's abolition' (p. 15) because 'before proposing the death penalty's abolition to the Parliament, French people must be prepare, not at all challenged' (p. 16). Many of those who form public opinion believe that the death penalty 'protects them'.

Jean Bloch-Michel mentioned that 'the abolition of capital punishment will trigger, sooner or later, the abolition of life sentences'. (p. 17)

England

The author mentioned that democratic regimes are hiding bits of authoritarian regimes or germs of civil liberties' destruction. Arthur Koestler, who was under the threat of death sentence in 1937 for charges of espionage, starts a campaign to abolish the death penalty throughout England in 1955. Also, during this year he published the volume *Reflections on Hanging*.

There is at least one significant difference between the French law and British law, especially in the case of homicide in English law there were no mitigating circumstances. If French jury could formulate a sentence that went from prison with suspension to the death penalty, England Assize Court hadn't this possibility: 'The defendant was declared innocent and aloud to leave the court, being removed from prosecution or he were found guilty and had no way to avoid the death penalty.' (p. 21) There is however a third possibility, namely, the defendant was declared *guilty but insane*, being taken from the prison to the hospice. But because of the famous 'M'Naghten norms' (that were presenting conditions under which an individual was considered crazy) was almost impossible for a person guilty of murder to be declared insane. Practically it was seeking a simplification of justice – the jurors and judges had to decide between total innocence and total guilt, meaning life or death. Arthur Koestler in his book reacted especially against this simplification, to decide the fate of a highly complex human being through a simplicity barbaric justice.

The Law of the homicides from 1957, approved by the House of Lords, brought a transformation in criminal law by taming it. With other words, the death penalty falls into disuse in England. At that time, in France the situation was different, as Jean Bloch-Michel indicated – 'given the indifference of public opinion and power, it might say that it is a problem that interest no one. But the silence is

especially the authorities'. It will be enough to be torn that everyone to hear the ugly noise of executions.' (p. 23)

'...death penalty still exists only because we cover our eyes and ears to not know anything about it.' (pp. 23-24)

Reflections over Hanging – Arthur Koestler

'... death penalty is an issue that is not just about statistics or statistical average, but moral and feelings.' (p. 27)

Legacy of the past

The devil in the box

Executioners were considered such as movie stars of today, and hanging 'a sort of macabre kindness, such as an old family joke that only abolitionists and others humorless don't know appreciate it' (p. 30). Lord Chief Justice¹⁴ claimed, in the 1960s, that it was normal for the judge to have his head wrapped in black when pronouncing the condemnation to death because it was a sign of mourning. One of the executioners also claimed that maintaining the traditional aspects of the process was something sacred.

Arthur Koestler claimed that British people have a greater degree of discipline and respect for the law which is why the death penalty was a necessary evil in those times. But a series of investigations of the Parliamentary Commission and the Royal Commission in the 1930s and 1948s showed that irreplaceable faith of death penalty in Britain was just a superstition. 'Like any other superstition, it manifested as the devil in the box. Vainly the lid will be closed by the force of facts and statistics, the devil will jump again pushed the box spring of the unconscious and irrational force of traditional beliefs.' (p. 34)

*'Bloody Code'*¹⁵

The most important British jurist of the nineteenth century, Sir James Stephen, argued that that law was 'the clumsiest, careless and cruel law that ever disgraced a civilized country'. (p. 35) 'On the English territory, the hangings and places intended for lifting them were so frequent, that in the first published guidelines for the use of travelers were listed as landmarks.' (*ibidem*) Moreover, almost a century and a half, the days of execution were the equivalent of national holidays, but much more common. Some workers, such as those who were responsible for the delivery of goods, weren't operating on a given day if during that day was held any execution.

¹⁴ The Magistrate with the highest rank in England and Minister of Justice, public function shares with the Lord Chancellor and for some other duties with the Minister of the Interior (p. 30)

¹⁵ In the early nineteenth century in England, the criminal law was known as the 'Bloody Code'. The Code was unique in the world because it mandated the death penalty for around 220 or 230 offenses and crimes. (p. 34)

‘The scenes when public executions were taken place were more than a national shame: were outbursts of collective madness, whose distant echoes resound even today when at the prison gate it shows the ad of the execution. [...] The scenes carried out with those occasions gain unexpected aspects of spirits agitation and of violence. People were fighting between themselves. Thus, in 1807, 40.000 people had come to witness the execution of Holloway and Haggerty. The crowd was filled with such frenzy that when the show ended on the spot remained nearly 100 dead.’ (pp. 35-36)

Public executions in eighteenth and nineteenth centuries were true public spectacles where attended all social classes. The ladies of the aristocracy queue to visit the condemned cells. A good place was rented at exorbitant prices; people came from the uttermost parts of the country to witness a splendid hanging. And all this happened in the sensitive period of Romanticism.

In many cases, the executioners were drunks during execution and because they were doing fudge job the hanging needed to be resumed two or three times. ‘Sometimes, the victim was brought back to their senses by a notch to let blood shed through the heel, and then was hung again. In other cases, the executioner and his assistants had to cling the victim’s legs to increase weight. [...] but also are mentioned the cases of victims who have returned in senses on the dissection table.’ (p. 37)

Scenes, at least as horrible, took place also after executions where mothers brought their children to the scaffold in order to be healed by the touch of the executed ones. Also, pieces of bodies were used in purchasing medicines for toothache, for example.

The age of criminal liability in the 18th century was at the age 7. To be executed they should theoretically have 14 years, but if it was concluded that there is ‘a clear evidence of propensity to evil’ (p. 38) they were liable to death by hanging execution. Chief Justice claimed that the execution should been taking place because ‘the example given by such punishment will serve to stop other children to commit similar crimes’. (*ibidem*) A particular case reminds of the situation of two sentenced to death. One of them was illiterate and the other one was mentally retarded and ‘their education was reduced to what they had learned from gangster movies and cartoons appeared in newspapers’. (p. 39) But the movies and the comics with gangsters were ‘essentially unrelated to the trial’ said an official. (*ibidem*)

‘...an individual who has not attained 21 years is not considered important in the sense that his signature is valid on a contract or a will: instead, he is considered major for being executed by hanging.’ (p. 40)

Catherine the Great said that ‘people are guided by temperance, not by excessively harsh’ (p. 41), and her well known *Instructions*, intended to abolish the death penalty, revolutionized Russian criminal system.

The death by hanging was considered a panacea against all crimes within the meaning of the Bloody Code. Thus, England, considered one of the oldest

democracies in Europe, stand out not through violent effects of foreign invasion but by its own legislative invasion over citizens.

The sources of the 'Bloody Code'

There are three causes of this bloody code:

- The industrial revolution in England
- The British disgust towards authority
- The custom of English legal system – 'the precedent' which thus cancels any 'new idea'.

If during medieval, death penalty was provided for the offenses like murder, treason, voluntary arson and rape, reaching at the beginning of the eighteenth century the death penalty to be administered for a total of 50 offenses, the Bloody Code, as noted previous, foresee execution for approximately 230 offenses.

The industrial revolution meant that cities were growing fast, without administration and without security. The old order was disintegrating and social chaos erupted, as we now understand the Merton's anomie phenomenon. 'The sudden expansion of extreme poverty [...] coincided with unprecedented accumulation of wealth, which appeared as a challenge in addition to committing crimes. All foreign visitors agreed they never seen such as wealth and splendor as in the homes and shops of London – and in the same time so many crooks, thieves and robbers.' (p. 43) This revolution lasted a century and ended in 1829 when it was created the modern police.

But the English were afraid of a police that could limit their freedoms and consequently, they chose the executioner, the familiar figure at the expense of the new and foreign one. Here is an argument of the defenders of the death penalty: 'whether the execution by hanging is abolished, the police will need to be armed to fight against criminals who will not be afraid anymore.' (p. 44)

An example, that stands at the bottom of a law appearance is given by the following example: because a gang of thieves from 1775, who robbed a number of owners in Hampshire, customed to cover their faces to avoid being unmasked, the Parliament enacted a law by which any person armed or disguised' guilty of a crime was punishable with the death penalty. The thieves' gang disappeared quickly from Hampshire but the law remained in force a century, until 1873. The purpose of this law expanded, the judge being able to apply it at a wide range of situations, so that precedents created the basis for other convictions. From this singular case it reached to 350 cases in which the death penalty was applied. Therefore the Magistrates had unlimited power.

'Oracles'

'The English judicial system is not based on a code, but on the application of the so called the «Common Law», that is the custom or habit.' (p. 45) The Judges decisions are registered and acquire precedents value.

There's been also advantages of this custom, if you can refer it like this, by not adopting the Roman Law or the Canon Law, England did not accept torture as a

means to obtain confessions. In England to carve out was simply a more severe form of execution, not an investigation process. 'While in the countries from the continent the procedure was *inquisitorial*, in England the procedure was *accusatory*.' (p. 46)

But for these 'benefits' England paid dearly. 'The aversion to written law made the English law be left to «oracles», wig wearers, whose spirit wasn't otherwise than tributary to the past, through judging strictly on the basis of the precedent. The law was not only applied but also made by them.' (*ibidem*)

Any legislative attempt brought by the power opponents or by the third parties repealing the death penalty, at least for some crimes, was categorically rejected because, as Lord Chief said, 'we do not want to witness the change of laws in England' (p. 47). This was claimed referring to taming the law. Lord Chief also added that the death penalty law was voted 'in the most glorious period of our history and there is no reason to risk exposing to some experiences'. (*ibidem*) So, public execution by hanging for a 7 year child was not a reason.

The public revolt

Between 1808 and 1837 it was worn a decisive fight to repeal the Bloody Code. The reformist movement had always faced the argument that 'only the death penalty has an exemplary meaning'. (p. 48)

In 1811 it began the petitions which triggered a surprising evolution. On behalf of public policy interest it was required taming the sentences. In 1819 there were already over 12.000 petitions coming from different entities like: guildsmen in London, bankers, jury etc. Therefore, the Parliament created 'Select Committee' who prepared a report that included for the first time 'a statistic of crime and punishment in England and of amendments to the provisions of criminal law during the prior three centuries'. (p. 49) If the report surprised the view of various social backgrounds like: merchants, guards, priests and so on, the judges were not heard by the Committee members.

The Bloody Code perished being challenged by public opinion expressed by the refused of jurors to declare the guilt of the accused ones.

'Hanging is not enough'

Another famous English jurist, this time from the seventeenth century, remained associated with the 'Pious Butcher' by wheel and rope supporting it with biblical quotes. The heart and the entrails of a man needed to be torn from the still alive man body who's hanging from a rope. Any argument for removing cruelty during the executions was fined with the idea of destroying the Constitution ramparts. Another form of execution, such as burning at the stake, which did not included the barbarian carve out was considered to be worthless of an exemplary value. Burning at the stake was repealed in 1816, existing since 1296.

In 1948, it was seek to abolish the corporal punishment because, according to the Atkins Committee, the inquiry Committee on corporal punishment: 'We don't have the assurance that corporal punishment has a tremendous effect in terms of

their exemplary, as claimed by those in favor of its application for adult offenders.’ (p. 55) But it was maintained the simple whipping ‘administered by a chief guardian who knows the job’ because ‘by applying a humiliating punishment, the sentenced should be deprived of all hope of reformation after the commission of an offense.’ (*ibidem*)

The judges and the rights of the accused

‘Those who were accused by an offence that entailed death penalty were allowed to be defended by a lawyer just since 1836.’ (p. 56) The lawyer presence ‘would undermine the confidence that he can have in the absolute impartiality of the judge’ (*ibidem*), moreover, the presence of the counsel was quite unnecessary as long as the judge was considered ‘the best friend of the accused’. (*ibidem*)

The judges categorically opposed, for 70 years, for the creation of a Court of Criminal Appeal. Only in 1907 this institution was created, before it haven’t been any institution to which a death sentenced can be able to appeal, the only hope he had being the royal clemency.

The doctrine of maximum roughness

‘...when the social progress ahead the law, so the harsh of the punishments appears to public opinion as disproportionate, the jurors begin to falter before providing the guilty verdict.’ (p. 58)

Cesare Beccaria, head of judicial reform in the Age of Enlightenment, in Europe, argued that the purpose of punishment is to protect society, otherwise the legal barbarism becomes common barbarism: ‘the same ferocious spirit that drives the hand of the legislator leads the hand of parricides or assassins’. (p. 59)

Koestler argues that the ‘harshness breeds impunity’ and thus, to prevent crime the moderate punishments are more effective than the excessive ones because ‘are applied without delay and without hesitation’. (*ibidem*) Moreover, people are scared to give excessive punishment to their peers amid inhuman laws.

Koestler accuses the monopoly of judges in England, nowhere else present, comparing them with the alchemists in the Middle Age who ‘lived withdrawn in a mysterious universe composed of secret formulas, with their spirit back to the past, refractory to external changes, wanting to know nothing but their inaccessible world.’ (p. 60)

Social changes lead to two alternatives: harshing laws or taming them. And England chose a bloody Code. Judges have reached ‘victims of their own professional deformation’ (p. 61) because they knew too little about human nature and about the killer profile, so that their behaviors have become inhuman.

‘From psychiatrically point of view the horrors of the Bloody Code, by hanging children, the orgies occasioned by public executions were nothing but symptoms of a disease known as hysterical anxiety.’ (*ibidem*)

By thieves and cops

This 'fourth power', as magistrates were called, had a considerable support from representatives of the Church.

The order forces were those who joined the opponents of abolition of death penalty and this from a simple reasoning: they are the ones who are at the forefront, those facing risks on a not fair wage so that, in the presence of taming the law, their task would be, theoretically, more difficult. They believe in the death penalty because of its exemplary value and repression.

During a survey held in 1856, whose purpose was to determine whether executions should be public, a retired police inspector argued that 'I don't think it can be found a means so, on the one hand, detainees to be executed in secret and on the other hand, the public to be, generally, satisfied.' (p. 64)

The Committee recommended that executions should not be public, but they continued to be performed for another 12 years. The Committee's decision considered that, statistically speaking, the assumption according to which the abolition would register an increase in armed criminals was not true. The number of carrying illegal weapons was not correlated with the number of executions. In Belgium, where the death penalty was abolished armed criminals were fewer than in France, where capital punishment was in force.

Interesting is also the fact that the decision to be part of one side or the other depends on the position you hold. 'Before he became Interior Minister, Sir Samuel Hoare, fought for abolition; as soon as he took receipt the portfolio he opposed it. Soon after he had ended the portfolio he returned to be an opponent of the death penalty, treating the subject in a very moving book.' (p. 69) Therefore once you are in a public position the responsibility becomes extremely overwhelming, so you become refractory to external influences.

Reflections on hanging a pig or What is criminal responsibility?

'In the Middle Age – and, in some isolated cases, until the nineteenth century – the animals guilty of killing a human being were judged according to the law, defended by a lawyer, sometimes paid, most often sentenced to be hanged, burned or buried alive.' (p. 70)

As outrageous as it is disgusting to cherish such a picture of an animal, mindless, killed for allegedly breaking the law. But, intellectually speaking, why are we 'more outraged by the execution of an animal than a human being?' (p. 71) But, as long as mental deficiency and lack of moral sense were not sufficient to annul criminal liability and the possibility to plead 'guilty but insane' was natural to hear an argument as: 'your dog knew the nature of his action and knew that hurts performing it.' (p. 72) Moreover, the law contained 'such definition of dementia that no one is really insane enough to be able to fit in it.' (p. 73) Thus, a mentally ill person who was brought before the court should have been admitted to a psychiatric institution or placed under surveillance and this according to the law

those times. And all this canceled if the offense was punishable with death penalty.

The precedent without the precedent or the 'M'Naghten normes'

'...dementia, as a defense, is an exception in the processes related to offenses other than murder, while in the case of murder, it becomes almost a rule.' This is because 'murder is closer to dementia than any other crime.' (p. 77)

M'Naghten was an insane man, a Protestant from Northern Ireland who believed that the Pope, the Jesuits Order and the Conservative Party leader wanted to kill him. Reason why he bought a gun and went to kill the Conservative Party leader. He did not shoot him, instead he shot his secretary. 8 doctors were heard at his trial and all 8 said that 'given the fixed idea M'Naghten had no control over his acts'. (p. 79) Based on this decision, M'Naghten was sent to the hospice, but because many discussions surrounded this event, the 'oracles' claimed that such as insane man as M'Naghten needed to be hanged in order to prevent others crazy people to do similar acts. Therefore, the House of Lords drew up a questionnaire on criminal liability of those with mental disabilities, questionnaire that had been sent to 15 judges who presided over the courts of the kingdom and not to the medical staff or not also to the medical staff. The judges' decision was contrary to the decision of the doctors and it was suggested hanging. However, more important is that this decision of those judges became known as 'M'Naghten Normes' and this precedent was used for 113 years.

M'Naghten normes were created when the word *psychiatric* didn't exist and when it 'could not be imagined that man has a biological past, «animal» instincts and impulses that [...] are still part of his natural heritage and, at the same time, a partial explanation and justification of his acts. In addition, no one could imagine that education, childhood and social environment are largely responsible for the formation of the character, including the character of criminals.' (pp. 81-82)

Yet, all depends on the judge's humanity or its lack: 'the judge should refer strictly to the terms of the law, then to «expand» the meaning of words used by the law to the point where the individual, who does not have the exercise of the judicial language, gets confused by the judge, who distortionate and deformate the poor words until you get to wonder if you need to dispute such a language, whose obvious benefit is that it can mean whatever the judge wants to say.' (p. 85) However, 'to oppose a judge means, sometimes, to put at stake the life of a man.' (p. 86)

Koestler argued that the judges were the obstacle in reforming these normes. It didn't matter nor the experience of other countries, as 'the foreigners are different'. (p. 87) Koestler also claimed that 'the best advocate for the abolition of the death penalty is the argument used by proponents themselves and their mentality.' (p. 90)

Free will and determinism or A philosophy of hanging

A cause can determine two or more effects. And the human behavior, one to which is assigned a specific effect of a cause, is determined by heredity and social environment. But the individual is free to choose. But this choice is an illusion because the decision taken is determined by the past.

‘From the scientific point of view, a man's actions are as strictly determined by genes that have been transmitted with hereditary patrimony, by the functioning of the endocrine glands or his liver, by education and by his past experiences which shapes his habits, thoughts, beliefs and philosophy, as it is determined the functioning of a clock by its springs, by its wheels and the connections between them, or as it is determined in a «thinking machine» by circuits, amplifiers, rezistențe, rules of operation and by the «storage of information» that was provided and they were fed with.’ (p. 93)

Therefore, education is the foundation for a set of custom and type-reactions, thus, due to the cognitive dissonance, the individual to be able to choose socially acceptable solution. But if the free choice is a pure illusion we create a paradox: ‘«The criminal responsibility» would be an absurdity, because the word «responsibility» implies the possibility of a free elections durin an action, while free will is an illusion and all our actions are pre-determined. «I could not help myself» would be enough to say in defense of anyone, because none of us can help being what he is.’ (p. 94)

But we must agree that is ‘up to us», at least to some extent, to choose our activity for the next five minutes’ because ‘our whole experience with reality, any impetus and incentive to exercise our will rests on the feeling that decisions really occur from a time to another, not at all that this experience is based solely on the conduct of a monotone chain in which each link was forged in ancient times’. (p. 95) Especially that the ‘man can not live without the illusion that he is the master of his destiny’. (p. 97) But science shows that man, when it comes to choosing how to act ‘is free like a robot’. (*ibidem*)

But whether we speak of free will or determinism, we need law, because ‘if the behavior of radioactive atoms would depend on no law, the world would not be univers, but chaos’. (p. 99)

In fact, ‘the dilemma of freedom-predestination is the essence of the human condition’. (p. 103)

Lord Goddard and the Sermon on the Mountain or the Result to a philosophy of Hanging

‘...every sentence has three goals: the punishment, the protection of society through its exemplary value and the offender’s rehabilitation.’ (p. 105)

Exemplary value means that capital punishment fear causes the action. But the free will applies rather to the other two objectives: the punishment and rehabilitating the offender.

The death penalty involves a bit of revenge, but if this is the mobile it should be punished also the ‘the alcoholic father, the mother who raise him like that [...] Because everyone – [...] teachers, employers and the entire society – were accomplices of the murderer, assisting him or inciting him to act as he acted.’ (p. 106)

Religions and metaphysical systems have to face the presence of the evil and it wasn’t found yet an answer to: ‘Why did God give man freedom to choose evil?’ (p. 107)

The humanization of the criminal justice system through the courts for children, parole or through the presence of open prisons was due to the understanding of crime social origins. Unfortunately, only death penalty makes impossible any situation of compromise.

If for any offense, other than murder, the judge has a wide range from which to choose the punishment, for murder he can decide only in two ways: innocent or the death penalty. But the ‘great defect of the law on murder is that it provides a unique punishment for an offense for which liability can be extremely difficult.’ (p. 112)

It was considered that the law providing the death penalty can not be changed because it would have denied the principle of offender’s liability and it would needed to introduce the notions of ‘uncontrollably impulse’ and ‘diminished liability’.

‘Being impossible to predict when a man acted freely – and must die – and when under compulsion – which means that it has the right to live, the only solution is to bring the law regarding the death penalty at the same level with the others, by removing the sentence that states it, forasmuch only this sentence is predetermined, non gradually and leaves only the possibility of choice between all or nothing.’ (p. 113) But precisely this stiffness provides value for capital punishment and hands all anti-progressive forces of the society.

Unfortunately, ‘jurors can not reduce the length of the rope, as you can not strangle or break the neck with suspension’. (p. 115)

Reflections over guillotine – Albert Camus

‘When the supreme justice causes only vomiting to the honest man, whom supposed to defend, it’s hard to sustain that maintaining it – as it should be – to bring a plus of peace and order in the city. On the contrary, it appears clear that it is no less outrageous than murder, and the new assassination, not only that it doesn’t delete insulting society, but it defiles it again.’ (pp. 119-120)

A social problem becomes a serious illness because no one dares to talk about it openly: the death penalty is ‘a necessary evil that legitimizes murder – as it is necessary – but which no one speaks about – because it’s wrong’. (p. 120)

And ‘when imagination sleeps, words are emptied of meaning: deaf people take note about conviction of a man without giving him attention. But if the machine

will be shown to them, if they touch the machine's wood and iron, if they will hear the noise of the falling head, the public imagination, suddenly awakened from sleep, will repudiate both that type of expression and the death penalty.' (p. 121)

Albert Camus did not believe that man is a social animal, but was convinced that man can not live outside society, so establishing a punishment was due to the society responsibility, but on a rational and efficient scale. As Arthur Koestler, Alber Camus believed that capital punishment does nothing more than 'dirty the society', the more so as its supporters could not justify it rationally.

The last public execution took place in France in 1939, the authorities taking in a wrong way the advertising on behalf of these public executions, pointing fingers and accusing the press by wanting 'to delight sadistic instincts among its readers'. (p. 124) But 'what kind of exemplary force can have killing stealthily at night in the courtyard of a prison?' (*ibidem*) Camus asked himself. A representative of the people argued in 1791, during the National Assembly, 'for mastering the people it takes a frightening spectacle' (*ibidem*). Moreover, proponents of the death penalty had as singular argument the 'exemplary value' of capital punishments. How is this exemplary value manifested if the execution takes place behind the scenes?

What crime is more heinous than the murder committed for public delight, which remains imperfect for the show? – 'The blood leaves the vessels in the severed carotid pace then it clots. Muscles contract, their fibrillation is intoxicating; the intestine curls and the heart motion is irregular, incomplete, fascinating. The mouth grips at some points in a terrifying grimace. It is true that on this decapitated head, with immobile eyes, with dilated pupils; they don't watch, fortunately, but they are not troubled either, they have no cadaver opalescence and they don't move; their transparency is alive, but their fixity is of death. All these can take minutes, even hours to individuals without disabilities: death is not immediate...' (p. 126) 'It is said that Charlotte Cordaz's face blushed by the palm that the executioner gave after beheading.' (*ibidem*) The sociologist Tarde said that 'it is better to kill without torture than to torture without killing.' (p. 129)

With masking these executions, the state confirms that it 'does not really believe in the exemplary value of the punishment' (p. 128) and that these executions are taking place due to tradition, due to routine. 'A law is applied mot-a-mot, and our inmates die in a parrot way on behalf of a theory that executioners do not believe in.' (p. 129)

Incidentally, this radical change of executions it may have been a postponement of the abolition of the death penalty: 'If you remove the atrocity of this show, if you perform executions inside prisons, you will quell public outrage thumping that appeared in the recent years and you will strengthen the death penalty.'; '... either you kill publicly or admit that you do not feel authorized to kill.' (*ibidem*)

Camus also puts us consider a paradox revolving around the death penalty: the society is at least naive to believe in the exemplary power of executions, as long as it does not restrain the committing crimes.

And the law will always be less complex than the nature itself. The exemplary value that capital punishment supporters proclaim is so childish, as it is statistically and factually unfounded: Koestler wrote that in England, ‘while pickpockets were executed, others thieves prove their mastery among crowd surrounding the scaffold on which their fellow was hung’; ‘from 250 hanged individuals, 170 previously witnessed personally one or two executions’; ‘In 1886, from 167 sentenced to death who had passed through the prison in Bristol, 164 witnessed at least one execution.’ (p. 131)

Any form of passion, such as love, honor revenge, fear of death defeat pain and this is because if we want ‘that capital punishment to be truly a scarecrow, human nature should be different, more exactly, as stable and calm as the law itself’. (p. 132)

Any criminal will declare his innocence before a trial and will be afraid of death only after trial. Camus says that for the law to scare it should not allow any mitigating circumstance since the beginning, but this would create a paradox. The survival instinct is essential as is the death instinct. Therefore, the desire to kill sometimes coincides with the desire to die: ‘the preservation instinct is replaced, in varying proportions, by the instinct of destruction’. ‘In a sense you kill in order to die yourself.’ (p. 133)

The statistics of the 20th century show that there is no connection between the death penalty and crime, the only connection is the law. Basically ‘the convict is cut in half not so much for the crime he did, but based on all the crimes that could be committed and were not, that will be committed and will not be.’ (p. 135)

‘If it's important to frequently demonstrate the power to the people, the executions must be frequent; but that means that also frequent must be the crimes, which will prove that the death penalty does not impress the extent that it should do, hence it is both useless and necessary.’ (*ibidem*) Being useless but necessary, the state hides it. Therefore, death penalty is a law that knows crime that itself triggers it, in order to turn on the machinery of death, but it will ignore the one that prevents it.

As Koestler, Camus also concludes that death penalty is revenge because ‘the punishment that sanction without preventing is called, indeed, revenge.’ (p. 138)

Even if we agree that through the assassin's death it is compensated the killing of his victim, the different between death penalty and taking a life is similar with the difference between a prison and a concentration camp. Certainly, capital punishment is a premeditated death and, as we all know, as an example, premeditated murder is considered more serious than a violence crime.

The individual sentenced to death is basically tormented, oscillates between hope and aninalic despair torments because ‘degrading and devastating fear, which is a subject for the convict for months or even years, is a frightening punishment than death, that the victim was not subjected’. (p. 140)

‘There is not a big deal to know when you're going to die, a sentenced to death from Fresnes said. Maddening and frightening is not knowing if you'll live’. (p. 141) The consciousness remains in a state of inert material, consciousness that

becomes his main enemy. 'I have no courage even for that' (p. 143) witness a young convict who was asked to write the family a few moments before execution. If waiting for the death penalty is a destruction of self, we can talk about two deaths, the first being by far the worst. And this fundamental injustice hurts also the convict relatives.

Camus tells how a great surgeon confessed that 'he not inform not even the faithful ones that were touched by an incurable cancer. He considered that shock could kill their faith'. (p. 144)

'After all, when he kills, any assassin assumes the risk of the most dreadful of deaths, but those who kill the assassin risk nothing, outside of a preferment.' (p. 143)

Referring again to the law of retaliation, the crime is committed by an individual totally guilty against a totally innocent person, the victim. But society, that assumes representing the victim, can not proclaim it's innocent. It is responsible for the crime that represses. Briefly, 'every society has the criminals it deserves'. (pp. 145-146)

Camus believed that overcrowded houses and the presence of inns are already serious nurseries of crime. Even if a colonel in 1952 stated that 'the places where hard labor for life was performed – which became the heaviest penalty – will come to be true nurseries of crime'. (p.146) So, the French society already had the outbreaks of crime. In the '50s it was estimated that the percentage of violent crimes due to alcohol was due 60. 'A survey conducted in 1951 in the center of Fresnes prison yard, among common law prisoners, showed that 29% of them are chronic alcoholics and 24% subjects came from alcoholic families. Finally, 95% of those who martyr children are alcoholics.' (pp. 146-147)

According to Camus, the early 1880s are marked by increased crime and by the legalization of opened kiosks without prior authorization for boozes. 'The state that resembles alcohol should not be surprised that collects crime.' (p. 147)

If we start from the premise that an alcoholic who commits a crime may not be considered to be given full responsibility, neither the allocated sanction may not be absolute, as is the death penalty.

Every society has its own brutes. But the problem they raise does not find solution in death penalty. Sure, this punishment removes the problem for a short time, but capital punishment applies not only for these brutes and thus, Camus asks him self: 'Can we be sure that none of the executed ones is recoverable? Can we swear that none of them is innocent? (p. 149) 'In 1860, the jurist d'Olivecroix applied the probabilities calculation to the judicial error. The conclusion was that an innocent is condemned at every 257 cases.' (p. 150)

'Guilt is not established with greater rigor in a test tube, even if gradually. A second tube will show the opposite, and the personal equation will preserve its importance in this deadly maths.' And 'today as yesterday persists the risk of error'. (p. 152)

Camus says that Assize Court processes are influenced by unpredictable: defendant's history, his attitude, his diction, evaluating incidents during the hearing, etc. And all these influence the final decision of the jury. In 1832 justice reform in France has allocated jurors the possibility to grant undetermined extenuating circumstances, therefore it matters the way the jury assesses these circumstances. 'Cases where the death penalty should exist are no longer accurately provided by law, but by the jury which [...] every time makes an assessment based on the trial.' (p. 153)

The Greeks believed that a crime not punished contaminates the fortress. Camus believes that also convicting an innocent man and punishing too severe a crime sacrileges the society in an equal measure.

Referring to a classic French law, with a reference on the classification of the death penalty, it is stated that 'human justice does not aspire at all to provide such proportionate assignments. Why? Because it knows its invalidity'. Camus asks him self why justice, in these circumstances, does not show modesty and leaves 'not enough space for maneuver around sentences, therefore for a possible mistake to could be repaired?'. (p. 154) Because 'there are no righteous people, only hearts more or less unjust', and 'without absolute innocence there is no supreme judge'. (p. 157)

As Camus considered, the supreme penalty was in fact always a religious sanction, and this religious spectrum allowed correction in the afterlife. But capital punishment only as a social construct, as today, does not allow this.

Remaining in the religion sphere, it is known that Emperor Julian used to deny providing to Christians administrative tasks, because they refused to pronounce capital convictions, having as belief that God forbade killing. So, even religious background does not agree with this penalty. Later Christians accepted the death penalty only because through the immortality of the soul the rehabilitation could take place.

As mentioned a little earlier, in social terms, the death penalty does nothing but eliminate a problem temporarily. Death penalty however 'crushes the united human community against death and granted itself an absolute value, since claiming to hold absolute power'. (p. 161)

'Proclaiming that an individual must absolutely be removed from society, because he is absolutely wrong, equivalates by saing that society is absolutely good' (p. 162), which is literally false. Moreover, 'the blood, like alcohol, eventually gets addictive, like the friendly wine', and 'bloody laws draw bloody manners'. (p. 163)

Albert Camus' reflections are completed by underlining the fact that societies will not know peace as long as there won't keep death outside the law.

'Let Cain not killed, but let exists for him, in the eyes of people, a sign of reprobation – this is the lesson we must learn from the Old Testament.' (p. 167)

Death penalty in Franța – Jean Bloch-Michel

The writer mentions that many thinkers of the time admitted that individual's life is only a conditional gift received from the state (Rousseau), or that the death penalty was considered to be part of the nature of things, sprang by the good and wrong (Montesque), or that the society has the right to take the life of an individual, as long as this life is the most important asset (Diderot).

In the years following the French Revolution, Criminal Code reduced to 32 the number of offenses punishable by death, according to the 115 ordinance from 1670. The death penalty continued to run in four procedures: by decapitation, by hanging, pulled on the wheel and by burning on the pyre.

Just as Camus stated, executions by hanging were not taking place without the presence of horrifying scenes: 'the executioner, keeping his hands on the arm of the gallows, gets on the tied hands of the convicted, and helping himself by blowing with the knees into the convicted stomach and bumping him, [...] made the sentenced spinning around four times'. (p. 177) Usually, the body remained hanged one day then it was thrown to the landfill.

Regarding execution by pulling on the wheel for certain types of offenses such as murder, grand theft, premeditated murder, burglary, rape of young girls; the torment was composed of two parts: I. a lying cross was sited on the scaffold and the convict, naked under his shirt, was lying on it with his head placed on a stone and his limbs bounded with ropes on the cross. The executioner struck him with a rod of iron, having a square section, on each bond about two times, and at the end he struck him again two or three times in the stomach. In total the sentenced used to receive about 11 hits. II. The body once fixed in a nested form, where the heels are brought to the neck, was carried on a chariot wheel to be exposed to the public.

In cases of parricidal (killing of parents), uxoricid (killing of the wife) and the murder of priests, after the execution using the wheel, the convicted persons were burned either alive or dead. Bush with pulling wheel combination has been used since 1750. Combining the pyle with pulling on the wheel had been used starting with 1750. Was also used the combination of the hanging with the pyle, but in this case, a corpse was burned. The practice of such combinations did not want to 'aggravate first procedure, but rather relieving the second one. By burning a man who had been pulled on the wheel was relieved the ordeal to pass through the fire, considered worst than the one associated with the wheel.' (p. 179)

Sometimes, by a Court secret disposal, not communicated to the victim, called *retendum in mente curiae*, the convicted was strangled with a rope during the torture. Pulling the pyre was used until 1791.

By throwing corpses at the landfills or abandoned them along the road, and therefore not burying them according to the Christian faith, it was followed to destroy the afterlife. 'So it was about total exclusion, not only from human society.' (p. 180)

On October 9, 1789 Dr. Guillotin brought into attention of the National Assembly 'the decree regarding provisional reforming of the criminal procedure' (*ibidem*) by filling with 6 new articles.

- The first article required that all those who commit the same type of crime to be punished in the same way, regardless of social status of the guilty.
- The second article required to be use the same procedure in executing by decapitation, regardless of the offense.
- Article 3 required non-stigmatizing of the criminal family, as long as the crime is committed in personal name.
- Article 4 was a continuation of the previous article by punishing those who blame the relatives of those who commit crimes.
- Article 5 was stated that the condemned property to not confiscated.
- And Article 6 required that the family can bury the bodies of those executed without any reference to the type of death in the register.

On January 21, 1790 the decree was voted, after it have been discussed once in December 1, 1789, but without being mentioned the unique form of punishment adopted. Also on December 1, 1789 Guillotin proposed for the first time the guillotine as a tool for execution, a machine not invented at that time.

The draft of the Criminal Code, including these changes was brought to debate on 30 May 1791. On 1st of June 1791, the Assembly decides to maintain the death penalty by cutting head, but controversies arise about the shortcomings of this form of execution and of the susceptibility to transform execution into a torture. The death penalty is decided along with penalties like: forced labor, detention in a maximum security prison, simple detention, pillory, civic degradation, wrist amputation, deportation and marking with red iron.

In early 1792 an executioner from Paris sent a memorandum to the Minister of Justice in which he stated: 'For the execution to finish according to the law, beyond the absence of any opposition from the convict, it is also needed for the executioner to be highly skilled, the convicted totally unfaltering, issues without which it will not reach in the situation that an execution with the sword to end up because of dangerous scenes'. (p. 186)

On 20 March 1792 the Assembly adopted the use of guillotine as an unique execution process to death throughout the kingdom, and on April 25, 1792 was has held the first public execution by guillotine. Public executions ceased in 1939.

In 1810 the Napoleon Criminal Code reintroduces torture during imprisonment, but reduces the number of crimes punishable by death from 32 to 27. The 28, 1832 law puts outside the text the following punishments: wrist amputation, marking by the red iron and exposure at the pillory.

For a short period, from April 12, 1866, was used the measure by which the convicted were dressed in force shirts, wowever, after a citizen experienced this torture and wrote his memoirs of a prisoner, the state quited using this method.

If in 1793 the law stipulated the presence of one executioner in every department of France, acting in addition to criminal courts, the order of October 7, 1832

reduced the number of executioners. A decision from 9 March 1849 'established there will be only one chief executioner in every each Court of Appeal jurisdiction and a deputy executioner into the departments under the jurisdiction of the Court'. (p. 193) And the Decree from 25 November 1870 reduced the existence of executioners to just an executioner and five deputies executioners throughout France.

If Napoleon's Code provided back then only 27 offences punishable with death, following the revision of the code in 1832 the number of such crimes falls to 16, remaining just until 1848 when, by amending Article 5 of the Constitution, the death penalty is abolished in France based on political reasons. Only according to the military justice Code the death penalty still applied for the crime: desertion.

Unfortunately, however, on the eve of war, on 29 July 1939 through a Decree it was reinstated the death penalty 'for attempts against external safety of the State, even in time of peace, and even if they were committed by civilians'. (p. 195) This decree led to the adoption of other laws providing death penalty for other crimes too.

The following phrase reminds us very clear about Merton's anomy theory: 'The period before Liberation and the on that followed it, were marked by a sharp and pronounced increase of death penalty'. (p. 197)

Immediately after the war, 'the exceptional tribunals, courts and the High Court for processes of collaboration went into operation, which issued numerous condemnations', 2.640 death sentences of which 768 resulted in executions. This has led also to an increased application of the death penalty for the crimes of common law.

Jean Bloch-Michel points out that the number of offenses should not be correlated only with the increase in population number or with that of alcoholism extension, but also with the increase number of suicides in France, which from 2.084 cases in 1830 reached to about 10.000 in the early twentieth century.

Amid those mentioned it can be concluded that the tendency to abolish the death penalty occurs in the conditions of political, economic and social development from a country.

Just as torture was seen as the maximum limit on the punishment scale, but it got lower to death penalty, likewise, the scale will be lowered again, considering that life hard labor is the limit. 'Those who make this proposal know that in a few years, against life penalty will be vigorous protests like it happens today against death penalty and would require lowering the maximum limit again.' (p. 201)

Although these reflections are correlated to XVII, XVIII, XIX, XX centuries, they are still the legacy on which's fund we execute in the twenty-first century.

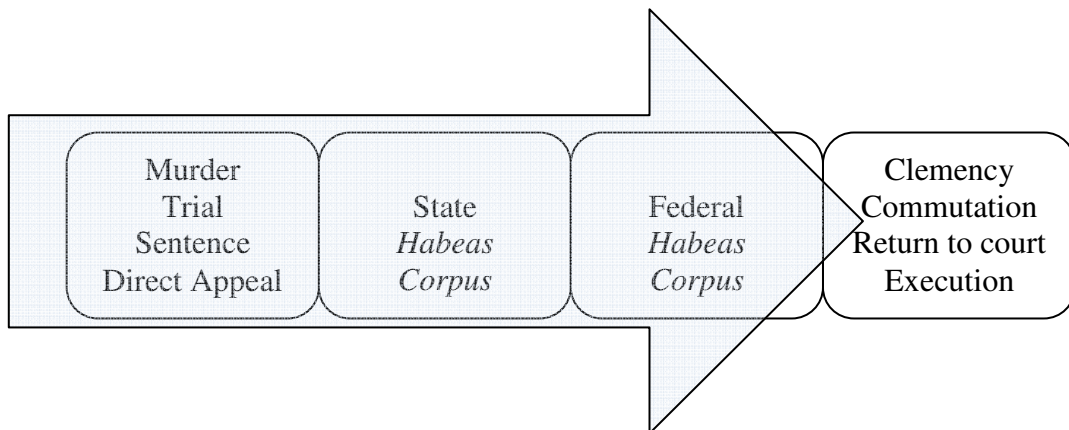
The author's note 2

David R. Dow¹⁶ speaks about 4 chapters that unfold a death penalty case:

- chapter I – the murder of an innocent human being, and it' followed by a trial where the murderer is convicted and sent to death row, and that death sentence is ultimately upheld by the state appellate court;
- chapter II – consists of a complicated legal proceeding known as a state *habeas corpus* appeal [A writ (court order) that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody and decide whether to order the prisoner's release]¹⁷;
- chapter III – is an even more complicated legal proceeding known as a federal *habeas corpus* proceeding;
- chapter IV – is one where a variety of things can happen, the lawyers might file a clemency petition, they might initiate even more complex litigation, or they might not do anything at all, but this fourth chapter always ends with an execution.

Figure 1

4 chapters in the development of a death penalty case – David R. Dow

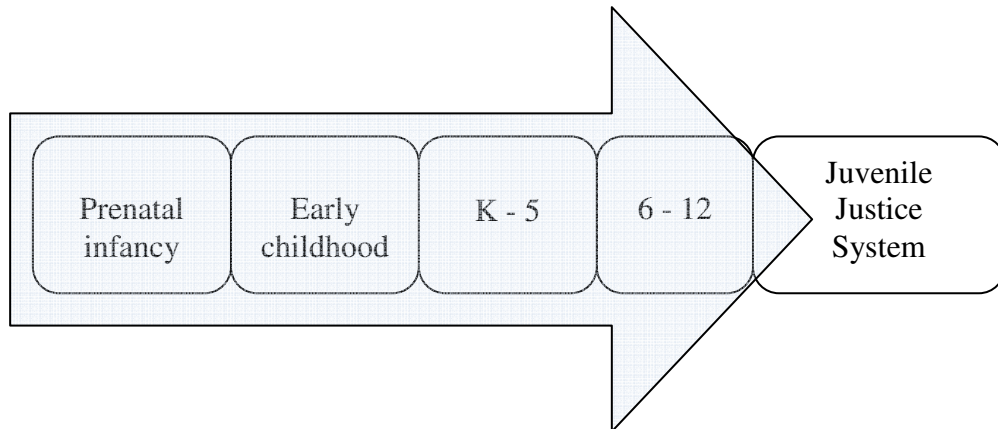


But his attention focus on other 5 chapters that precede those 4 mentioned, which can prevent killing an innocent human being and the casuistry of death penalty. David R. Dow tell us that during all these 5 chapters when: his mother was pregnant with him, in his early childhood years, when he was in elementary school, when he was in middle school and then high school, and when he was in the juvenile justice system – during each of these five chapters there were a wide variety of things that society could have done.

¹⁶ http://www.ted.com/talks/david_r_dow_lessons_from_death_row_inmates.html – accessed on 13th August 2012

¹⁷ <http://legal-dictionary.thefreedictionary.com/habeas+corpus> – accessed on 13th August 2012

Figure 2
5 chapters prior to death penalty – David R. Dow



David R. Dow mentioned a series of actions that could be implemented, some of them being already tested successfully in other states/countries. But all these programmes/interventions have in common the financial aspect, they cost money. Similar with marketing strategies, where you do have the possibility paying before or paying later, in criminal justice system we are paying later. David R. Dow says that 'for every 15.000 dollars that we spend intervening in the lives of economically and otherwise disadvantaged kids in those earlier chapters, we save 80.000 dollars in crime-related costs down the road'. Even if we don't find moral resorts for these primary actions, there is an economical reasoning that it should put us all on thoughts.