

AGAINST THE DEATH PENALTY

The Argument of Giuseppe Pelli

Jeff Hood

AGAINST THE DEATH PENALTY

THE ARGUMENT OF
GIUSEPPE PELLI

Florence, 1760-1761

Recreated and Modernized by

JEFF HOOD

THE ABOLITION CLASSICS

V. 3

The texts that built the case against the death penalty

COMPLICIT PRESS

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Giuseppe Pelli, unfinished dissertation on the death penalty, drafted c. 1760–1761. Manuscript held by the Archivio di Stato di Firenze, Archivio Pelli Bencivenni. First edited by Philippe Audegean in 2014 under the title *Contro la pena di morte*. Pelli died in 1808 and the work is in the public domain.

This book is an original composition. It recreates the argument of Pelli's treatise in new words. No text has been translated from the Italian, and no text has been reproduced or adapted from any modern edition or translation of the manuscript.

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FOREWORD

Three years before Beccaria published the essay that would transform European criminal law, a Florentine nobleman in his early thirties sat down in his study and began writing a treatise against the death penalty. His name was Giuseppe Pelli. The treatise — drafted around 1760–1761 — he never finished and never published. It surfaced more than two centuries later, among family papers held by the Archivio di Stato di Firenze. When scholars finally examined it, they found a complete abolitionist argument built on foundations quite different from Beccaria's, and in some respects reaching further.

Pelli wrote when almost no one was writing this way. The death penalty was the unquestioned background condition of European justice. Courts imposed it for murder, for theft, for heresy, for sodomy, for a hundred lesser crimes. The question of whether the state had the right to execute had almost never been raised directly, because the answer was assumed. Pelli raised it. He organized his argument as a series of proofs, each one attacking a different foundation on which the claimed right to execute might rest. Natural law: the right cannot come from there. Social contract: nor from there. Necessity: nor there. Deterrence: the evidence does not support it. Proportionality: death breaks the principle entirely. Each proof stands on its own, and together they amount to a systematic dismantling of every justification that has ever been offered for state killing.

I came to Pelli through the work of scholars who found the manuscript and understood what they had. He

FOREWORD

was writing within a Catholic intellectual framework that Beccaria largely set aside, and that framework produces some of his most interesting arguments. Original sin, for Pelli, is not a reason to punish more severely. It is a reason to punish with less confidence. If human beings are morally damaged by nature, so are judges, legislators, and juries. The same fallen humanity that produces crime also produces legal systems. You cannot invoke the wickedness of the criminal as justification for the power of the court without applying the same standard to the court itself. Pelli applies it. The result is one of the most intellectually honest treatments of the problem in the entire abolitionist tradition.

I have spent years in rooms where the state's power over life and death is not a philosophical abstraction. I have sat with people who were scheduled to die by a process that functions, as Pelli saw, on assumptions that have never been adequately examined. The assumption that the state has this right. The assumption that the right, even if it exists, is being exercised correctly in this case. The assumption that the error, if there is one, is small enough to accept. Pelli attacks all three. He does it from a desk in Florence in 1761, and he does it with a rigor and a moral seriousness that I find, reading him across two and a half centuries, genuinely moving.

FOREWORD

Pelli's treatise survives, unfinished, and has been edited in Italian and translated into English. This book is neither of those things. What follows is my own recreation of his argument — his order of proofs, his premises, the objections he answers and the conclusions he reaches — worked out in my own words and at a length he never reached, and then brought into conversation with capital punishment in the United States. The argument is Pelli's. Every sentence is mine. Readers who want Pelli's own words in English should go to Peter Garnsey's translation, which is listed at the back of this book. What I have tried to give them here is something a translation cannot: the argument at full stretch, addressed to a country that still kills people.

Rev. Dr. Jeff Hood
North Little Rock, Arkansas
2026

A NOTE ON THIS EDITION

The Author

Giuseppe Pelli Bencivenni was born in Florence in 1729. He was the last of a patrician family. He studied law at Pisa but never took the doctorate. In 1758 he entered the service of the Grand Duchy of Tuscany under its Habsburg-Lorraine rulers and spent the rest of his working life inside that administration. In 1775 he was made director of the Uffizi. He held the post for eighteen years. It was the work he loved. He died in Florence in 1808.

He was also a man who wrote everything down. The *Efemeridi* run to eighty volumes. He began them in 1759 and kept them daily until he died. Almost fifty years of one man recording what he read, who he saw, what he thought, what Florence was doing around him. Nobody has left a fuller record of that world. He drafted his case against the death penalty in the same years he started the diary. He was in his early thirties. He was reading the natural-law writers hard. The argument came out of that reading.

Then it disappeared for two centuries. The Archivio di Stato di Firenze bought two large collections of Pelli family papers in 1968 and 1969. The draft sat in them, unread, until the end of the 1980s. Renato Pasta found it, identified it, brought it to scholarship in 1990. Philippe Audegean edited it and published it in Padua in 2014. That is when the record changed. The first systematic case against execution in the modern West

had been written. Nobody knew it for two hundred and thirty years.

The Manuscript and Its Significance

He wrote it around 1760 and 1761. He built it as a series of numbered proofs. That was his legal training showing. It was also the scholastic habit that still governed how Italians argued in the middle of the eighteenth century. The surviving draft carries six of them. The first holds that death cannot serve the purposes punishment exists to serve, which he says include neither satisfaction owed to divine justice nor vengeance — vengeance he calls useless, inhumane and vile. The second argues from self-preservation and the terms on which men left the state of nature. The third denies that killing is useful. The fourth observes that the worst-governed states execute the most. The fifth notes that peoples we call barbaric fined where we kill. The sixth takes up the objection that the practice is universal and therefore justified. Then he stopped. The last work on the draft dates to 1761. He never finished it. He never published it. We do not know why. What we know is that he had the whole argument and he put it in a drawer.

That fact changes the history. A complete case for abolition existed before Beccaria published *On Crimes and Punishments* in 1764. It was sitting in manuscript in Florence while Europe still believed the question had not been asked. This takes nothing from Beccaria. Beccaria published. Beccaria reached an enormous audience. Beccaria changed the criminal law of half the world. That is an achievement Pelli never came near. But the argument did not wait for Beccaria to be

thinkable. It was already thought. What 1764 supplied was nerve.

This volume runs those six proofs out to eleven. Where Pelli compresses two moves into one chapter I have given each its own. Where he states a premise and leaves the reader to draw the conclusion I have drawn it. One change of order should be declared: his sixth proof, that universal practice proves nothing, comes last in the manuscript as a reply to an anticipated objection. I have put it first, because a modern reader will not go further until it is answered. And one theme deserves more weight than the manuscript's structure gives it. Pelli was a staunch Catholic. Original sin runs through everything he wrote here. It is his explanation for why men commit crimes and for why the law that punishes them is built the way it is. That doctrine, turned against the executioner, is the most distinctive thing he did. This book treats it as such.

This Recreation

This volume is a recreation, not an edition. It reproduces no sentence of Pelli's and no sentence of any translator's. What it reproduces is the argument: the sequence of the proofs, the premises each one rests on, the objections each one takes up, the conclusions each one reaches. Those are Pelli's, and the scholarship on the manuscript documents them. The words are mine. Where his position is recorded in detail I have followed it closely. Where he left an outline — he abandoned the manuscript unfinished — I have developed it along the lines his method requires, drawing on the natural-law, social-contract and theological traditions he was

working within. Nothing in this book should be quoted as Pelli's words. It is written in the first person because an argument of this kind has to be made by someone, not reported about; the voice is a device for carrying the reasoning, not a claim to the historical record.

The second part of this volume, "A Modern Engagement," is my own commentary on Pelli's argument, bringing each of his major proofs into conversation with the contemporary American context. Pelli was writing about European criminal justice in 1761. The arguments he made apply with equal or greater force to the United States in 2026, and I have tried to show why.

The Series

The Abolition Classics is a series from Complicit Press, publishing the texts that built the case against the death penalty in contemporary language. Pelli belongs in this series because his treatise is the earliest systematic argument for abolition in the Western tradition — earlier than Beccaria, and in several respects more complete. He wrote from within the Catholic intellectual tradition, which gives his argument a range and texture that the secular Enlightenment tradition could not provide. And he wrote with the passion of someone who understood, at a deep level, that this was not an academic question. The people who were being executed were real.

“Custom is not proof. Antiquity is not proof. Universal practice is not proof.”

PELLI'S ARGUMENT AGAINST THE DEATH PENALTY

What follows is not a translation and not a text. It is Pelli's argument — his proofs, in his order, resting on his premises — composed in new words. The first person belongs to the argument rather than to a document. No sentence here should be quoted as Pelli's.

INTRODUCTION

Why Examine an Institution Everyone Accepts?

I write on a question that concerns not the details of law but its very foundation: whether the state may justly take the life of a citizen. This question has been treated lightly by legislators who assume that severity is synonymous with justice. Yet no principle of government is more in need of examination than the one that authorizes the destruction of human life in the name of law. If punishment is to be rational, it must be founded on necessity and not passion; on utility and not vengeance; on reason and not inherited custom. I therefore examine whether the death penalty can be justified under any coherent system of civil justice. I conclude that it cannot.

Let me begin with an observation that ought to unsettle anyone who thinks carefully about it. Almost every nation executes criminals. Almost every legal code authorizes death as a penalty. Almost every jurist who has written on criminal law assumes without argument that the practice is legitimate. The death penalty is so universal, so ancient, so deeply embedded in the institutions of every civilization, that it seems to require no justification. It is simply there, like the seasons or the tides, a feature of the legal landscape that one might describe and refine and administer but need not interrogate.

I propose to interrogate it. Not because I am certain of the answer before I begin, but because the question is

serious enough to demand the attempt. The life or death of human beings is at stake. If this penalty is wrong — if the state genuinely lacks the right it claims — then every execution is not an act of justice but an act of injustice dressed in judicial costume. If this penalty is right, then defenders of it should be able to demonstrate the right's source, its scope, its limits, and its necessity. Either way, the question cannot be avoided by those who are serious about justice.

I anticipate the objection that will be raised immediately against the whole enterprise. It will be said that the universal acceptance of a practice proves its legitimacy. All nations execute. All legal codes authorize death. Surely this universal consent must carry some weight. Surely the wisdom of centuries, accumulated across cultures and continents and legal traditions, amounts to something.

It does not amount to what is claimed. Universal practice is not proof of rightness. Slavery was universal. Torture was universal. The execution of heretics was universal. The burning of witches was universal. Trial by ordeal was universal. Each of these practices was backed by the authority of centuries, the consensus of learned men, the approval of religious institutions, and the acceptance of entire civilizations. Each of them was wrong. We know now that they were wrong because people were willing to ask questions that their contemporaries considered impertinent or dangerous or simply unnecessary.

Custom is not proof. Antiquity is not proof. Universal practice is not proof. What establishes the rightness of a practice is the quality of the reasons that can be offered for it — reasons drawn from natural law, from the

INTRODUCTION

purposes of civil society, from the requirements of justice, from the evidence of consequences. If such reasons exist for the death penalty, I want to find them. If they do not, I want to say so clearly. Either outcome is preferable to the comfortable assumption that no examination is needed.

The burden of proof in this examination falls upon the defenders of execution, not upon its critics. The death penalty is not a minor administrative matter. It is the deliberate killing of a human being by the authority of the state. No act more serious lies within the power of government. No act is more irreversible. No act demands more complete justification. Those who would defend it must demonstrate where the right to execute comes from, why it is necessary rather than merely convenient, why lesser punishments are genuinely insufficient, and why society benefits from it in ways that could not be achieved otherwise. If they cannot establish these points with rigor, the penalty collapses. An undemonstrated right is no right at all. A power claimed without foundation is tyranny, not justice. The following proofs examine each of the possible foundations, and find each of them wanting.

PROOF I

Human Beings Enter Society to Preserve Life

Every account of the origin of civil government, from the most ancient to the most recent, begins with the same observation: human beings in the state of nature are insecure. Life without political organization is, as Hobbes put it with characteristic bluntness, solitary, poor, nasty, brutish, and short. Whether one accepts Hobbes's particular account of the state of nature, the basic point is broadly agreed upon: government exists because human beings decided that living without it was worse than living with it. They traded some of their natural freedom for the security that organized society provides.

What security did they seek? The accounts vary in their details, but the core is consistent. Human beings want safety. They want peace. They want stable conditions under which they can work, build families, pursue the goods that make life worth living. They want, above all, protection from violent death. The fear of being killed is the most fundamental of all the fears that drive people out of the state of nature and into civil society. It is not the only fear, but it is the foundational one. All the other goods that government provides — security of property, freedom from arbitrary violence, stability of expectation — presuppose that the persons who enjoy them remain alive. Life is the precondition of every other interest that civil society protects.

This is not a marginal observation. It is the central claim of the natural-law tradition from Grotius and Pufendorf through Locke and beyond: government exists because human beings wish to preserve their lives, and preservation of life is the primary purpose of the political order. The state is created to protect life. Its authority derives from and is limited by that purpose.

The argument for the death penalty must therefore answer a challenge that goes to the root of political legitimacy. A power created to preserve life cannot easily claim a right to destroy it. If the state exists to protect citizens from violent death, on what basis does it claim the authority to inflict violent death? The question is not merely rhetorical. It demands a serious answer. And serious answers have been attempted: perhaps the state preserves life on the whole by killing some; perhaps the killing is necessary for protection; perhaps the condemned person has forfeited their claim to the state's protection. These answers will be examined in turn.

But the starting point must be established clearly: preservation of life is the primary purpose of civil society. Any claimed power to destroy life must justify itself in relation to that purpose. The burden of justification falls heavily on those who would derive the power to kill from an institution created to prevent killing. If they cannot bear that burden, the power does not exist. It is a usurpation, not a legitimate authority.

The defenders of execution sometimes respond that the state preserves life overall by executing murderers: it kills some to protect others. This is a consequentialist argument for the death penalty — the deterrence argument — and it will be addressed in detail later. For

now, it is enough to note that the argument assumes rather than demonstrates the conclusion it purports to support. If the state truly preserved life overall through execution, the consequentialist case might have some force. But does it? The evidence, examined carefully, does not support the claim. And the argument from consequences, even if valid, would not establish a right to execute in any particular case where the consequentialist calculation went wrong.

The most fundamental issue at this stage of the argument is the relationship between the purpose of government and its powers. A government created to protect life may possess the power to take life in some narrow circumstances — killing in defense of a citizen under immediate threat, for instance. These are edge cases, and they depend on necessity in a specific and demanding sense. What they cannot establish is a general power to execute as a regular instrument of criminal justice. The gap between the emergency case and the institutional practice is too wide to bridge by analogy. Necessity, if it justifies anything, justifies only what is genuinely necessary, only when it is necessary, and only when no other means will serve. Capital punishment as an institution fails this test.

PROOF II

No One Can Transfer a Right He Does Not Possess

The social contract, as understood by the natural-law tradition, is an agreement among individuals to form a political community and to delegate certain powers to a common authority. The exact nature of this agreement is contested in its details, but one principle is broadly accepted: the authority of government cannot exceed the authority that the individuals who constitute it could themselves legitimately exercise. A government is an agent of the people who created it. Its powers are derived from theirs. It cannot possess, by delegation, what none of them individually possesses.

This principle has a direct application to the death penalty. Does any individual, in the state of nature, possess an unlimited right over his own life? Does any individual possess a right to authorize another to kill him at will? The answer must be no. Even within the natural-law tradition, which generally recognizes broad natural rights, the right to life is treated as foundational and non-transferable. It is the condition of all other rights. To surrender it unconditionally would be to surrender everything. No rational account of the natural condition describes human beings as possessing an unlimited right to dispose of their own lives, and therefore no rational account can describe them as transferring such a right to the political authority they create.

The argument proceeds as follows. Suppose that a thousand individuals come together to form a political community. Each of them has certain natural rights, including the right to defend themselves from violence. This right of self-defense is one of the powers they delegate to the government they create: the government is authorized to defend them from violence on their collective behalf. But the right of self-defense, even in the natural condition, is a limited right. It extends as far as is necessary to repel the threat and no further. It does not include the right to kill at will, to destroy life as a matter of policy, or to take life when no threat requires it.

Now consider what is being claimed for the death penalty. The state claims the right to kill a person who has already been captured, confined, and rendered harmless. This person is not currently threatening anyone. The threat, if there was one, has been neutralized by confinement. The state is not acting in self-defense. It is acting in something else — revenge, perhaps, or policy, or the exercise of a claimed sovereign right. But where did this claimed right come from? Not from the individuals who constituted the state, because none of them possessed it. A million people cannot collectively grant what none of them individually possesses. The social contract cannot create powers that did not previously exist in the contracting parties. If no individual has the right to kill a neutralized, captured person simply because that person committed a crime, the state does not acquire that right by becoming the collective agent of all individuals.

This argument has a theological dimension that is important to Pelli and that distinguishes his treatise from Beccaria's. Life, in the Christian tradition, is a gift from God. It belongs to God in a sense that makes it unavailable for unconditional transfer or disposal. Human beings do not own their lives in the full sense that would be required for them to transfer absolute authority over those lives to any political institution. The state may regulate human activity. It may restrict freedom. It may impose burdens and obligations. But it cannot claim authority over what belongs to God and was only lent, as it were, to the person who lives it.

The consequence of this argument for the theory of sovereignty is significant. Sovereignty has limits. Not every power that a king or a legislature claims is a power that legitimately exists. The power to execute may be widely exercised, widely assumed, and never formally challenged in any court of law. But the absence of a formal challenge does not establish the power's legitimacy. What establishes legitimacy is derivation from a valid source of authority. And the valid sources — nature, contract, necessity — do not, as this series of proofs establishes, provide such derivation. Life marks one of the limits of sovereignty. A government that kills citizens when killing is not genuinely necessary is a government that has exceeded its authority. It is exercising a power it was never given. And power exercised without authorization is the definition of tyranny.

PROOF III

Original Sin Explains Crime but Does Not Justify Execution

This proof is distinctively Pelli's. It turns a standard theological defense of punishment against capital punishment in particular, and it is one of the most intellectually interesting moves in the entire treatise. The standard defense of criminal punishment, in Catholic theology, invokes the doctrine of original sin: human beings are prone to vice, passion, and wickedness because they are fallen. This condition requires that civil authority impose penalties on wrongdoing, both to protect the innocent from the wicked and to provide a corrective incentive for those who would otherwise yield to their lower impulses. Without punishment, fallen humanity would descend into chaos. The need for criminal law, on this account, is rooted in the reality of original sin.

Pelli accepts this argument as far as it goes. Yes, crime exists because human beings are morally damaged. Yes, the tendency toward passion, anger, greed, weakness, and violence is part of the condition in which every human person finds himself. Yes, civil society requires mechanisms to restrain these tendencies and address their consequences. Punishment is one such mechanism, and it exists because human nature requires it. So far, the theologian and the jurist are in agreement.

But Pelli presses a question that the standard account does not address. Who administers the punishment? Not angels. Not God himself. Human beings. Fallen, imperfect, passion-prone, morally damaged human beings. The same original sin that explains why criminals commit crimes also explains the legislators who draft criminal codes, the judges who preside over trials, the jurors who decide guilt, and the executioners who carry out the sentence. Every institution involved in the administration of punishment is constituted by fallen human beings exercising fallible human judgment in conditions of incomplete information and imperfect motivation.

This should produce, in any person who takes original sin seriously, a significant degree of epistemic humility about the legal system. Courts make mistakes. Judges are biased. Witnesses lie and misremember. Prosecutors have interests that are not identical with the interests of justice. Defense attorneys are sometimes incompetent. Juries are susceptible to prejudice and passion and the desire to give a community what it demands. All of this is not a criticism of any particular institution. It is a description of what fallen human nature produces when it is organized into legal systems.

Given this, what follows? Surely not that legal systems should be abolished — they are necessary, as the standard account correctly argues, precisely because of human fallenness. What follows is that legal systems should be designed to minimize the damage that their inevitable errors produce. And this means designing them so that errors can be corrected. Imprisonment — even long, severe imprisonment — is

correctable. An innocent person unjustly imprisoned can, in principle, be released, compensated, and restored to society. Death is not correctable. An innocent person unjustly executed is simply dead. No act of the legal system can undo that.

The doctrine of original sin therefore cuts against capital punishment rather than supporting it. A legal system that recognizes its own fallenness should be reluctant to exercise irreversible power. It should structure itself so that the inevitable errors of fallen human judgment can be identified and corrected. The death penalty is inconsistent with this requirement. It introduces a category of irrevocable action into a system that, by its nature, cannot be free of error. The theological case for criminal punishment is also, properly understood, a theological case against the death penalty.

There is a further dimension to this argument that Pelli develops in the context of the judging function specifically. The judge who exercises the power of life and death over another person is assuming a degree of moral authority that fallen human nature cannot support. To sentence someone to death with complete confidence — to be certain enough of guilt, certain enough of the absence of mitigating circumstances, certain enough that no later evidence will emerge, certain enough of the justice of the sentence — is to claim a degree of certainty that the judge, as a fallen human being, simply does not possess. The appropriate response to this condition is not the claim of certainty but the design of systems that do not require it: systems where the worst consequences of error can be reversed.

PROOF IV

Public Authority Is Not Divine Authority

A recurrent move in the defense of capital punishment is the invocation of divine authority. God ordered the execution of criminals in the Mosaic law. God declared, to Noah and his descendants, that whoever sheds human blood shall have his blood shed by man. Scripture records the execution of criminals and apostates without adverse comment. The church has historically acquiesced in capital punishment, and some theologians have explicitly endorsed it. The argument is that capital punishment is authorized, at some level, by the divine will.

Pelli engages this argument with care and seriousness. He does not dismiss the theological tradition; he works within it. And working within it, he identifies a distinction that the standard theological defense of execution tends to collapse: the distinction between divine authority and human authority.

God may judge souls. God may take life — indeed, God takes every life, since death is universal, and whatever its proximate causes its ultimate cause is in the divine will. God possesses perfect knowledge of every circumstance, every intention, every degree of guilt, every mitigating factor. God's judgment is unconditioned by ignorance, prejudice, the limits of evidence, or the fallibility of testimony. If God's judgment condemns, the condemnation is perfect and

complete. None of these conditions holds for human justice.

A human judge never knows everything. A human court never sees the entire truth of a case. A human ruler is not omniscient, not free of passion and interest, not in a position to make the kind of perfectly calibrated judgment that the gravity of a capital sentence would require. The argument from divine authority for human capital punishment therefore rests on an analogy that fails at its most important point. God's authority to take life derives from God's nature as creator, omniscient, perfectly just. Human authority does not share these attributes. To claim, therefore, that the state executes on God's behalf, as the instrument of divine justice, requires demonstrating that the state has access to the kind of knowledge and judgment that would make such a delegation appropriate. It does not have that access.

Pelli is also attentive to the way that scriptural arguments for capital punishment misread the texts they invoke. The Noahic covenant — whoever sheds the blood of man, by man shall his blood be shed — is, on careful reading, a prophecy or a description of what tends to happen, not a command for what must happen. The Mosaic law prescribed death for many offenses, but the Mosaic law also prescribed practices — from dietary regulations to temple sacrifice to slavery to the subordination of women — that Christian civilization had long since set aside as belonging to a particular moment in the history of divine revelation rather than as permanent moral requirements. To selectively invoke Mosaic capital punishment while setting aside the rest of the Mosaic code is not biblical theology; it is convenience dressed as exegesis.

PROOF IV

The conclusion of this proof is that human justice must remain modest because human knowledge remains incomplete. The state cannot claim the moral certainty required to destroy a human life irrevocably. Its judgments are always provisional, always potentially mistaken, always in need of the possibility of correction. A system of criminal justice that takes its own limitations seriously will, for this reason, avoid the one penalty that forecloses the possibility of correction permanently.

PROOF V

Utility Does Not Require Death

The utilitarian argument for capital punishment is the most popular in ordinary political discourse and the most amenable to empirical examination. It runs as follows: the state must protect its citizens from criminals. Execution permanently removes the criminal from society and thereby prevents any future harm that person might cause. The state is therefore justified in executing criminals because execution serves the goal of public safety.

Pelli accepts the general principle. The state has an obligation to protect citizens from harm. Criminal penalties are one of the instruments through which it discharges that obligation. But he presses a question that the utilitarian argument does not adequately address: Is execution necessary for the protection of citizens, or merely sufficient for it?

The difference is crucial. Necessity is a demanding standard. It requires not merely that a given measure would achieve the desired result, but that no less drastic measure would achieve the same result. A doctor is not justified in amputating a limb merely because amputation would cure the disease if the disease could be cured by lesser means. A government is not justified in executing criminals merely because execution would protect society if confinement would protect it equally well.

Pelli argues that confinement does protect society equally well. An imprisoned person cannot commit further crimes against the general public. A person subjected to forced labor under conditions of confinement cannot terrorize communities. A person held for life in a secure institution is, from the perspective of public safety, as effectively neutralized as a person who has been executed — and is so through a means that does not require killing and that preserves the possibility of correction if the original judgment proves to have been wrong.

The defender of execution must therefore show not merely that death works for the purpose of public safety, but that no lesser measure works. This burden is not satisfied by asserting that imprisonment might fail in some cases — that prisoners might escape, or that they might harm guards or fellow inmates. These are real concerns that should shape the design of the prison system, but they do not establish that the only alternative to escape risk is death. Secure confinement can be made genuinely secure. The history of imprisonment demonstrates that a determined society can confine even its most dangerous members without killing them.

There is a further utilitarian argument that Pelli anticipates and addresses. It might be claimed that execution produces utility not primarily through its effect on the person executed but through its effect on others who might be deterred from committing similar crimes by the knowledge that death awaits those who do. This is the deterrence argument, which Pelli addresses in more detail in the following proof. For now, it is enough to note that deterrence, even if it existed at

the level claimed, would be an argument for the appearance of severe punishment rather than for execution specifically. A sentence of life imprisonment without the possibility of parole, carried out visibly and consistently, provides a powerful deterrent signal without requiring the state to kill. If what deters is the certainty and severity of punishment, then the certainty and severity of a guaranteed life sentence should suffice.

The utility of the death penalty, examined carefully, is not greater than the utility of severe non-lethal punishment. It may well be less. The spectacle of execution, as Pelli argues elsewhere, can brutalize rather than deter. The certainty of punishment, which is the actual deterrent mechanism, is undermined by the death penalty's tendency to make juries reluctant to convict. The permanent elimination of the offender forecloses the possibility of information the offender might have provided, the labor the offender might have performed, and the restitution the offender might have made. Death achieves less, on the utilitarian calculus, than its defenders suppose. And it achieves what it does achieve at a cost — the irrevocable destruction of a human life — that no lesser alternative requires.

PROOF VI

Punishment Must Be Seen, and Death Cannot Be Seen for Long

Let me be clear about what I am not arguing. I do not say that punishment should be hidden. A punishment nobody sees teaches nobody anything. If the purpose of a penalty is to hold the community back from crime, then the community must be able to see the penalty being carried out. On this I hold the common opinion. I hold it firmly. Punishment must be public.

My objection is to what the public sees when the punishment is death. An execution lasts a few minutes. The procession, the scaffold, the drop, the body. Then it is finished and the crowd goes home. Whatever instruction was in it has to be delivered in that short span. A short span is exactly what the mind does not retain. The horror is intense. It is also brief. The brevity is the flaw.

Set beside it a man condemned to labour for the rest of his life. He is visible for years. Everyone who passes sees what the law has made of him. The lesson is not delivered once and then withdrawn; it is delivered every day, to everyone, for as long as he lives. If we are asking which penalty impresses itself more deeply on a population, the answer is not the one that ends quickly. A punishment that continues teaches more than a punishment that concludes.

There is worse. The execution does not merely fail to instruct. It instructs in the wrong direction. Look at

what the crowd does. They arrive early to get a good position. Vendors work the edges. Children are lifted onto shoulders. There is laughter. Whatever solemnity the magistrates intended, what actually assembles is a holiday. A people that gathers cheerfully to watch a man die has already learned something. It is not reverence for the law.

What it has learned is that a human life may be taken when the proper authority says so. It has learned that watching this happen is an ordinary afternoon. That lesson does not stay inside the scaffold. It goes home with them. The state meant to teach the gravity of killing. By making killing ceremonial, it taught the opposite.

So the spectacle argument does not run against public punishment. It runs against this punishment. Let the penalty be seen. Let it be long enough to be understood. Let it leave the watching population more careful of life rather than less. Execution fails all three tests. The third one it fails badly.

PROOF VII

Deterrence Is Uncertain

The claim that execution deters crime is the most common argument offered for capital punishment in ordinary political discourse, and it is the argument that the evidence has most consistently failed to support. Pelli's engagement with it is, for an eighteenth-century writer, remarkably sophisticated. He anticipates, in outline, arguments that would be confirmed by centuries of subsequent empirical research.

The deterrence argument assumes that potential criminals are deterred by the prospect of severe punishment. This assumption has a certain intuitive plausibility: people in general prefer pleasant outcomes to unpleasant ones, and if the unpleasant outcome of a crime is sufficiently terrible, people will presumably calculate that the crime is not worth committing. The argument runs: increase the severity of punishment, decrease the incidence of crime.

Pelli identifies the problem with this argument at its psychological core. The assumption that potential criminals calculate the severity of punishment before acting is, in the overwhelming majority of cases, false. Most crimes occur under conditions that are inimical to rational calculation: under the influence of alcohol or other substances; under the pressure of immediate passion, rage, or desperation; in circumstances of poverty and hopelessness that foreclose long-term thinking; in contexts where the likelihood of being

caught at all seems negligible; in moments of crisis that do not allow for the kind of cool weighing of consequences that the deterrence theory assumes.

Consider the circumstances of most murders. They are not, in the main, committed by people who have weighed the prospect of execution against the anticipated benefits of killing and decided the benefits outweigh the costs. They are committed by people who are not, at the moment of the act, in a state of mind that permits rational deliberation about future consequences at all. The man who kills in a moment of rage, the desperate person who kills during a robbery that went wrong, the person acting under the pressure of circumstance that allows no space for reflection — none of these people was deterred or not deterred by the prospect of execution, because none of them was performing the calculation that deterrence theory requires.

Pelli adds an observation that has been repeatedly confirmed by subsequent criminology: what actually deters crime, to the extent that deterrence works at all, is not the severity of punishment but the certainty of it. A criminal who is highly likely to be caught and punished, even moderately, is deterred more effectively than a criminal who faces a small chance of being caught and a large threatened punishment if caught. The death penalty, precisely because of its severity, tends to reduce the certainty of punishment: juries are reluctant to convict when the consequence is death, witnesses are reluctant to testify, prosecutors are reluctant to proceed in cases where the evidence is uncertain. The expected punishment — calculated as severity multiplied by probability — may therefore be lower under a death

penalty regime than under a regime of certain but non-lethal punishment.

Furthermore, the comparative evidence — even the limited evidence available to Pelli in 1761, which has been vastly expanded in the centuries since — does not support the deterrence hypothesis. Jurisdictions that have abolished capital punishment do not experience increases in the crimes for which death was previously the penalty. Jurisdictions that retain capital punishment do not have lower crime rates than those that have abolished it. The pattern, examined across multiple countries, multiple crimes, and multiple time periods, is consistent: the presence or absence of the death penalty does not measurably affect homicide rates.

The deterrence argument for capital punishment was always an argument from intuition rather than from evidence. It appealed to a common-sense psychology of rational self-interest that does not accurately describe the psychology of people who commit crimes. Two and a half centuries of empirical criminology have confirmed that Pelli's skepticism was warranted. The deterrence argument fails not because it is philosophically confused but because its empirical premise — that severe punishment reduces crime — is simply not true. The certainty and visibility of punishment matter. The extremity of it does not.

PROOF VIII

The Scaffold Is the Mark of a Bad Government

I want to offer a new demonstration of my thesis. It rests on an observation anyone may verify who is willing to read history with an open eye. The government that executes most is the worst government. Not the safest. Not the most orderly. The worst.

Consider where the scaffold is busiest. It is busiest where power rests in a single will that answers to nobody. It is busiest under rulers who govern by fear because they cannot govern by consent. Where a prince is uncertain of his subjects, the executions multiply. Where a magistrate cannot command respect, he commands terror instead. The penalty travels with tyranny. It travels closely enough that you may use one to identify the other.

Now reverse the observation. Where laws are moderate, where the governed have some part in how they are governed, where authority does not fear its own people, the blood penalties thin out. They are reserved, then rare, then a scandal when they occur. This is not an accident of temperament. A government secure in its legitimacy does not need to kill in order to be obeyed.

The defenders of execution will say that harsh times require harsh remedies. They will say a disordered state must have recourse to the sword. I say they have the causation backwards. The sword does not restore the order. It advertises its absence. A state that must

repeatedly kill its own members to maintain itself is telling us precisely how weak its hold on them is.

There is a consequence here that ought to trouble anyone who is proud of his own country. If the frequency of executions is a measure of how badly a people is governed, then every scaffold erected in a supposedly enlightened nation is an accusation against that nation. We cannot call ourselves civilised and go on doing the thing that marks the despot. One of the two claims has to be given up.

I do not say this to insult the magistrates of any state. I say it because the argument runs in one direction only. If the death penalty were a mark of good order we would expect to find it concentrated among the best-governed peoples. We find it concentrated among the worst. That is not the pattern a just and necessary institution leaves behind.

PROOF IX

The Law of Retaliation Is Not Justice

The oldest and most intuitive argument for the death penalty is the principle of retaliation: like for like, death for death. A murderer takes a life, and justice requires that he forfeit his own. This is what the ancient texts called the *lex talionis* — the law of the talon, of proportional retribution. It appeals to a deep human intuition about fairness: that the punishment should somehow correspond to the offense. It has religious sanction in its most famous formulation: an eye for an eye, a tooth for a tooth. It seems like the natural response to the gravest crimes.

Pelli attacks it with a consistency that is one of the most admirable features of his treatise. He does not soften the argument or make exceptions for particularly heinous cases. He argues that the principle of retaliation, applied consistently, produces conclusions that no civilized society is willing to accept — and that the selective application of the principle to murder is therefore revealed as special pleading rather than as a coherent theory of punishment.

Consider what consistent application of the *lex talionis* would require. A thief steals your property: we steal from him in return. A kidnapper abducts your child: we abduct his child. If a torturer inflicts suffering on an innocent person: we torture him in the same manner. An arsonist burns down your house: we burn down his. No modern legal system accepts these

consequences. No defender of the death penalty seriously proposes them. And yet all of them follow from the principle that punishment should mirror the offense.

The reason these consequences are rejected is that they would require the legal system to do precisely what it condemns. A state that tortures torturers has not risen above torture; it has institutionalized it. A state that kidnaps kidnappers has not condemned kidnapping; it has performed it under legal authority. The rejection of these consequences implies a recognition, however unarticulated, that punishment cannot simply replicate the offense. Justice is something different from symmetrical retaliation.

But if the principle of retaliation is rejected for torture, for kidnapping, for sexual assault, on what basis is it retained for murder? The answer usually given — that murder is uniquely heinous and therefore uniquely warrants retaliation in kind — is not a principle. It is a preference. It says: the logic of retaliation is acceptable here but not elsewhere. But if the logic is acceptable here, why not elsewhere? And if it is not acceptable elsewhere, what justifies it here? The selective application of a principle reveals that the principle is not actually doing the work. Something else is doing the work: a desire for vengeance against murderers specifically, dressed in the language of principled justice.

Pelli's deeper argument is that retaliation is precisely what civil society was designed to transcend. In the state of nature, retaliation is the response to injury: you harmed me, so I harm you in return. This is the logic of the blood feud, of vendetta, of primitive vengeance. Civil society replaces this logic with something more

sophisticated: proportional punishment calibrated to the social harm caused by the offense, designed not to replicate the harm but to prevent future harm and maintain social order. The state rises above private vengeance precisely because it abandons the logic of revenge. To retain the death penalty is to preserve, within the apparatus of civilized law, a remnant of primitive vengeance. It represents not the maturity of the legal order but its failure to fully transcend its origins.

This does not mean that murderers deserve sympathy or that their crimes should be treated lightly. They deserve severe punishment. They deserve to spend years or decades or the rest of their lives deprived of the liberty that they abused. But punishment is not the same as retaliation. Punishment, in a rational legal system, is designed to serve the ends of justice — to protect society, to express the community's condemnation, to provide a measure of accountability — without requiring the state to do what the criminal did. The death penalty requires the state to kill. It is not justice. It is imitation. And a legal system premised on imitation of the worst acts of the worst people is a legal system that has confused its purposes.

PROOF X

Mercy Is a Political Virtue

In the long tradition of arguments for capital punishment, mercy plays a curiously ambivalent role. Defenders of execution often acknowledge its force in individual cases: they argue for mercy in specific circumstances, for clemency when the case is particularly sympathetic, for the executive pardon as a safety valve on a system that would otherwise be too rigid. But they treat mercy as an exception to justice — a departure from the rule, a concession to human feeling rather than a requirement of reason. Pelli argues the opposite. Mercy is not weakness. It is not sentiment. It is a political virtue, integral to the idea of good government.

The case for mercy as a political virtue begins with a distinction between power and authority. A government that can kill has power. A government that chooses not to kill when killing is not necessary has something more: it has demonstrated that its power is subject to principle. It has shown that it is capable of restraint. The capacity for restraint is the mark of genuine authority, as opposed to mere force. A government that kills when it could instead confine demonstrates that it has mistaken power for authority, destruction for justice.

In the Christian tradition, mercy is not opposed to justice but is one of its highest expressions. A purely retributive justice — one that gives every person exactly what they deserve, no more and no less — is a form of

justice. But the tradition also recognizes a higher standard: the justice that incorporates mercy, that recognizes the possibility of redemption, that treats even the guilty as persons rather than as objects to be disposed of. This is the justice of the parable of the prodigal son, of the woman taken in adultery, of the dying thief on the cross. It does not abolish the consequences of wrongdoing, but it refuses to treat the wrongdoer as simply the sum of his worst act.

For Pelli, the mercy argument has both a theological and a political dimension. Theologically, mercy reflects the divine character in a way that pure retribution does not. A government that practices mercy imitates God more faithfully than one that practices only strict retributive justice. Politically, a government that exercises restraint in its use of the most extreme power available to it demonstrates its legitimacy to those it governs. Citizens who see that their government is willing to limit its own power for reasons of principle are more likely to trust it, to cooperate with it, and to accept its authority than citizens who see a government that kills whenever it can.

There is also a practical political argument. Governments that rely on extreme punishment to maintain order are governments that lack the moral authority to achieve order by less coercive means. Severity in punishment is often a symptom of weakness in governance: a government that cannot command genuine respect and cooperation falls back on terror. A strong, legitimate government — one that has earned the trust and cooperation of its citizens — does not need to kill. It governs through law, through persuasion,

through the genuine moral authority that comes from principled and restrained use of power.

The best ruler, Pelli argues, is not the ruler who kills most effectively but the ruler who governs with the least violence necessary. The measure of a great legal system is not the severity of its punishments but the justice of its procedures, the fairness of its applications, and the wisdom with which it calibrates the force it uses to the social ends it serves. Mercy — the principled decision not to exercise the most destructive power available — is central to this measure. It is not an addition to justice. It is a component of it.

PROOF XI

Civilization Is Measured by Restraint

The final proof is not an argument from principle but from history, and it is one that Pelli felt with particular force in the intellectual climate of the mid-eighteenth century, when the idea of progress was not merely a hope but a demonstrated reality. Earlier ages had done terrible things in the name of justice. Earlier ages had tortured. Earlier ages had mutilated. Earlier ages had executed for theft, for debt, for heresy, for witchcraft, for crimes against property that a later generation would treat as misdemeanors or not crimes at all. The Enlightenment that Pelli inhabited was, in part, defined by its recognition that these practices were wrong and by its project of eliminating them.

The trajectory of this history is unmistakable, and Pelli reads it correctly. Civilization advances — not smoothly, not inevitably, not without reversals and catastrophes — but over time, in the direction of reduced cruelty, reduced arbitrariness, and reduced reliance on extreme violence as an instrument of order. What each generation recognizes, looking back, is that the punishments its predecessors administered with such confidence were disproportionate, often unjust, and frequently productive of the very disorder they were meant to prevent. And what each generation fails to see with equal clarity is that its own practices will be subject to the same judgment by those who come after.

Pelli was confident that the death penalty belonged in the category of practices that a later, more enlightened age would regard as barbarous. He was writing in 1761. He could not have known how long it would take. But the direction he identified has proven to be correct. The number of capital offenses in European legal codes has contracted from hundreds to a handful to, in most countries, none. The use of torture as a standard element of criminal procedure has been abolished. The public execution has given way, in most of the world, to private or entirely eliminated execution. More than a hundred nations have abolished capital punishment in law or in practice. The trajectory is exactly what Pelli predicted.

The United States is an anomaly in this trajectory. It is the only established democracy in the Western world that still carries out executions. It finds itself, on this question, not among the democracies of Europe, Canada, Australia, and Japan but among Iran, Saudi Arabia, and North Korea. The company is instructive. There is something about the maintenance of capital punishment that tends to coexist with other features of political culture — concentrated executive power, weak judicial independence, limited procedural protections for defendants — that a democracy committed to the rule of law should find uncomfortable.

Pelli's historical argument does not establish that abolition is inevitable. Moral progress is not inevitable. It requires advocates, arguments, political will, and the willingness of individuals and societies to recognize that what they have been doing is wrong. What the historical argument establishes is that the direction of moral progress, on this question, is clear. Every generation

that has looked seriously at the death penalty and had the political courage to act on what it found has moved toward abolition. No nation that has abolished it has reinstated it. No society that has eliminated capital punishment has found that it cannot maintain public order without it. The historical record, as Pelli understood it, points in one direction. The question is not whether to follow it but when.

CONCLUSION

What the Proofs Establish

From the foregoing examination of the foundations, purposes, effects, and history of capital punishment, the following conclusions emerge.

The right to execute cannot be derived from natural law. Nature provides no principle that authorizes deliberate killing as an act of justice against a person already captured and rendered harmless. The self-defense analogy fails because there is no ongoing threat to defend against.

The right to execute cannot be derived from the social contract. No individual possesses an unconditional right over his own life that he could transfer to the political authority. The social contract cannot create powers that did not exist in the contracting parties.

The right to execute cannot be justified by necessity. Imprisonment and other non-lethal penalties accomplish every legitimate goal of public safety that execution accomplishes. Necessity requires that no less drastic measure would serve. That condition is not met.

The right to execute cannot be justified by deterrence. The evidence, both empirical and psychological, does not support the claim that execution deters crime more effectively than severe non-lethal punishment. The deterrence argument was always intuition rather than evidence. The evidence has not confirmed it.

CONCLUSION

The right to execute cannot be justified by retaliation. The *lex talionis*, applied consistently, produces consequences that no civilized society accepts. Its selective application to murder reveals it as revenge rather than principle. The state's purpose is to transcend the logic of private vengeance, not to institutionalize it.

Capital punishment conflicts with Christian morality. It contradicts the teaching of mercy, the recognition of human fallenness as a reason for humility rather than severity, the insistence that divine authority and human authority are categorically distinct, and the trajectory of the gospel toward life rather than death.

Capital punishment creates irreversible injustice. Human courts make mistakes. Innocent people are condemned. The death penalty ensures that these mistakes cannot be corrected. No legitimate system of justice can accept this consequence.

Capital punishment degrades the moral character of society. It habituates citizens to violence. It teaches that life is conditionally available for destruction by authority. It produces the opposite of the civic virtue it claims to support.

Therefore: the death penalty must be rejected as incompatible with rational justice, with the purposes of civil society, with Christian morality, and with the moral progress of civilization. Lesser punishments can accomplish every legitimate goal of law. The life of a citizen is not the property of the state. It is the boundary of its authority.

A MODERN
ENGAGEMENT

PELLI IN THE TWENTY-FIRST
CENTURY

I. The Question Nobody Asked

Pelli's starting point — that the right to execute has simply been assumed rather than demonstrated, and that the burden of proof falls on its defenders — is as accurate in 2026 as it was in 1761. The American death penalty operates today in a remarkable state of intellectual dormancy. Its defenders rarely engage with the philosophical literature on its justification. Its administrators rarely ask whether the institution they are running has an adequate foundation. Legislators who vote to retain it rarely do so after examining the question of where the state's right comes from. It is simply there, inherited, assumed, defended with gestures toward justice and safety and closure that almost never constitute a serious argument.

I have been in courtrooms where men and women were sentenced to death. I have heard the language of justice invoked to describe what was being done. I have never, in any of those contexts, heard a serious examination of whether the state actually has the right it is exercising. The assumption is always already in place. Pelli's challenge — examine the assumption, demand its justification, refuse to accept universal practice as proof of legitimacy — has never been more needed.

Custom is not proof. Two and a half centuries after Pelli wrote it, this sentence is still the most important single contribution that any abolitionist can make to the public debate. The American tradition of capital punishment is not, by virtue of its antiquity, legitimate. It needs to be examined. It needs to be justified. And

THE QUESTION NOBODY ASKED

when it is examined seriously, as Pelli showed, it cannot sustain the examination.

II. The Transfer That Cannot Happen

Pelli's argument that the state cannot possess, through the social contract, a power that no individual possesses resonates in a particular way in the American context, where the social contract tradition — Locke, especially — is supposed to be foundational to the political theory of the republic. The Declaration of Independence grounds the authority of government in the consent of the governed. The Bill of Rights limits what government can do to individuals on the basis of rights that preexist the state.

If these premises are taken seriously, Pelli's argument follows directly. The Eighth Amendment prohibits cruel and unusual punishments. The question of whether the death penalty is cruel and unusual has been before the courts for decades, and the courts have consistently declined to find that it is, on the grounds that it has historically been practiced and therefore cannot be unusual. But this is precisely the error Pelli identifies at the outset: treating universal practice as proof of legitimacy. The fact that cruel punishments have been universally practiced does not establish that they are not cruel. It establishes only that cruelty has been widely tolerated.

The deeper point is about the scope of sovereignty. A government grounded in the consent of the governed cannot claim powers that the governed could not themselves possess. Individuals cannot, in Pelli's account, legitimately delegate the unconditional power over life. The American state has been exercising a power that was never legitimately delegated to it. The

THE TRANSFER THAT CANNOT HAPPEN

authority has always been claimed. It has never been adequately grounded.

III. The Fallen Judge

Pelli's use of the doctrine of original sin to argue for humility in the exercise of judicial power is one of his most distinctively Catholic contributions to the abolitionist tradition, and it has a contemporary resonance that deserves more attention than it receives. The American legal system is administered by fallen human beings who are subject to the same biases, passions, errors, and failures of judgment that afflict human beings everywhere.

The empirical record of American capital punishment demonstrates this with painful specificity. The decisions about who faces a capital charge, who is convicted, who is sentenced to death, and who is ultimately executed are shaped, at every stage, by factors that have nothing to do with the gravity of the offense: the race of the victim, the county where the crime occurred, the quality of the legal representation available to the defendant, the political climate at the time of trial, the personal characteristics of the judge and jury. These are not isolated failures. They are systemic features of a system administered by fallen human beings in conditions that make impartial judgment very difficult.

Pelli's argument is that a genuinely Christian legal system — one that takes seriously the theological anthropology it claims to be based on — would build into its design a recognition of human fallenness and its consequences. It would design for correction. It would avoid the irreversible. It would be structured on the assumption that it will make mistakes, not on the assumption that it will not. The American death penalty

is structured on the opposite assumption: that the procedures surrounding capital cases are sufficiently rigorous that the system can be trusted to get them right, and that the cost of occasionally getting them wrong can be accepted. Pelli's response, from within the tradition that produced that claim, is: no. The fallen judge cannot trust himself that much.

IV. What God's Power Cannot Lend

The invocation of divine authority for capital punishment is common in American political discourse, particularly in the South, where the death penalty is most practiced and where the Christian tradition is most publicly prominent. Genesis 9:6, Romans 13, and various passages from the Old Testament law are regularly cited in defense of execution. The argument that God has authorized the state to kill, and that human law is implementing divine justice when it does so, is taken seriously by many people.

Pelli's response is worth stating in full force: the distance between divine authority and human authority is not a matter of degree but of kind. God's justice is perfect. Human justice is approximate, imperfect, provisional, and subject to the biases of fallen human nature. To claim divine sanction for human executions is to claim that the American criminal justice system — with its documented racial disparities, its wrongful convictions, its dependence on the quality of legal representation available to the defendant, its variation by county and region and political climate — is implementing God's judgment. This claim should make anyone who has observed that system blush. It does not implement God's judgment. It implements the judgments of fallen human beings in imperfect conditions, with predictably imperfect results.

The use of scripture to defend capital punishment is also, as Pelli notes, highly selective. The same tradition that produces Genesis 9:6 also produces the Sermon on the Mount, the parable of the prodigal son, the woman

taken in adultery, the dying thief on the cross, and the entire trajectory of the New Testament toward mercy and reconciliation. A biblical theology of punishment that takes all of this seriously arrives at a very different place from one that selects the passages most convenient for the conclusion it has already reached.

V. The Necessity That Isn't

Twenty-three American states have abolished capital punishment. Not one of them has been unable to maintain public safety. Not one has experienced an increase in murder that can be attributed to abolition. Not one has been forced to reinstate the death penalty because it discovered that confinement was insufficient to protect the public from dangerous offenders. The experiment has been running for long enough, across enough jurisdictions, to be considered definitive. Death is not necessary for public safety. Confinement is sufficient.

Pelli's argument from necessity stands completely confirmed by the evidence of the past two centuries. He argued, without the benefit of the data we now have, that the burden of proof falls on those who claim that death is the only measure that will serve. That burden has not been met. It cannot be met, because the evidence of jurisdictions that have abolished execution and maintained public order is overwhelming. The claim of necessity was always a claim of habit, not of logic. Pelli saw this in 1761. The data makes it undeniable in 2026.

VI. What the Crowd Learns

Executions in the United States are no longer public in the eighteenth-century sense. They happen behind prison walls, before a handful of official witnesses. Pelli would have objected to that. Not for the reason people expect. He believed punishment had to be visible or it taught nothing. By his standard a hidden execution is the worst of both arrangements: it keeps the killing and discards whatever instruction the killing was supposed to carry.

But the spectacle has not disappeared. It has moved. It is in the countdown coverage, the last-meal reporting, the live updates from the media witnesses, the crowd outside the fence. I have stood at that fence. I have seen both crowds, the celebrating one and the grieving one. What they share is the knowledge that a man is dying inside the building behind them on a published schedule.

So the question Pelli asked is still the right question. What does the watching population learn? A society that debates which of its members should be killed, that treats an execution as a policy outcome, that counts a completed death as an accomplishment, is teaching itself that life is conditional on the state's satisfaction. Pelli thought a punishment should leave the public more careful of life. Ours leaves it less.

VII. The Irreversible Mistake — Beyond Pelli

This is the one place in this book where I go past Pelli rather than with him. The argument from error is not in his manuscript. He did not write about wrongful conviction. I will not put the words in his mouth. What follows is his method applied to evidence he never had.

Since 1973 more than two hundred people have been exonerated from death rows in the United States. They were convicted by procedures the system called adequate. They were sentenced by juries the system called competent. They were innocent. And for every exoneration that arrived in time there are cases where it did not. Cameron Todd Willingham was executed in Texas in 2004 for a fire that later forensic analysis indicates was almost certainly accidental.

Pelli's own argument gives us everything we need to finish this one. He held that human beings are fallen and that the fallenness reaches the law as much as the crime. A fallen court will convict wrongly. That much is his. The rest is arithmetic he did not have to do: a wrongly imprisoned man can be released and a wrongly executed man cannot. A penalty that forecloses correction is a penalty that requires a court to be right every time. No court has ever been.

VIII. Imitation Is Not Justice

The retributive argument for capital punishment — that murder deserves death because justice requires like for like — is probably the argument that resonates most powerfully with the largest number of people. It appeals to something deep in human psychology: the sense that the most terrible crimes demand the most extreme response, that anything less than death for murder is a failure to take murder seriously.

I have sat with the families of murder victims. I understand the desire for the harshest possible response to the worst possible thing that can happen to a family. I do not dismiss that desire, and I do not think Pelli dismisses it either. What he challenges is the claim that executing the killer is what justice requires, as opposed to what grief demands. These are not the same thing. Grief is not justice. The desire for the killer to suffer in the most extreme way is a natural human response to the worst kind of loss. But a legal system that simply implements whatever grief demands is not a legal system at all. It is a vengeance system with procedural trappings.

What the families of murder victims actually need — what grief actually requires, as opposed to what the legal system claims to offer them — is not always execution. Research on survivors of violent crime suggests that many of them do not find the closure they are promised in the death of the person who killed their loved one. The execution is another death. It does not undo the first. It does not restore what was taken. It produces, in many cases, not resolution but a renewal of

IMITATION IS NOT JUSTICE

the original trauma: another court case, another verdict, another death, another family destroyed. The legal system has been serving its own institutional logic under the name of the victims' interest. Pelli's challenge to the *lex talionis* is also, in this respect, a challenge to the way that the victims' interest has been invoked to justify a practice that does not serve it.

IX. Mercy as Strength

The political discourse around capital punishment in the United States has, for decades, treated mercy as weakness. The accusation that a politician is “soft on crime” has been one of the most effective political weapons available. The image of the tough prosecutor who pursues death, versus the soft defender who argues against it, has dominated the political framing of this issue in ways that have made serious public argument very difficult.

Pelli’s argument that mercy is a political virtue is therefore not merely a philosophical claim. It is a direct challenge to the political culture that has sustained American capital punishment for a generation. A government that can choose not to kill and chooses instead to confine — that exercises the restraint to impose a severe penalty without destroying the person on whom it is imposed — is not weak. It is demonstrating something more difficult than the willingness to kill: the capacity to govern by principle rather than by the satisfaction of public rage.

The states that have abolished capital punishment are not governed by weak politicians who were afraid to pursue justice. They are governed by people who examined what the evidence showed, recognized what the practice cost in terms of wrongful executions, racial disparities, and financial burden, and decided that a justice system could serve its purposes without killing. That decision required more courage, not less, than the decision to retain the death penalty because it has always been there.

X. Civilization's Measure

Pelli was optimistic. He believed that the trajectory of history was toward abolition, and he was right. He could not have known how slow the movement would be, how many setbacks it would suffer, how tenaciously the practice he argued against would cling to existence in some corners of the world long after it had been abandoned in others. But the direction he identified has proven correct.

The United States is one of those corners. It is a country that prides itself on its commitment to human rights and the rule of law, that holds up its legal tradition as a model for the world, that has contributed enormously to the development of international human rights norms — and that still executes people, in numbers that make it an outlier among established democracies. The gap between the self-image and the practice is one of the most striking facts about American political culture.

Pelli wrote to future generations — to us. He despaired of persuading his own contemporaries, just as the abolitionists who come after him despaired of persuading theirs. But he believed that the argument was correct, that the evidence would accumulate, that the practice would eventually become impossible to defend. He was right about all of this. What he could not provide was the political will. That is what each generation must supply for itself.

The measure of a civilization is how it treats those who have fallen furthest from its ideals. Not how it treats the successful, the innocent, the powerful — but

how it treats the condemned, the guilty, the ones who have done the worst things. A civilization that can say, even to these: we will not destroy you, we will confine you, we will hold you accountable, we will take seriously what you have done, and we will not kill you — that civilization has achieved something. It has placed the dignity of the human person above the satisfaction of public anger. It has recognized that the life of the condemned is not the state's property to dispose of. Giuseppe Pelli understood this in Florence in 1761. The task, for those of us writing and reading in 2026, is to act on it.

DEFINITIONS AND TERMS

Giuseppe Pelli Bencivenni (1729-1808). Florentine nobleman and civil servant, trained in law at Pisa. Director of the Uffizi from 1775 to 1793. Diarist of the *Efemeridi*, eighty volumes kept daily across half a century. Around 1760 he wrote the first systematic case against the death penalty in the modern West. He never published it. It sat in a family archive until the 1980s.

Natural law. The claim that some moral principles bind everyone and can be found by reason, whatever the statute books of a given country happen to say. Grotius, Pufendorf and Locke are the names usually attached to it. Pelli works inside this tradition. He uses it to ask where, in the nature of things, the right to kill a captive man is supposed to come from.

Social contract. The idea that government is legitimate because people agreed to it, giving up some freedom in exchange for protection. Hobbes, Locke and Rousseau built the versions we still argue about. Pelli finds the flaw. A contract can only hand over what the parties had to give. No man owns his own life the way he owns a field. The power to execute was never in the contract because it was never in the people who made it.

Original sin. The doctrine that human beings have come damaged ever since the fall of Adam. Defenders of execution have long used it to explain why criminals do what they do. Pelli turns it around. If we

are all fallen, then so are the judges, the juries, the witnesses. The doctrine that explains the crime also explains the verdict. A fallen court needs a punishment it can take back. Death is the one punishment it cannot.

Lex talionis. The law of retaliation. Punishment should match the offense in kind: an eye for an eye, a life for a life. It is the oldest justification for capital punishment and the one Pelli spends the longest stretch of the treatise dismantling. Applied consistently it would have us torture torturers, kidnap kidnappers, maim those who maim. We apply it to murder and nowhere else, which for Pelli is the evidence that it was never a principle at all.

Deterrence. The theory that punishment prevents crime by making the cost too high. Pelli rejected it with nothing but reason to go on. Most killing happens in conditions where nobody is calculating anything. Where the comparison could be made, the harshest penalties did not produce the safest places. Two and a half centuries of criminology have since reached the same conclusion.

Necessity. The standard that does more work in Pelli's argument than anything else. A penalty is justified only if it is needed. If something less drastic protects the public just as well, the more drastic thing is not justice but surplus. Prison, Pelli argues, achieves every legitimate purpose execution claims for itself.

Beccaria, Cesare (1738-1794). Milanese nobleman, author of *On Crimes and Punishments* in 1764, the

book that carried abolition into European law and changed criminal statutes across two continents. Pelli reached the same conclusion a few years earlier by a different road, through natural law and Catholic theology rather than the French Enlightenment. Neither man needed the other to see it.

The Innocence Project. Founded in 1992. Uses DNA and other evidence to free people convicted of crimes they did not commit. It has helped exonerate hundreds. More than two hundred people have now walked off American death rows. Pelli made no argument from wrongful conviction and had no cases to point to. What he supplied was the premise: a fallen humanity produces fallen courts. The list of the exonerated is what that premise looks like with two hundred and sixty years of evidence attached.

FURTHER READING

On Pelli

Pelli, Giuseppe, and Cesare Beccaria. *Against the Death Penalty: Writings from the First Abolitionists*. Edited and translated by Peter Garnsey. Princeton University Press, 2020. The first complete English translation, printed with Beccaria and with the letters the two men exchanged. Garnsey shows how far apart their foundations were. Start here if you want Pelli's own words.

Pelli Bencivenni, Giuseppe. *Contro la pena di morte*. Edited by Philippe Audegean. Padua: Cleup, 2014. The Italian edition of the manuscript. This is the book that put Pelli into the record.

Audegean, Philippe. Introduction to *Contro la pena di morte*. Padua: Cleup, 2014. Audegean's introduction is the best guide there is to what Pelli was doing and what he was reading.

Audegean, Philippe, trans. *Contre la peine de mort, précédé de Correspondance avec Beccaria*. Paris, 2016. The French edition. Audegean lays out Pelli's three lines of attack: death does not prevent, no man can have consented to it in advance and the penalty is a habit of authoritarian states.

On the Abolitionist Tradition

Beccaria, Cesare. *An Essay on Crimes and Punishments*. 1764. Edited and modernized by Jeff Hood. *Complicit*

FURTHER READING

Press, 2026. The book that made abolition famous, written a few years after Pelli wrote his. Read them together and you get the whole eighteenth century.

Lactantius. *On the Sacred Animal: A Modern Engagement with Lactantius Against the Death Penalty*. Edited and modernized by Jeff Hood. Complicit Press, 2026. The earliest sustained Christian argument against killing prisoners. Pelli's Catholicism runs straight back to it.

Rush, Benjamin. *Considerations on the Injustice and Impolicy of Punishing Murder by Death*. 1792. Edited and modernized by Jeff Hood. Complicit Press, 2026. The American founding-era case. Rush welds natural rights to Christian theology exactly the way Pelli does.

Mittermaier, Karl Joseph Anton. *Capital Punishment*. 1865. Edited and modernized by Jeff Hood. Complicit Press, 2026. The great nineteenth-century survey of the evidence. Mittermaier assembled the numbers for what Pelli had worked out from reason alone.

On the Italian Enlightenment

Venturi, Franco. *Italy and the Enlightenment: Studies in a Cosmopolitan Century*. Translated by Susan Corsi. London: Longman, 1972. The essential study of the Italian Enlightenment. This is the world Pelli lived and worked in.

Woolf, Stuart J. *A History of Italy 1700–1860: The Social Constraints of Political Change*. London: Methuen, 1979. For the conditions Pelli was writing under. Also for the reasons a man in his position might think twice about publishing.

On the History of Capital Punishment

Banner, Stuart. *The Death Penalty: An American History*. Harvard University Press, 2002. The definitive history of the American death penalty, colonial period to now. The country Pelli's argument has to be aimed at.

Garland, David. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Harvard University Press, 2010. On why the United States kept the death penalty when comparable democracies gave it up. The politics underneath the philosophy.

Related Volumes in This Series

Darrow, Clarence. *An Eye for an Eye*. 1905. Edited and reset by Jeff Hood. Complicit Press, 2026. The companion volume. Pelli gives you the argument. Darrow gives you the man the argument is about.

Plato. *The Apology*. Edited and modernized by Jeff Hood. Complicit Press, 2026. Where the tradition starts. Pelli reasons his way to the conclusion. Socrates stands in a courtroom and lives it.