

THE DEATH PENALTY

THE ABOLITION CLASSICS

The texts that built the case against the death penalty

V . 2 1

THE DEATH PENALTY

La pena de mort
Barcelona, 1912

GABRIEL ALOMAR

Translated from the Catalan,
with a Foreword, by
JEFF HOOD

THE ABOLITION CLASSICS
V. 21

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“La pena de mort” was delivered as a spoken address
at the Congrés de la Llibertat, Barcelona, in February 1912.

The Catalan text is in the public domain.

This is the first English translation, made from the text
digitized by the Institut d’Estudis Catalans in its Corpus
Textual Informatitzat de la Llengua Catalana.

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FOREWORD

I have stood in the witness room. Thirteen times.

I have watched men breathe until they did not. I have watched the state perform its liturgy... the strap, the needle, the black curtain drawn back so the family can see. I know what Gabriel Alomar knew in February of 1912, standing before the Congrés de la Llibertat in Barcelona, before my grandfather was born, before this country had electrocuted most of the men it would go on to electrocute: the scaffold is not law. The scaffold is worship.

Alomar called it what it is. A sacrifice. A rite. A mass said in blood instead of wine.

I have watched a chaplain stand beside the gurney and bless what should never be blessed. I have watched a warden read a death warrant like it was scripture. Alomar saw this too, a century before me, an ocean away, in a language I do not speak. He called the executioner a priest. He called the condemned a scapegoat. He was right.

We keep telling ourselves the death penalty is justice. It has never been justice. It is theology. Bad theology. A god who demands blood is not a god I recognize. And a society that manufactures that blood, quietly, behind a curtain, on a schedule, is not practicing law. It is practicing religion... the oldest, cruelest religion there is.

Alomar wrote that the death penalty devours its victim to satisfy a duty imposed by divine justice. I have watched that devouring. I have held the hands of mothers whose sons were fed to it. Alomar knew about them too, before I did. He knew the rope does not fall only on the condemned. It falls on the family. It falls on everyone who has to carry that name afterward, in a town that will not let them forget it.

This address is over a hundred years old. It should not still be true. And yet nearly every page of it describes what I saw last month, and the month before that, and will see again before this book reaches a shelf.

We publish Alomar now, in English, in this series, because abolition is not a new argument. It is an old one, said in many tongues, by many witnesses, across a century of scaffolds that would not fall. His voice belongs beside Spear's, beside Hugo's, beside Dunbar's, beside every writer in this canon who looked at the machinery of state killing and refused to call it justice.

Listen to him. He has been dead for eighty-some years, and he is still more honest than most of what gets said in an American courtroom today.

*The Rev. Dr. Jeff Hood
North Little Rock, Arkansas*

EDITOR'S NOTE

THE AUTHOR

Gabriel Alomar i Villalonga (1873–1941) was a Catalan poet, essayist, educator, and diplomat, closely associated with the Modernisme movement and, later, with Catalan noucentisme. He is credited by several contemporaries, including Rubén Darío and Vicente Huidobro, with coining the term “futurism” in his 1904 lecture-essay *El futurisme*, five years before Filippo Tommaso Marinetti’s Italian manifesto claimed the word for itself. Alomar’s futurism was less an aesthetic program than a political one: an argument that Spain, and Catalonia within it, was addicted to an imperial past and needed to turn decisively toward what was to come.

Alomar went on to serve the Second Spanish Republic as ambassador to Italy (1932–1934) and later to Egypt (1937 until the Republic’s defeat in 1939); he remained in Cairo, in exile, until his death in 1941. He did not live to see the death penalty formally abolished in Spain. The Republic itself suspended it briefly in 1932, only for it to be reinstated in 1934 amid political turmoil, and then fully restored by decree under the Franco dictatorship in 1938. Spain would not abolish the death penalty for ordinary crimes until 1978, and not for every offense — including wartime military crimes — until 1995.

THE ADDRESS

That same turn toward the future runs through “La pena de mort” (“The Death Penalty”), delivered as a spoken address at the Congrés de la Llibertat in Barcelona in February 1912, where Alomar served as the appointed speaker on the question of capital punishment. Alomar divides the argument in two, as he tells the reader directly in Section I: the death penalty “as law” (Sections II–IV) and the death penalty “as fact” (Sections V–VIII). The first half reads closer to comparative religion than jurisprudence — Alomar’s central claim is that capital punishment survives not as reasoned law but as inherited ritual, a human sacrifice dressed in the language of justice, with the executioner cast as priest and the condemned as scapegoat. The second half turns to consequence: the punishment that falls on innocent families, the impossibility of a fallible court claiming infallibility through *res judicata*, and the always-reserved exception for military and wartime jurisdictions, an exception still argued today.

Readers of this series will recognize the lineage. Alomar’s insistence that the death penalty is theology dressed as law echoes Charles Spear’s American abolitionism nearly seventy years before him, and anticipates arguments this series has traced across a century of scaffolds that would not fall.

THIS EDITION

This appears to be the first English translation of “La pena de mort,” rendered from the Catalan text

digitized by the Institut d'Estudis Catalans as part of its Corpus Textual Informatitzat de la Llengua Catalana. Alomar wrote for the ear of a live congress audience rather than for the page: his sentences run long, and his address turns directly on the listener ("senyors meus..."). This translation preserves that oratorical shape rather than smoothing it into a more conventional modern essay.

Alomar divided the address only by roman numerals; he gave his sections no titles. The eight titles used here, and the contents page built from them, are editorial and belong to this edition alone, as does everything printed after the text. Where the address names something without pausing to explain it — a Paris prison, a Spanish general shot on a beach in 1831, a tag of Cicero, a tyrant's ring out of Herodotus — the definitions supply what a Barcelona audience in 1912 would not have needed told.

Alomar's voice appears here in English for the first time, as V. 21 of *The Abolition Classics*.

*"The execution is truly a rite, a
bloody mass, a genuine sacrifice, an
auto-da-fé, an act of amends to an
angered God."*

Gabriel Alomar, 1912

THE DEATH PENALTY

Gabriel Alomar

1912

This work was read at the Congrès de la Llibertat, held in Barcelona in February 1912, at which the author was the appointed speaker on the topic THE DEATH PENALTY.

I

The Persistence of a Custom

The death penalty is, juridically, the reduction of a custom to law — not the application of a rational principle of law to the exercise of a civilization. It is the persistence of a fact that predates all true social culture; a fact between individuals who lack the mutual guarantee of a collective organism, the embryo of the City. It is, in short, like religion, like worship, a plebeian persistence of the traditional element, of the element of the multitude, amid cultures constituted by the spiritual dictatorship of the select few.

In this brief study of the death penalty, I want to treat separately the law and the fact.

II

The Death Penalty as Law

The death penalty as law (pseudo-law) is originally the consecration, by society, of a human instinct, an individual passion: it is the jurisprudence of vengeance. Thus the expression "public vindication" well expresses the intimate nature of such a sanction. The purpose of the death penalty, understood this way, is twofold: in what we might call its immaterial, theoretical aspect, it is the satisfaction of offended justice; in its material, practical aspect, it is exemplarity — the prevention of future crimes that other men might commit, the use of supreme terror against the crime carried out by society in order to prevent the crime carried out by the individual.

The mythological idea of Justice remains very much alive among us. Justice-Astraea, Themis, or Nemesis, is still a goddess. And the death penalty is, without metaphor, the human sacrifice ritually offered to her. If you examine the nature of the death penalty even briefly, especially comparing it with all other punishments, you will see it as a religious act. The execution is truly a rite, a bloody mass, a genuine sacrifice, an auto-da-fé, an act of amends to an angered God. There is a superstition of satisfied justice in the moment of stupor that follows the consummation of a juridical death. The executioner, in the rudimentary conception of the common people, is a priest, the priest of the black

and fearsome god, the priest of the night, who officiates, like his innumerable forebears, to bring down upon the victim's head (as a scapegoat) the disasters that threaten an entire community, kneeling in dread before the scaffold-altar. There is, in the air, in those instants, something like a divine will for blood, pain and death, which delights in the victim and satisfies the red thirst of the God of evil. Ah! Perhaps in this curious and complicit alliance between the executioner and the priest, in this stubborn defense of the death penalty by Catholicism, there is an inheritance of primitive cults, transmigrated to our altars from the Old Testament and through the concept of Calvary understood as the divinization of an expiatory parricide, necessary to punish, in the person of a God, the crimes of all humanity. And moreover, one has been able to observe, for example, in various painful hours of Barcelona's history, the idea of the death penalty as amends to Justice offended by mysterious acts of urban violence, as a need for expiatory blood, for an exemplary head, whatever the proven guilt of the victims may have been. Thus the death penalty is the ring of Polycrates; the condemned man's life is offered as a ransom to ward off future evils; it is the offering of one man's pain and death so that he may pay for all the compensations of an immanent and hidden justice.

The final punishment, in the eyes of one who observes it closely, is a kind of ritual cannibalism. Society — no longer the individual — devours its victim to satisfy a duty imposed by divine justice. There are, in the invisible realm, scales — those famous scales with which the Egyptian gods of the

afterlife weighed souls, like the Michael of Catholic superstition, or those other symbolic scales with which the Greco-Roman Themis is depicted; and the condemned man's head, falling into the pan, restores the balance, the idea of the just, the equal, of violent leveling. Do you see the atavistic savagery of capital punishment?

Now look at the spectacle of the execution. Here primitive justice, taking visible form, becomes tragedy, representation, staged myth. Terror works upon the spectators' souls as an educational emotion, aesthetic in the true sense — that is, exciting the nerves to produce a vibration that reshapes sentiment. Cultures tend to have, in their origins, a kind of national spectacle that serves, intentionally or not, as schools for their respective citizenries. Thus the Roman Circus. Thus our bullfights. Thus the autos-da-fé were sometimes used as part of festival programs, as at the weddings of monarchs. Thus public executions still are today, in countries where they are still held in the middle of the public square, as in France. And in those other countries where they are carried out within prisons, as in England and Spain, there nonetheless remains the morbid, melodramatic anticipation of the news, the imagining of the horrific moments in the chapel, the sight, in short, of the black flag atop the tragic gate... There is, in these customs, a social sadism in which the spectacular mob takes delight in pain; there is an aura of impiety and homicide that spreads a contagion of wickedness and violence over the multitude of heads. This is exemplarity...

The religious aspect of the death penalty was surely born from the concept of authority as a divine delegation. If we imagine God as the absolute owner of human lives, then Kings or the State will be so as well, by representation. The death penalty is a natural consequence of absolutism. The scaffold, according to this system, must be a sign of royalty, like the scepter — itself, too, a symbol of violence in its origins. The gallows and the knife were, by this same reasoning, emblems of feudal dominion in the Middle Ages.

III

Exemplarity and the Right to Punish

Let us now look at the practical aspect of the death penalty; let us consider it, not under a criterion of justice, but under a criterion of utility. Not as a juridical institution, but as social efficacy. Let us treat, then, of exemplarity.

We could represent it in the form of another set of scales: society places before the potential criminal the alternative of death as a weight equivalent to death; it is, in reality, a persistence of the theological superstition known as the law of talion. It uses supreme terror as a determining element in man's will. But to oppose crime, it finds no remedy other than crime itself, in a monstrous application of *similia similibus*. The purpose of a punishment must always, juridically, be conditioned by the very law it seeks to apply. To punish a crime with an aggravated repetition of that same crime is the greatest of absurdities. By what right, by what authority, can a killer punish killing? Evil is compensated with good, not with evil. I can see, in the death penalty, nothing but one example: that of murder! Every possible aggravating circumstance comes together in this pseudo-juridical act, which disqualifies from any exercise of law and politics the societies that practice it. For them, man is not an end; he is a means so that other men may take example...

Example of what? Example that human life has a relative, instrumental value, and that any morning, in a prison yard or before a crowd, a citizen can be killed with refined coldness, in the pretended conviction of performing an august act, a movement of justice.

Let us reconstruct for a moment the appalling scene: the condemned man, dressed in the ridiculous shroud, tightly bound, climbs the steps of the fatal stairway. The minister of Christ authorizes the execution without a single protest, without any reservation, and in his hand, sarcastically, is the image of a divine man condemned to death... And another official, degraded by every curse, seats the condemned man on the bench, fits the collar, turns the mechanism... Is it possible, is it possible, to display before the People a greater lecture in immorality and ignominy?

But the exemplarity of the death penalty stands judged by history. As time has advanced, the death penalty has come to be applied ever more rarely. And just as the old judicial barbarism has been diminishing, so has criminality been decreasing. Personal safety and respect for human life are notions that have spread among citizens as public authority has come to accept them in its legislation. The abolition of the death penalty is, then, the final point of a quite clear evolution, one that can be traced through contemporary history. It began by generally limiting capital punishment to homicide, whereas before it was applied, as is known, to many bloodless offenses; it has continued by further excluding from the death penalty homicides not classed as murder, and among these, those not

accompanied by wholly odious circumstances. Only in offenses of a political or military character, which I will discuss further on, is the old juridical rigidity preserved.

But let us continue analyzing exemplarity in its most direct effect: Who is the usual public at executions, the mob that tends to swarm around prisons on days of capital punishment? We all know it is the lowest of the common crowds, and that among them are usually found the professional criminals. The flower of the Parisian underworld waits, singing, at the gates of the Petite Roquette in Paris, for the free show that the last gesture of their fallen comrade will offer them at the moment of “marrying the widow,” as the prison slang has it, or of “sticking one’s head out the window and sneezing into the sack,” as the red mobs of 1793 used to say. To die “gamely” on the guillotine or the stake is, for such people, a proof of bravery; and at the very foot of the scaffold, the eternal flower of crime sprouts anew, watered by the blood offered up... What respect can you expect human life to inspire in one who sees violent death erected as a holy work, and vengeance as a duty?

Let us recall an old and barbaric custom of certain mothers who, taking their children to witness capital executions — fortunately still incomprehensible to childish minds — would give the children a hard slap on the cheek to make them remember that horrible act. Behold, here, exemplarity...

There still circulates, among supporters of the death penalty, an old and inept phrase which is for

them almost their only argument: I mean Alphonse Karr's line, "Let the gentlemen murderers begin." But, gentlemen, the first response that occurs to me is a one-word question: Which ones? Which murderers must begin — the common criminals, or the legal ones? I believe the worthiest ought to begin! And since society can only retain the right to punish so long as it retains its own moral superiority over those it punishes, it is clear that it falls to society to begin. What would you say if a civilizing nation, in a war against barbarians or savages, used those same warlike methods itself? You would say that it had, ipso facto, lost its right to intervene, because it had ceased to hold social superiority. Well, society is the eternal intervener, charged with civilizing the customs of crime, which swarm like savages within the heart of our Cities.

The rights of individuals are limited by social interest. As soon as an individual ceases to be a social man, society may cut off his free relations with society, so that other individuals do not suffer in their own liberty. But also, conversely, social right is limited by individual right. Society cannot cease to be society, on pain of losing all right. And since its first obligation is to guarantee life, the death penalty falls outside its rights. If its right is limited, it can never apply an unlimited punishment; it cannot deprive of life, nor can whatever deprivations of liberty it imposes ever be perpetual.

The right of social repression is a law of war between society and the individual. Very well. But like all war, it must have its own laws. Society, in order to repress infractions of the law, may resort

to the means of violence necessary to seize the person of the offender, if need be. But once he is reduced to imprisonment, he is then protected by the law that safeguards all prisoners of war in our civilization. His liberty is in the hands of the law; but his life is sacred by the ministry of the law. The death penalty, consequently, amounts to the execution of prisoners — a system of warfare abandoned by all civilized nations. It is the execution of prisoners in the war between the individual and society.

But there is, against the death penalty, an argument that to me is decisive: the death penalty is absolutely repugnant to the social conscience. Consider: every action must bear its responsibility. Well then: the act of the death penalty is entirely irresponsible. There is, in the face of executions, a flagrant case of social cowardice. Society does not merely limit itself to being cruel to the victim; it is also cowardly before its own responsibilities. What citizen wishes to claim for himself the responsibility for the execution? When a crowd is responsible, none of the individuals composing it feels any responsibility at all. It is a convenient system of inhibition. Collective guilt frees each person of personal guilt. On the eve of executions, the people cry out for pardon, cry out to be freed from the people's own wrath, in the name of the people's own will, for the man whom only the people will kill! Could there be a more monstrous contradiction? I believe that the cry for mercy that rises from every direction on those dark days, in truly civilized cities, is an echo of remorse scattered among the crowds, diluted infinitesimally across a sea of

human heads, all sharing in a guilt that seems smaller to each soul because each soul feels it divided among all of humanity. Every citizen has a hand of his own placed upon the instrument of torment, and each one feels his share of the murder. And in order to cleanse themselves completely of this guilt, men have found the figure of another horrible victim, a scapegoat, upon whom to unload the surrounding responsibility that everyone rejects: and this victim is the executioner. But the executioner himself takes care to declare, as if by sacrament, that it is not he who kills, but the law... The law — a convenient word, an idolatrous personification of a mere letter that has no efficacy at all unless it expresses the will of a people who dictated it, as the embodiment of a national soul. The legislator who voted for the death law, the head of State who sanctioned it, the citizen who applauded it, the minister who proposed it, the prosecutor who demands it, the judge who pronounces it — all of them would consider themselves dishonored if they had to carry it out personally, and would abandon their offices rather than do so. What is more: all of them would indignantly refuse the executioner's hand, so as not to stain themselves with ignominy. Do you see the injustice this represents? Do you see the hypocrisy this signifies? How can we believe that they consider an act of justice that very justice they demand, when its fulfillment forever dishonors the official who carries it out?

This is why the figure of the executioner, so suggestive to that search for aesthetic antitheses which was Romanticism, has its own genuine,

distinctive literature, an aspect of poetic satanism, and his name as a pariah, paying for the darkness of the whole social conscience, joins that of the outcasts sung by the Romantic muse, in the verses of Espronceda, in the ironies of Heine, in the phantasmagorias of Victor Hugo — the great patriarch of all abolitionists of the scaffold, together with Lamartine. And, by contrast, the Romanticism of absolutist reaction idealizes the executioner as the cornerstone of the social edifice, in the inhuman pages of De Maistre, creator of what we might call “scaffold-ism.”

IV

The Doctrine of Social Defense

Following the modern evolution of criminal law, the death penalty, as a juridical doctrine, has also had to evolve, and so the theorists, seeing the collapse of the traditional arguments in favor of the scaffold, have found themselves compelled to seek out others more in keeping with the criminal-law formulas of the day. From the historical concept of punishment as the spiritual satisfaction of offended justice, the law has moved on to the idea of pure and simple social defense, or to the (more humane) idea of the correction of the offender. There is no need to dwell on the absolute incompatibility between the death penalty and a correctional system. What remains for us to consider, then, is solely the truly inhumane theory that seeks to make the death penalty, as a sanction, compatible with the doctrine of the offender's absolute irresponsibility. For this well-known penal school of ethical determinism, the death penalty is an excision of the rotten social limb, the annihilation of the criminal as one would a wild beast — not in view of his awareness of crime, but in view of the social danger he represents. I do not believe there exists, in our present body of contemporary doctrine, a more inhumane and shameful conception. If the criminal is always a madman, a lunatic, an abnormal being — a belief I share to some extent — then the crime committed by the society that kills

him would be the true crime, carried out with responsibility and awareness. And if in that case we proclaim the death penalty lawful, it must also be applied to homicidal madmen, or to the sick struck by infectious diseases, by epidemics, as unconscious killers of society. And if confinement in prisons is not a perfect guarantee for the rest of the citizenry, logic implies that neither are hospitals, asylums, lazarettos, or quarantines!

V

The Death Penalty as Fact

I have spoken, so far, of the death penalty as law. I will devote a few words to the death penalty as fact. And, first of all, I will fix upon a consideration I believe to be truly essential: the ultimate punishment does not fall exclusively upon the condemned man; it falls, with greater reach and perhaps greater intensity, upon his family — that is, upon the innocent. For death is a horrifying contingency for the citizen to whom it is applied; but there is a pain still greater for many: the execution of a child! Are there not fathers, are there not, above all, mothers, who would willingly lay their own heads beneath the instrument of torment to save the lives of their children? Here you have another supreme and detestable immorality of this iniquitous law. And this is not only a dreadful moral torment that turns every mother into a *Mater Dolorosa*; beyond that, society, pitiless and inexorable, condemns the very name of the condemned man's family to a perpetual dishonor, in a defaming and definitive excommunication.

As fact, it must also be said that the death penalty is a sacrilegious violation of the unknowable, and lays a profane hand upon the domain of the infinite. Can man banish man into non-existence, or into the dark and unknown existences beyond? Can it be lawful, for those who believe in God, for man to do work reserved to God,

destroying a life before its natural term? Can that terrible veil be lifted without the act of whoever does so being comparable to the symbolic sacrilege of those who lifted the veil of the Ark and were struck down by lightning, as Scripture tells?

I can already hear the word with which certain crowds tend to greet these generous crusades against the death penalty. Sentimentalism, cheap sentimentalism... Well then: this sentimentalism created civilization; this sentimentalism will tomorrow put an end to wars, just as yesterday it put an end to the barbarous heritage of every people's childhood. And, on the other hand, is it not also — as Benavente so aptly noted — an opposing sentimentalism, that frenzy with which every voice of social cruelty demands the victims' blood, on days when they consider the interests of caste, hierarchy, or wealth to be undefended — interests that must necessarily be attacked if we are to open the way to the future?

We now come to another formidable argument against capital punishment: that of its irreparability, and that of the fallible condition of every tribunal. The death penalty amounts to a proclamation of the infallibility of human justice. And, in fact, an old legal fiction has sought to impose this dogma upon justice with the idolatrous reverence, the *noli me tangere*, the taboo, of what has been called *res judicata*. We can all recall instances in which the indisputable authority of *res judicata* has been invoked to silence debates in which governments felt themselves weak. Here is one more proof that our society still finds itself in what Auguste Comte called the theological state,

and that Catholicism has so thoroughly infected the foundations of our citizenship that fear of free inquiry attacks even the firmest guarantees of popular liberty and sovereignty. The new age that we would wish to inaugurate here is that of an unending revision of all religious, moral, social, juridical, and political values; for this revision is, ultimately, human progress itself — the light, the sense of what is better, the ideal, every noble part of the human economy, every perfectibility of history. And we could go on tracing this glorious series of revisions across the ages, as milestones left along the road to glory by every hero and every sage, each of whom bears his name attached to some saving and regenerating revision, as one who christens one more star in the infinite Milky Way. Ah! — this nebula is a red road, red with the generous blood with which every redeemer has soaked the earth; and the suppression of the death penalty, when it is finally achieved, will have been won at the cost of countless redemptive death sentences.

I will now give a brief remembrance to that host of illustrious victims who, in every nation, form the martyrology of Citizenship and Liberty. For Christian civilization itself, would not the sole example of the injustice of Calvary already be an unanswerable argument against the death penalty? For Spain's own present constitutional order, would not the immense list of the victims of Ferdinand's reign suffice to banish forever from our codes the penalty that produced such slaughter? Consider that the very people who once killed the men of liberty and constitutionalism would have

acclaimed them only a few years later, and that now, with the same hand that delivered them to death, it has inscribed their names in letters of gold at the head of the Palace of Laws — so that they, victims of the law, might preside over the creation of other laws and perfume them with their generous blood, not so that such laws might cause new victims awaiting the marble of future Congresses, but so that the formidable exemplarity of juridical errors might stand as eternal testimony to human weakness.

I will not name these heroes triumphant over death, who today cooperate through their immaterial presence in our task. But let us, to the memory of all of them, lay down a branch of oak.

The authority of *res judicata* received a mortal blow in the debates of the Dreyfus affair. That is a moment that will remain significant in contemporary history, because it represents, in the juridical realm, the emancipation from all legal religiosity — just as constitutional principle and the abolition of the divine right of kings represent, in the political realm, the emancipation from another religiosity.

Human justice is an essentially unreliable thing. Moreover, in its extreme, literal application, it is *summum jus, summa injuria*, as the Romans used to say. And to remedy the injustices of justice, men have invented grace, pardon, the reprieve — a remnant of the principle that once attributed to kings the original administration of justice and, with it, the right of life and death over men. But the pardon, in itself, is an immoral institution. Its

granting depends, very often, on causes quite different from any purification of justice — a royal celebration, the veneration of the Cross on Good Friday, a collective and momentary outcry, the chance sway of public sentiment. The pardon tends to be a political measure, not a juridical one. The life or death of the condemned is gambled on the fortunes of currents of opinion or the conveniences of State. A French writer called it the lottery of death. Today an odious criminal will be pardoned, and tomorrow the pardon will be denied to a poor wretch. The examples speak for themselves...

VI

From Torment to Suppression

The death penalty in history, just as it has diminished in the number and extent of its applications, has also changed in its quality. I mean that from the concept of torment — that is, of supreme pain inflicted on the condemned, as a chastisement, as a punishment in the true sense of the word — we have moved to the concept of the suppression of life with the suppression of pain. As a consequence of Beccarian doctrine, the French guillotine, today a grim and vile image, was in its own day almost a medical instrument, one through which the surgeon Louis (hence the name "Louison") and the physician Guillotin gave proof, in their own way, of the famous sentimentality characteristic of the close of the eighteenth century. Little could they have imagined that the guillotine would soon stain its crooked jaw with the blood of kings, with the representative and expiatory blood of an entire dying regime, as though the unleashed fury of a popular cataclysm wished to avenge, through pure and simple death, the tradition of the old penal barbarism. Whoever compares the momentary, feverish, sickly fury of 1793 with the cold and systematic legal cruelty of the old regime will be able to judge serenely the work of the Revolution, the transition between the two eras. And whoever compares, concretely and vividly, the refined and interminable torment of a

Damiens (the failed regicide of Louis XV) or of a De la Barre (the young nobleman who died for refusing to salute a religious procession) will grasp the immense distance between one age and the next. Add to this difference the abolition of the procedural barbarism of torture, which entailed the natural possibility that the tortured man was innocent. Between the two regimes, then, as regards the death penalty, there lies the evolution from the concept of punishment or pain to the concept of the suppression of life. The guillotine was a kind of chloroform. In this same vein, electrocution — which has at times, like every such instrument, produced contrary results — is one more proof of this penal trend. In future times, when the death penalty is a distant barbarism, studied in history books, our descendants will be unable to comprehend how the figure of the scaffold could coexist with the cities of our day; and they will feel, at that memory, the same gesture of revulsion that torture, judicial torment, inspires in us today.

In our legislation we can note, of late, reforms that have sought to lessen the horror of the supreme punishment. One of these is the reduction of the compulsory hours in the chapel; the chapel, imposed by a religious scruple, is a remnant of refinement in death — a kind of moral torment, already abolished almost everywhere. Another reform is the one that removed executions from public view, with a plain inconsistency regarding the principle of exemplarity. In England, executions are also carried out behind closed doors. In France, they are still public. I recall that when the bill was

introduced proposing that the guillotine be confined to the interior of prisons, all the abolitionists voted against it, because they believed that the scandalous publicity of those events was a guarantee that the social conscience would sooner cry out for the total suppression of the penalty.

Let an enthusiastic greeting now go out to the nations that have already abolished the scaffold. Let it go, in particular, to the young and most noble Republic of Portugal, a shining example for Iberia. Let it go to Italy. Let it go to that host of French abolitionists, defeated yesterday by the social backwardness of the Parisian crowds. And let there be, finally, a wish that Spain may soon give the world this lesson in nobility and dignity — this imperialism of glory, radiating and exporting a Spanish spirit that could truly rise to a most exemplary and doctrinal Europeanness, dispelling our old historical darknesses.

VII

Exceptional Jurisdictions

I must add a few words on the death penalty in exceptional jurisdictions or laws.

Every time the voices of power have spoken of an imminent abolition of the death penalty, they have never failed to say that the abolition would not extend to military jurisdiction. And on this point, some distinctions are needed.

Italy, which has abolished the death penalty, retains it in military jurisdiction, but only in time of war. Here is a very necessary clarification. For our part, at present, we would not mind if Spanish legislation adopted the same principle. War, by itself, represents an atavistic instinct akin to that of the death penalty. In fact, it is a death penalty by chance. And since it is a most abnormal state, one that requires strong coercions to bring about, the death penalty is a natural consequence of it. But we would wish, on the other hand, for the absolute abolition of the death penalty in time of peace, in both military and civil jurisdiction. We do not believe it to be an absolute necessity for discipline, as a common commonplace holds. It would be worth, on this point, comparing the penalties laid down in the various military codes of Europe, and modifying the Spanish code in light of them — a code repeatedly called archaic.

It must also be borne in mind that offenses punishable by death in military jurisdiction are of two kinds: either disciplinary offenses, or offenses against public order. Both are offenses to which extradition, in general, does not apply, and which are therefore not considered universal or natural crimes, but artificial, local, national, political offenses — created by law and not by nature. The men on whom such sentences generally fall are not born, professional criminals, but occasional, incidental ones. If we look to history, we will see that the victims proclaimed illustrious today were once sacrificed by exceptional or wartime jurisdictions, under the wrath or passions of the moment, compounded by the swiftness of the proceedings. Some of them were criminals yesterday and are heroes today: what national honors would seem sufficient today, for instance, for General Lacy, or for El Empecinado, or for Torrijos, were they able to rise again?

VIII

A General Danger

The persistence of the death penalty is a general danger, contrary to what may perhaps seem so to those who shrug their shoulders selfishly, telling themselves: What does a punishment I will never fall under matter to me? But does this good burgher truly know under what appearances of crime he may stumble tomorrow, or beneath what monstrous judicial error he might be caught? Has he truly considered the consequences a victorious revolution, full of reprisals and vengeance, might bring upon him? The abolition of the scaffold would bring about a general softening of customs, private and public, and with the passing of years the restoration of the death penalty would become as natural an impossibility for humanity as judicial torture is today in civilized lands. Just as I deeply believe that the death penalty fosters murder, I believe that abolition would foster the moral education of man and of the people, moralizing, first and foremost, those in power, as the true representatives of the select, of the worthiest. Society must not imagine itself as a Medea who slits her children's throats before the People, nor as a divine Moloch who devours humans in sacrifice. In the general protest that rises from every quarter on the eves of executions, there is an echo of conscience; it is the infant cry of the conscience to come, of the next and higher stage of human

conscience, in the unfolding of its transformation, reacting against yesterday's conscience, closer to our bestial origins.

My small glory as a writer would consist precisely in having contributed, to the best of my abilities, to the awakening of that new conscience...

EDITORIAL APPARATUS

Definitions and Terms

Congrès de la Llibertat. The Barcelona congress of February 1912 at which this address was delivered, Alomar having been named its appointed speaker on capital punishment. The congress met eighteen months after the Setmana Tràgica of July 1909, whose courts-martial and executions were still an open wound in the city; the passing reference to “various painful hours of Barcelona’s history” is to those days.

public vindication. Alomar’s *vindicta pública*, the standing Spanish legal formula for the public interest in punishment. He seizes on it because the word carries vengeance inside it, and reads the phrase as an admission the law makes without meaning to.

Astraea, Themis, Nemesis. Greek and Roman personifications of justice and retribution: Astraea the virgin of justice who fled the earth, Themis the keeper of divine order, usually shown with scales, Nemesis the goddess who exacts what is owed. Alomar treats the persistence of these figures in legal iconography as evidence that the law still thinks of justice as a deity requiring satisfaction.

auto-da-fé. Literally an act of faith. The public ceremony of the Spanish and Portuguese Inquisitions at which sentences were pronounced and the condemned handed to the secular arm for burning. Alomar’s point in naming it beside the

modern execution is that both are liturgies, staged for a congregation.

scapegoat. The goat of Leviticus 16, on whose head the sins of the community were laid before it was driven into the wilderness. Alomar makes the condemned man the scapegoat and the executioner his priest, an argument that anticipates by sixty years the ritual anthropology of René Girard.

the ring of Polycrates. From Herodotus. The tyrant of Samos, warned that unbroken good fortune invites divine envy, threw his most treasured ring into the sea to purchase misfortune; it came back inside a fish, and his ruin followed anyway. Alomar uses it for the logic of the propitiatory offering: a life surrendered in advance to buy off a disaster that has not yet come.

the law of talion. Lex talionis, the rule of like for like, an eye for an eye. Alomar calls it a theological superstition rather than a legal principle, and the whole second half of his argument turns on the claim that a punishment identical to the crime cannot condemn the crime.

similia similibus. The homeopathic maxim, like cured by like. Alomar's charge is that the state prescribes killing as the remedy for killing and calls the dose justice.

"Let the gentlemen murderers begin." Que messieurs les assassins commencent, from Alphonse Karr's satirical journal Les Guêpes in 1849: abolish the death penalty by all means, but let the murderers give it up first. It was the

stock retort of French retentionists for a century, and Alomar answers it by asking which murderers are meant.

la Roquette. The Paris prison quarter that gave its name to the guillotine's standing place. Two prisons faced each other across the rue de la Roquette; the condemned were held in the Grande Roquette, and from 1851 the scaffold was raised in the street outside its gate, where sixty-nine people were beheaded before its demolition in 1900. Alomar's text says Petite Roquette, which held juveniles and later women; the slip is his and has been left standing.

marrying the widow. Épouser la veuve, Paris prison slang for going to the guillotine, the widow being the machine. The companion phrase Alomar gives from the crowds of 1793 is éternuer dans le sac, to sneeze into the basket.

Damiens and De la Barre. Robert-François Damiens, who wounded Louis XV with a penknife in 1757 and was publicly torn apart by horses after hours of prescribed torment; the Chevalier de la Barre, a young nobleman beheaded in 1766 on a charge of blasphemy that began with his failure to remove his hat before a religious procession. Alomar sets them at the far end of the distance the guillotine was meant to close.

Guillotin and Louis. Joseph-Ignace Guillotin, the physician who proposed a uniform and instantaneous method of execution to the National Assembly, and Antoine Louis, the surgeon who designed the machine that briefly bore his name as

the Louison. Alomar's reading of the guillotine as a humane instrument gone monstrous is the hinge of his sixth section.

res judicata. The doctrine that a matter finally adjudged is settled and may not be reopened. Alomar's objection is not to the doctrine in ordinary civil use but to its extension into a claim of infallibility, which is what a court asserts whenever it imposes a penalty that cannot be undone.

summum jus, summa injuria. The highest law is the highest injustice, from Cicero. The maxim that law applied to its letter and to its limit produces the opposite of what it was for.

the Dreyfus affair. The prosecution, conviction and eventual exoneration of Captain Alfred Dreyfus in France between 1894 and 1906. Alomar treats it as the case that broke the spell of *res judicata* by proving in public that a final judgment can be a lie.

the theological state. The first of the three stages in Auguste Comte's account of human understanding, in which events are explained by the will of supernatural agents. Alomar's charge is that European penal law is still in that stage while believing itself to be in the last.

Ferdinand's reign. Ferdinand VII of Spain, restored in 1814, who annulled the Constitution of 1812 and executed the liberals who had made it. Alomar's three names are the emblematic dead of that repression: General Luis de Lacy, shot in 1817 after a failed rising; Juan Martín Díez, El Empecinado, the guerrilla commander hanged in

1825; and General José María de Torrijos, shot with his companions on the beach at Málaga in 1831. All three were later honored by the state that killed them, which is the whole of Alomar's point.

the veil of the Ark. The Ark of the Covenant, which the Hebrew Scriptures make lethal to touch or to look into. Alomar reaches for it as an image of the unknowable trespassed upon.

ethical determinism. Alomar's name for the Italian positivist school of criminology associated with Lombroso, Ferri and Garofalo, which denied the offender's moral responsibility while urging that the socially dangerous be eliminated. He regards it as the most shameful of the modern defenses of the scaffold, because it removes the guilt and keeps the killing.

lazaretto. A quarantine hospital for those carrying infectious disease. Alomar's closing analogy: if imprisonment is not a perfect guarantee, neither is quarantine, and no one proposes killing the sick.

De Maistre. Joseph de Maistre, the Savoyard counter-revolutionary whose St Petersburg Dialogues of 1821 contain the celebrated passage making the executioner the cornerstone of the social order, the horror and the bond of human association together. Alomar names the position and calls it scaffold-ism.

Portugal and Italy. The two abolitions Alomar salutes. Portugal removed the death penalty for political offenses in 1852 and for ordinary crimes by the Charter of Law of 1 July 1867, and the young

Republic he praises abolished it for all offenses in 1911. Italy abolished it for all crimes but certain military offenses in wartime by the Zanardelli Code of 1889.

Further Reading

BY ALOMAR

Alomar, Gabriel. La pena de mort. 1912. The Catalan text, digitized by the Institut d'Estudis Catalans in its Corpus Textual Informatitzat de la Llengua Catalana, from which this translation was made.

Alomar, Gabriel. El futurisme. 1905. The lecture-essay that gave Alomar his claim on the word futurism four years before Marinetti, and the clearest statement of the politics underlying this address.

ON SACRIFICE AND THE SCAFFOLD

Girard, René. Violence and the Sacred. 1972. Translated by Patrick Gregory. Johns Hopkins University Press, 1977. The full anthropological argument that Alomar makes in outline: that ritual killing exists to absorb a community's violence and that the victim's guilt is beside the point.

Hubert, Henri, and Marcel Mauss. Sacrifice: Its Nature and Function. 1898. Translated by W. D. Halls. University of Chicago Press, 1964. The study of sacrificial structure available in Alomar's own lifetime, and the nearest scholarly kin to his reading of the execution as a rite.

Maistre, Joseph de. St Petersburg Dialogues. 1821. Translated by Richard A. Lebrun. McGill-Queen's University Press, 1993. The position Alomar names and rejects, in its author's own words.

Foucault, Michel. Discipline and Punish. 1975. Translated by Alan Sheridan. Pantheon, 1977. Opens with the execution of Damiens and traces the same movement Alomar describes, from the punishment of the body to its quiet suppression.

ON THE ARGUMENT ITSELF

Camus, Albert. "Reflections on the Guillotine." 1957. In *Resistance, Rebellion, and Death*, translated by Justin O'Brien. Knopf, 1961. The other great essay by a writer of the Latin south on the execution as a ceremony whose exemplarity nobody witnesses.

Karr, Alphonse. Les Guêpes. 1849. The source of the retort Alomar answers in Section III.

Garofalo, Raffaele. Criminology. 1885. Translated by Robert Wyness Millar. Little, Brown, 1914. The positivist case for eliminating the socially dangerous, which Alomar calls the most inhumane conception in the modern literature.

RELATED VOLUMES IN THIS SERIES

Beccaria, Cesare. An Essay on Crimes and Punishments. 1764. V. 5. Edited and modernized by Jeff Hood. Complicit Press, 2026. The

doctrine Alomar invokes by name when he describes the guillotine as its consequence.

Hugo, Victor. Under Sentence of Death. 1829. V. 9. Edited and reset by Jeff Hood. Complicit Press, 2026. Alomar calls Hugo the great patriarch of all abolitionists of the scaffold.

Spear, Charles. Essays on the Punishment of Death. 1844. V. 10. Edited and modernized by Jeff Hood. Complicit Press, 2026. The American argument that the death penalty is theology before it is law, made nearly seventy years earlier.

Shelley, Percy Bysshe. On the Punishment of Death. c. 1815. V. 20. With an introduction and notes by Jeff Hood. Complicit Press, 2026. The fragment that puts Alomar's question about the spectators a century before him.

COMPLICIT PRESS

THE ABOLITION CLASSICS

The texts that built the case against the death penalty